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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–3659; Directorate Identifier 2014–SW–050–AD; Amendment 39–18409; AD 2016–04–15]**

**RIN 2120–AA64**

## Airworthiness Directives; MD Helicopters Inc., Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI), Model 369A, 369D, 369E, 369FF, 369HE, 369HM, 369HS, 500N, and 600N helicopters with a certain part-numbered main rotor blade attach pin (pin) installed. This AD requires ensuring the life limit of the pin as listed in the Airworthiness Limitations section of aircraft maintenance records and Instructions for Continued Airworthiness (ICA). If the hours time-in-service (TIS) of a pin is unknown, or if a pin has exceeded its life limit, this AD requires removing the affected pin from service. This AD was prompted by a report from an operator who purchased pins that did not have life limit documentation. These actions are intended to document the life limit to prevent a pin remaining in service beyond its fatigue life, which could result in failure of a pin, failure of a main rotor blade, and subsequent loss of control of the helicopter.

**DATES:** This AD is effective March 31, 2016.

**ADDRESSES:** For service information identified in this final rule, contact Aerometals, 3920 Sandstone Dr., El Dorado Hills, CA 95762, telephone (916) 939–6888, fax (916) 939–6555, *www.aerometals.aero.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

*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–2015–3659; 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 economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Galib Abumeri, Aviation Safety Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5324; email *Galib.Abumeri@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

On September 2, 2015, at 80 FR 53028, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to MDHI Model 369A, 369D, 369E, 369FF, 369HE, 369HM, 369HS, 500N, and 600N helicopters with a pin part-number (P/N) 369X1004–5 installed. The NPRM proposed to require determining the number of hours TIS of each pin and whether the aircraft maintenance records contain a pin life limit. If the hours TIS are unknown, NPRM proposed to require removing the pin from service. If the aircraft maintenance records do not contain a pin life limit, the NPRM proposed to require revising the records and establishing a life limit of 5,760 hours if the pin is installed on a Model 369A, 369HE, 369HM, or 369HS helicopter, or 7,600 hours if the pin is installed on a Model 369D, 369E, 369FF, 500N, or 600N helicopter. The NPRM also proposed to require revising the records to add a statement that if a pin is interchanged between different model helicopters, then its life limit must be restricted to the lower life limit even if it was originally installed on a helicopter model with a higher life limit. Lastly, the NPRM proposed to prohibit installing a pin on any helicopter before these proposed requirements have been accomplished.

Aerometals produces pin P/N 369X1004–5 under a parts manufacturer approval as a replacement pin for MDHI P/N 369A1004–5. The NPRM was prompted by a report from an operator who purchased Aerometals' pins P/N 369X1004–5 without life limit documentation. The FAA inadvertently approved the pins without a life limit in the Airworthiness Limitations section and without a restriction for parts that are interchanged between models with different life limits. A total of 5,133 affected pins were sold by Aerometals without any indication that the parts were life-limited. The proposed requirements were intended to correct the failure of these parts to have a documented life limit to prevent a pin remaining in service beyond its fatigue life, which could result in failure of a pin, failure of a main rotor blade, and subsequent loss of control of the helicopter.

### Comments

After our NPRM (80 FR 53028, September 2, 2015) was published, we received a comment from one commenter supporting the NPRM.

### FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

### Related Service Information

Aerometals has issued Aero–ICA–1001 Supplemental Instructions for Continued Airworthiness, Revision NC, dated May 22, 2014, and Service Bulletin Aero–SB–1103, dated July 2, 2014. The service bulletin specifies determining whether the helicopter has pins P/N 369X1004–5 installed and then reviewing the aircraft maintenance records to determine if the pins have a life limit identified. If the life limit is not the same as that listed in the ICA,

the service bulletin specifies revising the life limit in the maintenance records. The service bulletin states that the pins were approved by the FAA as parts manufacturer approval direct replacement parts with the same life limits as the parts they replace. However, they were sold without an FAA-approved supplemental ICA containing an Airworthiness Limitations Section specifically assigning these life limits to the pins.

**Costs of Compliance**

We estimate that this AD will affect 118 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour. We estimate 1/2 work-hour to inspect and record any update for a total of $42.50 per helicopter and $5,015 for the U.S. fleet. If required, we estimate 1 work-hour per helicopter to replace 10 pins because each blade has 2 pins and each helicopter has 5 blades. Required parts are $445 for each pin. Based on these estimates, it will cost $4,535 per helicopter to replace 10 pins if the pins have exceeded their life limit.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2016–04–15 MD Helicopters Inc.:** Amendment 39–18409; Docket No. FAA–2015–3659; Directorate Identifier 2014–SW–050–AD.

**(a) Applicability**

This AD applies to Model 369A, 369D, 369E, 369FF, 369HE, 369HM, 369HS, 500N, and 600N helicopters with an Aerometals main rotor blade attach pin (pin) part number (P/N) 369X1004–5 installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a pin remaining in service beyond its fatigue life. This condition could result in failure of a pin, loss of a main rotor blade, and subsequent loss of control of the helicopter.

**(c) Effective Date**

This AD becomes effective March 31, 2016.

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

(1) Within 100 hours time-in-service (TIS) or during the next annual inspection, whichever occurs first:

(i) Review the maintenance records and determine the hours TIS of each pin P/N 369X1004–5 and whether there is a pin life limit listed in the Airworthiness Limitations Section of the applicable maintenance manual or Instructions for Continued Airworthiness (ICA). If the hours TIS on a pin is unknown, remove the pin from service.

(ii) For Model 369A, 369HE, 369HM, and 369HS helicopters, if there is no pin life limit, establish a new life limit of 5,760 hours TIS for each pin P/N 369X1004–5 by making pen-and-ink changes or by inserting a copy of this AD into the Airworthiness Limitations Section of the maintenance manual or the ICA. Remove from service any pin that has 5,760 or more hours TIS.

(iii) For Model 369D, 369E, 369FF, 500N, and 600N helicopters, if there is no pin life limit, establish a new life limit of 7,600 hours TIS for each pin P/N 369X1004–5 by making pen-and-ink changes or by inserting a copy of this AD into the Airworthiness Limitations Section of the maintenance manual or the ICA. Remove from service any pin that has 7,600 or more hours TIS.

(iv) For all model helicopters, add the following statement to the Airworthiness Limitations Section of the maintenance manual or the ICA by making pen-and-ink changes or by inserting a copy of this AD: If interchanged between different model helicopters, the life limit of pin P/N 369X1004–5 must be restricted to the lowest life limit indicated for the helicopter models and serial numbers affected.

(2) Do not install a pin P/N 369X1004–5 on any helicopter before the requirements of this AD have been accomplished.

**(f) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Galib Abumeri, Aviation Safety Engineer, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5324 or email at *9-ANM-LAACO-AMOC-REQUESTS@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

Aerometals Service Bulletin Aero-SB–1103, dated July 2, 2014, and Aerometals Aero–ICA–101 Supplemental Instructions for Continued Airworthiness, Revision NC, dated May 22, 2014, which are not incorporated by reference, contain additional information about the subject of this final rule. For service information identified in this final rule, contact Aerometals, 3920 Sandstone Dr., El Dorado Hills, CA 95762, telephone (916) 939–6888, fax (916) 939–6555, *www.aerometals.aero.* You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 6210 Main Rotor Blades.

Issued in Fort Worth, Texas, on February 17, 2016.

**Lance T. Gant,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2016–03881 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9753]**

**RIN 1545–BL84**

## Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations relating to the compliance-monitoring duties of a State or local housing credit agency for purposes of the low-income housing credit. The final and temporary regulations revise and clarify the requirement to conduct physical inspections and review low-income certifications and other documentation. The final and temporary regulations will affect State or local housing credit agencies. The text of these temporary regulations also serves as the text of the proposed regulations (REG–150349–12) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:**

*Effective date:* These regulations are effective on February 25, 2016.

*Applicability date:* For dates of applicability, see § 1.42–5T(h)(2).

**FOR FURTHER INFORMATION CONTACT:** Jian H. Grant, (202) 317–4137, and Martha M. Garcia, (202) 317–6853 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

This document amends 26 CFR part 1 to revise and clarify rules relating to section 42 of the Internal Revenue Code (Code). On March 5, 2012, the Treasury Department and the IRS published Notice 2012–18, 2012–10 IRB 438. Notice 2012–18 informed State and local housing credit agencies participating in a physical inspections pilot program of an alternative method for satisfying certain inspection and review responsibilities under § 1.42–5(c)(2) for projects for which the Department of Housing and Urban Development (HUD) conducted physical inspections.[1] Notice 2012–18 also requested comments on various issues relating to § 1.42–5. The Treasury Department and the IRS received written and electronic comments in response. After consideration of all of the comments received, the Treasury Department and the IRS are issuing these final and temporary regulations.

This document also updates the authority citation of 26 CFR part 1. The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) re-designated section 42(m) of the Code as section 42(n). The updates in this document reflect that re-designation.

*General Overview*

Section 42 provides rules for determining the amount of the low-income housing credit, which section 38 allows as a credit against income tax. Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. Section 42(c)(2) defines a qualified low-income building as any building that is part of a qualified low-income housing project at all times during the compliance period (the period of 15 taxable years beginning with the first taxable year of the credit period).

Section 42(g)(1) defines a qualified low-income housing project as any project for residential rental property if the project meets one of the following tests, as elected by the taxpayer:

(A) At least 20 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or

(B) At least 40 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

In general, under section 42(i)(3)(A), a low-income unit is a residential unit that is rent-restricted and the occupants of which meet the applicable income limit elected by the taxpayer as described in section 42(g)(1)(A) or (B).

Under section 42(i)(3)(B)(i), a unit is not treated as a low-income unit unless it is suitable for occupancy and used other than on a transient basis. Under section 42(i)(3)(B)(ii), the suitability of a unit for occupancy must be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes. Failure of one or more units to qualify as low-income units may result in a project's ineligibility for the low-income housing credit, reduction in the amount of the credit, and/or recapture of previously allowed credits.

Under section 42(m)(1), the owners of an otherwise-qualifying building are not entitled to low-income housing credits that are allocated to the building unless, among other requirements, the allocation is pursuant to a qualified allocation plan (QAP). A QAP provides standards by which a State or local housing credit agency or its Authorized Delegate within the meaning of § 1.42–5(f)(1) (''Agency'') will make these allocations. A QAP also provides a procedure that an Agency must follow in monitoring for compliance with the provisions of section 42. A plan fails to be a QAP unless, in addition to other requirements, it—

> provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of [section 42] and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

Section 42(m)(1)(B)(iii).

Section 1.42–5 (the compliance-monitoring regulations) describes some of the provisions that must be part of any QAP. As part of its compliance-monitoring responsibilities, an Agency must perform physical inspections and low-income certification review.

The compliance-monitoring regulations specifically provide that, for each low-income housing project, an Agency must conduct on-site inspections of all buildings by the end of the second calendar year following the year the last building in the project is placed in service (the all-buildings requirement). In addition, prior to the amendments in this document, the regulations provided that, for at least 20 percent of the project's low-income units (the 20-percent rule), the Agency must both inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those same units (the same-units requirement). The

[1] Notice 2014–15, 2014–12 IRB 661, extended permission through December 31, 2014, for State and local housing credit agencies to use the alternative method in Notice 2012–18.

regulations provide that the Agency must also conduct on-site inspections and low-income certification review at least once every 3 years after the initial on-site inspection. Further, the regulations require the Agency to randomly select which low-income units and tenant records to inspect and review (the random-selection rule). The regulations also require the Agency to choose the low-income units and tenant records in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed (the no-notice rule). However, an Agency may give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30-day notice of inspection or review).

**Summary of Comments and Explanation of Provisions**

*Use of the REAC Protocol, Physical Inspections, and Low-Income Certification Reviews*

Notice 2012–18 asked whether the 20-percent rule for both physical inspections and low-income certification review is appropriate, including whether this percentage appropriately balances the IRS's compliance concerns against the desirability of reducing the inspection burden on Agencies, tenants, and building owners; whether the percentage should vary depending on the type of inspection the Agencies are performing; and whether the percentage should vary with the number of units in a building.

Notice 2012–18 also asked whether the regulations should provide an exception from the inspection provisions of § 1.42–5(d) for inspections done under the HUD Real Estate Assessment Center protocol (REAC protocol) similar to the exception under § 1.42–5(d)(3) for inspections performed by the Rural Housing Service under the section 515 program. Notice 2012–18 had permitted use of the REAC protocol by participants in an inter-Departmental physical inspections pilot program that sought to align the section 42 physical inspection requirements with the physical inspection requirements under HUD programs.

Several commenters asserted that the 20-percent rule is appropriate. Others claimed that it is overly burdensome for larger properties (30 units or more). Several commenters suggested that the regulations permit an Agency to satisfy the physical inspection requirement by using the REAC protocol. These commenters generally suggested that availability of the REAC protocol for physical inspections would promote flexibility and lessen burden. Allowing an Agency to use the REAC protocol for purposes of the section 42 physical inspection requirements would eliminate the need for multiple Federal inspections on the same property if the property also benefits from HUD programs. Additionally, for larger properties, the minimum number of low-income units that an Agency must inspect under the REAC protocol may be fewer than under the 20-percent rule.

In response to the comments received, the final and temporary regulations authorize the IRS to specify in guidance published in the Internal Revenue Bulletin the minimum number of low-income units for which an Agency must conduct physical inspections and low-income certification review. Rev. Proc. 2016–15, which is being issued concurrently with these regulations, provides that, in a low-income housing project, the minimum number of low-income units that must undergo physical inspection is the lesser of 20 percent of the low-income units in the project, rounded up to the nearest whole number of units, or the number of low-income units set forth in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart in the revenue procedure. The revenue procedure applies the same rule to determine the minimum number of units that must undergo low-income certification review. An Agency is free to conduct physical inspections or low-income certification review on a larger number of low-income units if it believes that to be appropriate.

The Treasury Department and the IRS, however, are concerned about application of this 20 percent rule in some situations. For projects with a relatively smaller number of low-income units, physical inspection or low-income certification review of a randomly chosen 20 percent of those units may not produce a sufficiently accurate estimate of the remaining units' overall compliance with habitability or low-income requirements. Accordingly, not later than when these temporary regulations are finalized, the Treasury Department and the IRS intend to consider whether Rev. Proc. 2016–15 should be replaced with a revenue procedure that does not permit use of the 20 percent rule in those circumstances.

In response to Notice 2012–18's request for comments on whether the IRS should provide an exception from the inspection provisions of § 1.42–5(d) for inspections done under the REAC protocol, commenters generally supported creating such an exception. The final and temporary regulations, however, do not fully adopt this suggestion. Instead, the regulations authorize the IRS to provide in guidance published in the Internal Revenue Bulletin exceptions from, or alternative means of satisfying, the inspection provisions of § 1.42–5(d). Rev. Proc. 2016–15 provides that the REAC protocol is among the inspection protocols that satisfy both § 1.42–5(d) and the physical inspection requirements of § 1.42–5T(c)(2)(ii) and (iii). The revenue procedure contains a rigorous definition of which inspection regimes it will treat as being the REAC protocol for this purpose. Comments are requested on all aspects of the provisions in the revenue procedure that define ''performed under the REAC protocol'' for purposes of satisfying §§ 1.42–5(d) and 1.42–5T(c)(2)(ii) and (iii).

Because vacant low-income units contribute to a building's qualified basis, both occupied and vacant low-income units in a low-income housing project must be included in the population of units from which units are selected for inspection. This is the case even if the vacant unit or units may be temporarily unsuitable for occupancy as a result of work that is being done to repair or rehabilitate the unit or units. See § 1.42–5(e)(4). Potential inspection of vacant units is the rule for all compliance-monitoring inspections that do not use the REAC protocol, and Rev. Proc. 2016–15 therefore requires similar treatment when an Agency conducts a physical inspection under the REAC protocol.

Some commenters recommended using a risk-based assessment model in place of the 20-percent rule. Such a model would determine the frequency of inspections and the number of low-income units to inspect based on the probability of noncompliance of a low-income housing project. The probability of noncompliance would be determined for this purpose by the degree of compliance of the project over one or more prior years. The final and temporary regulations do not adopt this approach. However, in response to the request for comments on these temporary regulations, commenters wishing to renew this suggestion should provide both greater detail regarding the suggested risk-based procedure and a thorough justification for that procedure, including why a multi-year approach fits within the compliance requirements of section 42.

Several commenters suggested modifying the 20-percent rule by requiring more units for the initial physical inspection than for the subsequent physical inspections on the ground that a comprehensive initial physical inspection establishes a baseline of compliance for a low-income housing project. By contrast, some commenters suggested requiring more units for the subsequent physical inspections, asserting that the quality of compliance of a low-income housing project often decreases after the initial physical inspection. These comments, however, did not provide sufficient analysis to justify increasing the number of units to be inspected in either the initial or a subsequent inspection. Without a reasonable basis for doing so, requiring more units for either the initial or subsequent inspections would unreasonably increase the administrative burden on Agencies, owners, and tenants of low-income housing projects. The final and temporary regulations, therefore, do not adopt these suggestions. Commenters wishing to renew either of these suggestions should provide both greater detail and a thorough justification for the suggestion.

On the question of whether the required percentage of low-income units should vary depending on the type of compliance review (physical inspection or low-income certification review), one commenter recommended against a varying percentage, stating that there is no compelling reason for the required percentage to vary. A second commenter suggested that, in order to assess tenant eligibility, an Agency should review more than 20 percent of the low-income certifications because noncompliance relating to tenant eligibility may be harder to detect than noncompliance relating to habitability. The final and temporary regulations adopt the first commenter's suggestion. Just as an Agency may always physically inspect more than the minimum number of units, if an Agency deems it appropriate, the Agency may always review more than the minimum number of low-income certifications in a project to assess tenant eligibility. Commenters wishing to renew comments on this issue should provide both greater detail and a thorough justification for their suggestion.

Two commenters suggested that the regulations not impose an all-buildings requirement for physical inspection, but merely require an Agency to apply the physical inspection and low-income certification review requirements on a project-wide basis. According to these commenters, an all-buildings requirement can make the inspection process overly burdensome, particularly in rural areas where projects often consist of small buildings such as single-unit buildings, duplexes, or triplexes. The final and temporary regulations do not fully adopt this suggestion. The regulations continue to require that Agencies comply with the all-buildings requirement unless guidance published in the Internal Revenue Bulletin pursuant to § 1.42–5T(a)(iii) provides otherwise.

Rev. Proc. 2016–15 does provide for such an exception. Under Rev. Proc. 2016–15, the all-buildings requirement does not apply to an Agency that uses the REAC protocol, under HUD oversight, to satisfy the physical inspection requirement (although the REAC protocol itself may require inspection of all buildings in certain cases). The rigor with which Rev. Proc. 2016–15 defines the REAC protocol justifies this exception. Among the requirements set forth in the revenue procedure is the requirement that a physical inspection performed under the REAC protocol utilize the standards adopted, and inspectors certified, by HUD. Inspections performed under the REAC protocol or by the Rural Housing Service under the section 515 program require federal agency oversight. Thus, such oversight substitutes for an all-buildings requirement for inspection. Similar to inspections performed by the Rural Housing Service under the section 515 program, inspections performed under the REAC protocol are not subject to an all-buildings requirement. A physical inspection that the revenue procedure treats as being performed under the REAC protocol also involves the use of the most recent REAC UPCS inspection software, which has a strong statistical basis. Therefore, under the revenue procedure, the REAC protocol is an acceptable method for satisfying both § 1.42–5(d) and the physical inspection requirement of § 1.42–5T(c)(2)(ii) and (iii). If, in the future, the Treasury Department and the IRS become persuaded that there are one or more additional suitable alternatives to the all-buildings requirement, they may provide one or more additional exceptions to that requirement.

A commenter suggested that the regulations permit an Agency to treat multiple buildings with a common owner and plan of financing as a single low-income housing project, regardless of whether the owner has elected this treatment under section 42(g)(3)(D). The final and temporary regulations do not adopt this suggestion. Section 42(c)(2)(A) defines a ''qualified low-income building'' as, in part, any building that is part of a qualified low-income housing project at all times throughout the compliance period. Section 42(g) defines a ''qualified low-income housing project'' as any project for residential rental property if the project meets the requirements of section 42(g)(1)(A) or (B), whichever is elected by the taxpayer. The scope of the term ''qualified low-income housing project'' for purposes of physical inspections should be the same as for other purposes under section 42.

*Decoupling of the Physical Inspection and Low-Income Certification Review Requirements (Ending the Same-Units Requirement)*

Notice 2012–18 asked for comments on whether permitting physical inspection and low-income certification review of different low-income units (that is, ending the same-units requirement) would simplify the inspection process. The notice also asked for comments on whether ending the requirement would impair the value of the data obtained. One commenter asserted that the current rule of requiring physical inspection and low-income certification review of the same low-income units is effective in finding noncompliance on a particular unit. Most commenters, however, believed that decoupling of the physical inspection and low-income certification review requirements would reduce the administrative burden, better preserve the surprise element, and likely increase the coverage of compliance-monitoring.

In response to these comments, the final and temporary regulations end the same-units requirement by decoupling the physical inspection and low-income certification review. Therefore, an Agency is no longer required to conduct physical inspection and low-income certification review on the same units. Because the units no longer need to be the same, an Agency may choose a different number of units for physical inspection and for low-income certification review, provided the Agency chooses at least the minimum number of low-income units in each case. If an Agency chooses to select different low-income units for physical inspections and low-income certification review, the Agency must select the units for physical inspection or low-income certification review separately and in a random manner.

Further, because the units no longer need to be the same, an Agency may choose to conduct physical inspection and low-income certification review at different times. For example, if HUD requires a physical inspection only two years after a joint HUD/low-income

housing credit inspection, that second inspection may be used for both HUD and low-income housing credit purposes without accelerating the next low-income housing credit file review. (Thereafter, physical inspections performed every third year might take place a year before the every-three-year file reviews.) Also, an Agency may choose to conduct physical inspections in the summer but complete the low-income certification review in the winter when physical inspections may be difficult to conduct due to weather conditions. The inspections and reviews, however, must satisfy the applicable timeliness requirements of § 1.42–5T(c)(2)(ii)(A)(*1*) and (*2*).

In addition, to make meaningful the physical inspection and low-income certification review, the final and temporary regulations retain the random-selection rule and strengthen the no-notice rule. Accordingly, if an agency decides to decouple the physical inspection and low-income certification review, the Agency may not allow selection of a low-income unit for physical inspection (or low-income certification review) to influence the likelihood that the same unit will be selected (or will not be selected) for low-income certification review (or physical inspection).

Whether or not an Agency is selecting the same units for inspection and for low-income certification review, the Agency may give an owner reasonable notice that an inspection of the building and low-income units or review of low-income certifications will occur. This notice enables the owner to notify tenants of the inspection or to assemble low-income certifications for review. The regulations provide that reasonable notice is generally no more than 30 days, but they also provide a very limited extension for certain extraordinary circumstances beyond an Agency's control such as natural disasters and severe weather conditions.

Thus, under the final and temporary regulations, if an Agency chooses to select the same units for physical inspections and low-income certification review, the Agency may conduct physical inspections and low-income certification review either at the same time or separately. However, once the Agency informs the owner of the identity of the units for which physical inspections or low-income certification review will occur, the Agency must conduct the physical inspections and low-income certification review within the reasonable-notice time frame described in the preceding paragraph.

Comments are requested on these aspects of the regulations. For example, comments are requested on whether the same maximum amount of notice is reasonable for physical inspections and low-income certification review. Comments are also requested on whether, for physical inspections, the reasonable-notice time frame should be shortened. For example, under the REAC protocol, an inspector provides a 15-day notice of an upcoming HUD inspection to the owner and/or manager of the building and same-day notice of which units are to be inspected.

*Possible Changes in the Minimum Size of Samples*

The Treasury Department and the IRS believe the methods in Rev. Proc. 2016–15 reasonably balance the burden on Agencies, tenants, and building owners while adequately monitoring compliance. However, additional comments may be submitted on other possible methods, including stratified sampling procedures and estimation methodologies. To be useful, any such comments should include substantial detail regarding the procedures to be adopted and should provide thorough justification as to whether the suggested methods effectively reduce burden without negatively impacting the confidence that can be placed in the results obtained from the resulting samples.

*Revision to Frequency and Form of Certification*

The final and temporary regulations revise the rules currently in § 1.42–5(c)(3) to clarify that a monitoring procedure must require that the owner certifications in § 1.42–5(c)(1) be made to and reviewed by the Agency at least annually covering each year of the 15-year compliance period.

**Effective/Applicability Dates**

The temporary regulations apply on February 25, 2016 and expire on February 22, 2019. Agencies using the REAC protocol as part of the physical inspections pilot program may rely on the temporary regulations for on-site inspections and low-income certification review occurring between January 1, 2015 and February 25, 2016.

**Statement of Availability of IRS Documents**

IRS Revenue Procedures, Revenue Rulings notices, notices and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov.*

**Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal authors of these regulations are Jian H. Grant and Martha M. Garcia, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by removing the entries for §§ 1.42–1T and 1.42–2T and by adding and revising entries in numerical order to read as follows:

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

Section 1.42–1T also issued under 26 U.S.C. 42(n).

Section 1.42–2 also issued under 26 U.S.C. 42(n).

Section 1.42–5T also issued under 26 U.S.C. 42(n).

■ **Par. 2.** Section 1.42–5 is amended by:

■ 1. Adding paragraph (a)(2)(iii).

■ 2. Revising paragraphs (c)(2)(ii) and (iii) and (c)(3).

■ 3. Revising the paragraph heading of paragraph (h), redesignating the text of paragraph (h) as paragraph (h)(1) and adding a paragraph (h)(1) heading, and adding paragraph (h)(2).

■ 4. Adding paragraph (i).

The additions and revisions read as follows:

**§ 1.42–5 Monitoring compliance with low-income housing credit requirements.**

(a) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see § 1.42–5T(a)(2)(iii).

* * * * *

(c) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.42–5T(c)(2)(ii).

(iii) [Reserved]. For further guidance, see § 1.42–5T(c)(2)(iii).

(3) [Reserved]. For further guidance, see § 1.42–5T(c)(3).

* * * * *

(h) *Effective/applicability dates*—(1) *In general.** * *

(2) [Reserved]. For further guidance, see § 1.42–5T(h)(2).

(i) [Reserved]. For further guidance, see § 1.42–5T(i).

■ **Par. 3.** Section 1.42–5T is added to read as follows:

**§ 1.42–5T Monitoring compliance with low-income housing credit requirements (temporary).**

(a)(1) through (a)(2)(ii) [Reserved]. For further guidance, see § 1.42–5(a)(1) through (a)(2)(ii).

(iii) *Effect of guidance published in the Internal Revenue Bulletin.* Guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) may provide—

(A) Exceptions to the requirements referred to in § 1.42–5(a)(2)(i) and the requirements described in this section; or

(B) Alternative means of satisfying those requirements.

(b) through (c)(2)(i) [Reserved]. For further guidance, see § 1.42–5(b) through (c)(2)(i).

(ii) Require that, with respect to each low-income housing project, the Agency conduct on-site inspections and review low-income certifications (including in that term the documentation supporting the low-income certifications and the rent records for tenants).

(iii) Require that the on-site inspections that the Agency must conduct satisfy both the requirements of § 1.42–5(d) and the requirements in paragraph (c)(2)(iii)(A) through (D) of this section, and require that the low-income certification review that the Agency must perform satisfies the requirements in paragraphs (c)(2)(iii)(A) through (D) of this section. Paragraph (c)(2)(iii)(A) through (D) of this section provides rules determining how these on-site inspection requirements and how these low-income certification review requirements may be satisfied by an inspection or review, as the case may be, that includes only a sample of the low-income units.

(A) *Timing.* The Agency must conduct on-site inspections of all buildings in the low-income housing project and must review low-income certifications of the low-income housing project—

(*1*) By the end of the second calendar year following the year the last building in the low-income housing project is placed in service; and

(*2*) At least once every 3 years thereafter.

(B) *Number of low-income units.* The Agency must conduct on-site inspections and low-income certification review of not fewer than the minimum number of low-income units required by guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(C) *Selection of low-income units for inspection and low-income certifications for review*—(*1*) *Random selection.* The Agency must select in a random manner the low-income units to be inspected and the units whose low-income certifications are to be reviewed. The Agency is not required to select the same low-income units of a low-income housing project for on-site inspections and low-income certification review, and an Agency may choose a different number of units for on-site inspections and for low-income certification review, provided the Agency chooses at least the minimum number of low-income units in each case. If the Agency chooses to select different low-income units for on-site inspections and low-income certification review, the Agency must select the units for on-site inspections or low-income certification review separately and in a random manner.

(*2*) *Advance notification limited to reasonable notice.* The Agency must select the low-income units to inspect and low-income certifications to review in a manner that will not give advance notice that a particular low-income unit (or low-income certifications for a particular low-income unit) for a particular year will or will not be inspected (or reviewed). However, the Agency may give an owner reasonable notice that an inspection of the building and low-income units or review of low-income certifications will occur. The notice is to enable the owner to notify tenants of the inspection or to assemble low-income certifications for review.

(*3*) *Meaning of reasonable notice.* For purposes of paragraph (c)(2)(iii)(C)(*ii*) of this section, reasonable notice is generally no more than 30 days. The notice period begins on the date the Agency informs the owner of the identity of the units for which on-site inspections or low-income certification review will or will not occur. Notice of more than 30 days, however, may be reasonable in extraordinary circumstances that are beyond an Agency's control and that prevent an Agency from carrying out within 30 days an on-site inspection or low-income certification review. Extraordinary circumstances include, but are not limited to, natural disasters and severe weather conditions. In the event of extraordinary circumstances that result in a reasonable-notice period longer than 30 days, an Agency must conduct the on-site inspection or low-income certification review as soon as practicable.

(*4*) *Applicability of reasonable notice limitation when the same units are chosen for inspection and file review.* If the Agency chooses to select the same units for on-site inspections and low-income certification review, the Agency may conduct on-site inspections and low-income certification review either at the same time or separately. The Agency, however, must conduct both the inspections and review within the reasonable-notice period described in paragraph (c)(2)(iii)(C)(*2*) and (*3*) of this section.

(D) *Method of low-income certification review.* The Agency may review the low-income certifications wherever the owner maintains or stores the records (either on-site or off-site).

(3) *Frequency and form of certification.* A monitoring procedure must require that the certifications and reviews of § 1.42–5(c)(1) and (c)(2)(i) be made at least annually covering each year of the 15-year compliance period under section 42(i)(1). The certifications must be made under penalty of perjury. A monitoring procedure may require certifications and reviews more frequently than every 12 months, provided that all months within each 12-month period are subject to certification.

(c)(4) through (h)(1) [Reserved]. For further guidance, see § 1.42–5(c)(4) through (h)(1).

(2) *Effective/applicability dates of the REAC inspection protocol.* The requirements in paragraphs (a)(2)(iii), (c)(2)(ii) and (iii), and (c)(3) of this section apply beginning on February 25, 2016. Agencies using the REAC inspection protocol of the Department of Housing and Urban Development as part of the Physical Inspections Pilot Program may rely on these provisions for on-site inspections and low-income certification review occurring between January 1, 2015 and February 25, 2016. Otherwise, for the rules that apply before February 25, 2016, see § 1.42–5 as

contained in 26 CFR part 1 revised as of April 1, 2015.

(i) *Expiration date.* The applicability of this section expires on February 22, 2019.

**John Dalrymple.**

*Deputy Commissioner for Services and Enforcement.*

Approved: January 29, 2016.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2016–04005 Filed 2–23–16; 4:15 pm]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2016–0112]**

### Drawbridge Operation Regulation; Chester River, Chestertown, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the S213 (MD213) Bridge across the Chester River, mile 26.8, at Chestertown, MD. This deviation is necessary to perform bridge maintenance and repairs. This deviation allows the bridge to remain in the closed-to-navigation position.

**DATES:** This deviation is effective without actual notice from February 25, 2016 through 6 p.m. on June 1, 2016. For the purposes of enforcement, actual notice will be used from February 22, 2016 at 9 a.m., until February 25, 2016.

**ADDRESSES:** The docket for this deviation, [USCG–2016–0112] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Maryland Department of Transportation State Highway Administration, that owns and operates the S213 (MD213) Bridge, has requested a temporary deviation from the current operating regulations to perform a bridge stringer replacement project. The bridge is a bascule draw bridge and has a vertical clearance in the closed position of 12 feet above mean high water.

The current operating schedule is open on signal if at least six hours notice is given as set out in 33 CFR 117.551. Under this temporary deviation, the bridge will remain in the closed-to-navigation position from 6 a.m. on February 22, 2016 to 6 p.m. on June 1, 2016.

The Chester River is used by a variety of vessels including small U.S. government and public vessels, small commercial vessels, and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

During the closure times there will be limited opportunity for vessels able to safely pass through the bridge in the closed position to do so. Vessels able to safely pass through the bridge in the closed position may do so, after receiving confirmation from the bridge tender that it is safe to transit through the bridge. The bridge will be able to open for emergencies if at least six hours notice is given and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the temporary deviation.

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

Dated: February 22, 2016.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2016–04006 Filed 2–24–16; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2016–0114]**

### Drawbridge Operation Regulation; Mantua Creek, Paulsboro, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the CONRAIL Railroad Bridge across the Mantua Creek, mile 1.4, at Paulsboro, NJ. This deviation is necessary to complete bridge construction. This deviation allows the bridge to remain in the closed-to-navigation position.

**DATES:** This deviation is effective from midnight on March 1, 2016 to midnight on April 1, 2016.

**ADDRESSES:** The docket for this deviation, [USCG–2016–0114] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** CONRAIL, that owns and operates the CONRAIL Railroad Bridge, has requested a temporary deviation from the current operating regulations to complete construction of the new bridge and the remote operating system. The bridge is a vertical lift drawbridge and has a vertical clearance in the closed position of 2.5 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.729(a). Under this temporary deviation, the bridge will remain in the closed-to-navigation position from midnight on March 1, 2016 to midnight on April 1, 2016 and will open on signal if at least four hours notice is given by telephone at (856) 231–2282.

The Mantua Creek is used by a variety of vessels including small U. S. government and public vessels, small commercial vessels, tug and barge traffic and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to safely pass through the bridge in the closed position may do so at any time. The bridge will be able to open for emergencies if at least four hours notice is given by telephone at (856) 231–2282 and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the temporary deviation.

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

Dated: February 22, 2016.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2016–04011 Filed 2–24–16; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

**[EPA–HQ–OAR–2013–0795; FRL–9942–80–OAR]**

**RIN 2060–AR65**

## Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds—Requirements for t-Butyl Acetate

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending the EPA's regulatory definition of volatile organic compounds (VOC) under the Clean Air Act (CAA). The regulatory definition of VOC currently excludes t-butyl acetate (also known as tertiary butyl acetate or TBAC; CAS Number: 540–88–5) for purposes of VOC emissions limitations or VOC content requirements on the basis that it makes a negligible contribution to tropospheric ozone formation. However, the current definition includes TBAC as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC. This final action removes the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements related to the use of TBAC as a VOC.

**DATES:** This final rule is effective on April 25, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2013–0795. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Souad Benromdhane, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Mail Code C539–07, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541–4359; fax number: (919) 541–5315; email address: *benromdhane.souad@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. General Information

### *A. Does this action apply to me?*

Entities affected by this final rule include, but are not necessarily limited to, state and local air pollution control agencies that prepare VOC emission inventories and ozone attainment demonstrations for state implementation plans (SIPs). These agencies are relieved of the requirements to separately inventory emissions of TBAC. This final action may also affect manufacturers, distributors and users of TBAC and TBAC-containing products, which may include paints, inks and adhesives. This action allows state air agencies to no longer require these entities to report emissions of TBAC.

### *B. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this final rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this final rule will be posted on the TTN's policy and guidance page for promulgated rules at the following address: *http://www.epa.gov/airquality/ozonepollution/actions.html#impl.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP Line at (919) 541–4814.

### *C. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date the final action is published in the **Federal Register.** Filing a petition for review by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such action. Thus, any petitions for review of this final action related to the elimination of recordkeeping of TBAC must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**.

## II. Background

### *A. The EPA's VOC Exemption Policy*

Tropospheric ozone, commonly known as smog, is formed when VOC and nitrogen oxides ($NO_X$) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, the EPA and state governments limit the amount of VOC that can be released into the atmosphere. VOCs are organic compounds of carbon, many of

which form ozone through atmospheric photochemical reactions. Different VOC have different levels of reactivity. That is, they do not react to form ozone at the same speed or to the same extent. Some VOC react slowly or form less ozone; therefore, changes in their emissions have limited effects on local or regional ozone pollution episodes. It has been the EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC so as to focus control efforts on compounds that do significantly affect ozone concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOC. The EPA lists compounds that it has determined to be negligibly reactive in its regulations as being excluded from the regulatory definition of VOC (40 CFR 51.100(s)).

The CAA requires the regulation of VOC for various purposes. Section 302(s) of the CAA specifies that the EPA has the authority to define the meaning of ''VOC,'' and hence what compounds shall be treated as VOC for regulatory purposes. The policy of excluding negligibly reactive compounds from the regulatory definition of VOC was first laid out in the ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977) and was supplemented subsequently with the ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans'' (70 FR 54046, September 13, 2005) (from here forward referred to as the 2005 Interim Guidance). The EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and, therefore, suitable for exemption by the EPA from the regulatory definition of VOC. Compounds that are more reactive than ethane continue to be considered VOC for regulatory purposes and, therefore, are subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 policy.

The EPA uses two different metrics to compare the reactivity of a specific compound to that of ethane: (1) The reaction rate constant (known as $k_{OH}$) with the hydroxyl radical (OH); and (2) the maximum incremental reactivity (MIR) on ozone production per unit mass basis. Differences between these metrics and the rationale for their selection is discussed further in the 2005 Interim Guidance.

*B. History of the VOC Exemption for TBAC Including the Unique Recordkeeping, Emissions Reporting, Photochemical Dispersion Modeling and Inventory Requirements*

On January 17, 1997, ARCO Chemical Company (now known as and from here forward referred to as LyondellBasell) submitted a petition to the EPA, which requested that the EPA add TBAC to the list of compounds that are designated negligibly reactive in the regulatory definition of VOC at 40 CFR 51.100(s). The materials submitted in support of this petition are contained in Docket EPA–HQ–OAR–2003–0084. LyondellBasell's case for TBAC being less reactive than ethane was based primarily on the use of relative incremental reactivity factors set forth in a 1997 report by Carter, *et al.*[1] Although the $k_{OH}$ values for TBAC are higher than for ethane, Carter's results indicated that the MIR value for TBAC, expressed in units of grams of ozone per gram of TBAC, was between 0.43 and 0.48 times the MIR for ethane, depending on the chemical mechanism used to calculate the MIR. In other words, TBAC formed less than half as much ozone as an equal mass of ethane under the conditions assumed in the calculation of the MIR scale.

On September 30, 1999, the EPA proposed to revise the regulatory definition of VOC to exclude TBAC, relying on the comparison of MIR factors expressed on a mass basis to conclude that TBAC is negligibly reactive (64 FR 52731, September 30, 1999). However, in the final rule, the EPA concluded at that time that even ''negligibly reactive'' compounds may contribute significantly to ozone formation if present in sufficient quantities and that emissions of these compounds need to be represented accurately in photochemical modeling analyses. In addition to these general concerns about the potential cumulative impacts of negligibly reactive compounds, the need to maintain recordkeeping and reporting requirements for TBAC was further justified by the potential for widespread use of TBAC, the fact that its relative reactivity falls close to the borderline of what has been considered negligibly reactive, and continuing efforts to assess long-term health risks.[2] Based on these conclusions, in 2004, the EPA promulgated a final rule that excluded TBAC from the definition of VOC for purposes of VOC emissions limitations or VOC content requirements, but continued to define TBAC as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOC (69 FR 69298, November 29, 2004) (from here forward referred to as the 2004 Final Rule).

In the 2004 Final Rule, the EPA argued that the recordkeeping and reporting requirements were not new requirements for TBAC as industry and states were already subject to such requirements to report TBAC as a VOC prior to the exemption. However, in practice, the rule created a new, distinct recordkeeping and reporting burden by requiring that TBAC be ''uniquely identified'' in emission reports, rather than aggregated with other compounds as VOC. The final rule explained that the EPA was in the process of reviewing its overall VOC exemption policy and that the potential for retaining recordkeeping and reporting requirements for compounds exempted from the definition of VOC in the future would be considered in that process. That process led to the development of the 2005 Interim Guidance, which encouraged the development of speciated inventories for highly reactive compounds and identified the voluntary submission of emissions estimates for exempt compounds as an option for further consideration, but did not recommend mandatory reporting requirements associated with future exemptions. Thus, TBAC was the only compound that was excluded from the VOC definition for purposes of emission controls but was still considered a VOC for purposes of recordkeeping and reporting requirements.

*C. Petition To Remove Recordkeeping and Reporting Requirements From the TBAC Exemption*

The EPA received a petition from LyondellBasell in December 2009,

[1] Carter, William P.L., Dongmin Luo, and Irina L. Malkina (1997). Investigation of the Atmospheric Ozone Formation Potential of T-Butyl Acetate, Report to ARCO Chemical Corporation, Riverside: College of Engineering Center for Environmental Research and Technology, University of California, 97–AP–RT3E–001–FR, *http://www.cert.ucr.edu/~carter/pubs/tbuacetr.pdf.*

[2] Between the EPA's proposed and final rule exempting TBAC as a VOC, the state of California raised concerns to the EPA about the potential carcinogenicity of tertiary-butanol, or TBA, the principal metabolite of TBAC. At the time, the EPA decided that there was insufficient evidence of health risks to affect the exemption decision, but persuaded LyondellBasell to voluntarily perform additional toxicity testing, use the testing results in a health risk assessment, and have the testing and assessment results reviewed in a peer consultation.

which was re-affirmed in November 2011, requesting the removal of recordkeeping and reporting requirements from the final rule to exempt TBAC from the regulatory VOC definition. LyondellBasell contends that the emissions reporting requirements are redundant and present an unnecessary burden. In 2015, the EPA issued a proposed rule (80 FR 6481, February 5, 2015) [3] in order to relieve manufacturers and users from recordkeeping and reporting requirements that were part of the 2004 Final Rule.

## III. The EPA's Assessment of the Petition

In most cases, when a negligibly reactive VOC is exempted from the definition of VOC, emissions of that compound are no longer recorded, collected, or reported to states or the EPA as part of VOC emissions. When the EPA exempted TBAC from the VOC definition for purposes of control requirements in the 2004 Final Rule, the EPA created a new category of compounds and a new reporting requirement that required that emissions of TBAC be reported separately by states and, in turn, by industry. However, the EPA did not issue any guidance on how TBAC emissions should be tracked and reported, and implementation of this requirement by states has been inconsistent. A few states have modified their rules and emissions inventory processes to track TBAC emissions separately and provide that information to the EPA. Others have included TBAC with other undifferentiated VOC in their emissions inventories. Thus, the data that have been reported to date as a result of these requirements are incomplete and inconsistent. In addition, the EPA has not established protocols for receiving and analyzing TBAC emissions data collected under the requirements of the 2004 Final Rule.

Although the reactivity of TBAC and other negligibly reactive compounds is low, if emitted in large quantities, they could still contribute significantly to ozone formation in some locations. However, without speciated emissions estimates or extensive speciated hydrocarbon measurements, it is difficult to assess the impacts of any one exempted compound or even the cumulative impact of all of the exempted compounds.

In the 2004 Final Rule, the EPA stated the primary objective of the recordkeeping and reporting requirements for TBAC was to address these cumulative impacts of ''negligibly reactive'' compounds and suggested that future exempt compounds may also be subject to such requirements. However, such requirements have not been included in any other proposed or final VOC exemptions since the TBAC decision. Having high quality data on TBAC emissions alone is unlikely to be very useful in assessing the cumulative impacts of these compounds on ozone formation. Thus, the requirements are not achieving their primary objective to inform more accurate photochemical modeling in support of SIP submissions.

In the 2004 Final Rule, EPA also noted that recordkeeping and reporting requirements were justified in light of the continuing efforts to characterize long-term health risks associated with TBAC and its metabolite tertiary-butyl alcohol (TBA). Since the rule was finalized, those efforts have resulted in at least two studies regarding the long-term health risks associated with TBAC and TBA. LyondellBasell performed additional toxicity testing and a health risk assessment and submitted the peer-consultation results to the EPA in 2009.[4] In addition, in 2006, the state of California published its own assessment of the potential health effects associated with TBA and TBAC.[5] Also, the EPA is currently in the process of assessing the evidence for health risks from TBA through its Integrated Risk Information System (IRIS) program.[6] This is the first IRIS assessment for TBA. A draft of this assessment is expected to be released for public comment later this year. However, the existing toxicity information being examined in the IRIS assessment does not rely on any of the data collected through the recordkeeping and reporting requirements at issue in this rule, and, thus, continuation of those requirements does not appear relevant to any likely future determinations about the health risks associated with TBAC or TBA.

## IV. Public Comments

The EPA received five comments on the proposed rule referenced above from industry in support of this final action. No adverse comments were received.

## V. Final Action

The EPA is removing the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements for TBAC.

There is no evidence that TBAC is being used at levels that would cause concern for ozone formation. Additionally, the EPA believes these requirements, which are unique among all VOC-exempt compounds, are of limited utility because they do not provide sufficient information to judge the cumulative impacts of exempted compounds, and because the data have not been consistently collected and reported. Because these requirements are not addressing any of the concerns as they were intended, the EPA is removing the requirements for TBAC to relieve industry and states of the associated information collection burden.

This final action removes recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements related to the use of TBAC. This action does not affect the existing exclusion of TBAC from the regulatory definition of VOC for purposes of emission limits and control requirements.

We note that removal of the recordkeeping and reporting requirements does not indicate that the EPA has reached final conclusions about all aspects of the health effects posed by the use of TBAC or its metabolite TBA. The EPA is currently awaiting completion of the IRIS assessment on the potential risks involved with TBA and its toxicity. If it becomes clear that action is warranted due to the health risks of direct exposure to TBA or TBAC, the EPA will consider the range of authorities at its disposal to mitigate these risks appropriately.

## VI. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

[3] See *http://www.gpo.gov/fdsys/pkg/FR-2015-02-05/pdf/2015-02325.pdf.*

[4] Toxicology Excellence for Risk Assessment (2009). Report of the Peer Consultation of the Potential Risk of Health Effects from Exposure to Tertiary-Butyl Acetate, January 7–8, 2009, Northern Kentucky University METS Center, Erlanger, Kentucky, Volumes I and II, *http://www.tera.org/Peer/TBAC/index.html.*

[5] Luo, Dongmin, *et al.* (2006*) Environmental Impact Assessment of Tertiary-Butyl Acetate, Staff Report,* Sacramento: California Environmental Protection Agency, Air Resources Board, January 2006, *http://www.arb.ca.gov/research/reactivity/tbacf.pdf;http://www.arb.ca.gov/research/reactivity/tbaca1.pdf; http://www.arb.ca.gov/research/reactivity/tbaca2.pdf;* and Budroe, John D., et al (2015) *Tertiary Butyl Acetate Inhalation Cancer Unit Risk Factors, Appendix B,* Public Review Draft August 2015. California Environmental Protection Agency, Office of Environmental Health Hazard Assessment, *http://oehha.ca.gov/air/hot_spots/pdf/PublicReviewDraftTBAc_URF081415.pdf.*

[6] See *http://www.epa.gov/iris/publicmeeting/iris_bimonthly-dec2013/mtg_docs.htm#etbe.*

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. It does not contain any new recordkeeping or reporting requirements. This action removes recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements related to use of TBAC.

*C. Regulatory Flexibility Act (RFA)*

After considering the economic impacts of the TBAC final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action removes recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements related to use of TBAC. We have, therefore, concluded that this action will relieve regulatory burden for all directly regulated small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. In fact, this should reduce the burden on states.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175. This final action removes existing emission inventory reporting and other requirements that uniquely apply to TBAC among all VOC-exempt compounds. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action removes recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements related to use of TBAC. It does not affect the existing exclusion of TBAC from the regulatory definition of VOC for purposes of emission limits and control requirements.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The EPA did not conduct an environmental analysis for this rule because the EPA does not believe that removing the unique reporting requirements will lead to substantial and predictable changes in the use of TBAC in and near particular communities.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 17, 2016.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 51 of the Code of Federal Regulations is amended as follows:

## PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

### Subpart F—Procedural Requirements

■ 1. The authority citation for part 51, subpart F, continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

■ 2. Section 51.100 is amended by:
■ a. Revising the introductory text of paragraph (s)(1); and
■ b. Removing and reserving paragraph (s)(5).

The addition reads as follows:

**§ 51.100 Definitions.**

* * * * *

(s)(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);

1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C3F7OCH3, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH3); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; *trans*-1,3,3,3-tetrafluoropropene; $HCF_2OCF_2H$ (HFE-134); $HCF_2OCF_2OCF_2H$ (HFE-236cal2); $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13); $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); *trans* 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; t-butyl acetate; and perfluorocarbon compounds which fall into these classes:

* * * * *

(5) [Reserved]

* * * * *

[FR Doc. 2016–04072 Filed 2–24–16; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R08–OAR–2014–0369; FRL–9935–54–Region 8]**

## Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to the Utah Division of Administrative Rules, R307–300 Series; Area Source Rules for Attainment of Fine Particulate Matter Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval and finalizing the conditional approval of portions of the fine particulate matter ($PM_{2.5}$) State Implementation Plan (SIP) and other general rule revisions submitted by the State of Utah. The revisions affect the Utah Division of Administrative Rules (DAR), R307–300 Series; Requirements for Specific Locations. The revisions had submission dates of: February 2, 2012, May 9, 2013, June 8, 2013, February 18, 2014, April 17, 2014, May 20, 2014, July 10, 2014, August 6, 2014, and December 9, 2014. These area source rules control emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors, sulfur dioxides ($SO_2$), nitrogen oxides ($NO_X$) and volatile organic compounds (VOC). Our approval will make these rules federally enforceable. Additionally, EPA is finalizing approval of the State's reasonably available control measure (RACM) determinations for the rule revisions that pertain to the $PM_{2.5}$ SIP. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

**DATES:** This final rule is effective on March 28, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2014–0369. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Crystal Ostigaard, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On October 17, 2006 (71 FR 61144), EPA strengthened the level of the 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS), lowering the primary and secondary standards from 65 micrograms per cubic meter ($\mu g/m^3$), the 1997 standard, to 35 $\mu g/m^3$. On November 13, 2009 (74 FR 58688), EPA designated three nonattainment areas in Utah for the 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$. These are the Salt Lake City, UT; Provo, UT; and Logan, UT-ID nonattainment areas. The State of Utah has made a number of SIP submittals intended to address the requirements under part D of title I of the CAA for these $PM_{2.5}$ nonattainment areas. Among those requirements are those in sections 172(c)(1) and 189(a)(1)(C) regarding reasonably available control measures (RACM) and reasonably available control technology (RACT).

On August 25, 2015 (80 FR 51499), EPA proposed to approve or conditionally approve a number of RACM components in the $PM_{2.5}$ Moderate area SIP submitted by the State. Our proposed notice and associated technical support document (TSD) give details on EPA's interpretation of the RACM requirements under part D and our evaluation of the State's submittals. Specifically, the RACM components consist of area source rules found in Utah's submittals dated February 2, 2012, May 9, 2013, June 8, 2013, February 18, 2014, April 17, 2014, May 20, 2014, July 10, 2014, August 6, 2014, and December 9, 2014. These submittals contained various revisions to the DAR, Title R307—Environmental Quality, set of rules, most of which are applicable to the Utah SIP for $PM_{2.5}$ nonattainment areas. The new rules or revised rules we are addressing in this final rule were provided by Utah in the nine different submissions listed above, and these rules are: R307–101–2, General Requirements: Definitions; R307–303, Commercial Cooking; R307–307, Road Salting and Sanding; R307–312, Aggregate Processing Operations for $PM_{2.5}$ Nonattainment Areas; R307–328, Gasoline Transfer and Storage; R307–335, Degreasing and Solvent Cleaning Operations; R307–342, Adhesives and Sealants; R307–343 Emissions Standards for Wood Furniture Manufacturing Operations; R307–344, Paper, Film, and Foil Coatings; R307–345, Fabric and Vinyl Coatings; R307–346, Metal Furniture Surface Coatings; R307–347, Large Appliance Surface Coatings; R307–348, Magnet Wire Coatings; R307–349, Flat Wood Panel

Coatings; R307–350, Miscellaneous Metal Parts and Products Coatings; R307–351, Graphic Arts; R307–352, Metal Container, Closure, and Coil Coatings; R307–353, Plastic Parts Coatings; R307–354, Automotive Refinishing Coatings; R307–355, Control of Emissions from Aerospace Manufacture and Rework Facilities; R307–356, Appliance Pilot Light; R307–357, Consumer Products; and R307–361, Architectural Coatings.

A previous rule, Rule R307–340 Surface Coating Processes, was replaced in these submittals by the specific rules for coatings listed above. Utah correspondingly repealed R307–340. In addition, Rule R307–342, Adhesives and Sealants, replaces an unrelated rule, R307–342 Qualifications of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks. The removal of the previous version of R307–342 is addressed by the State's February 2, 2012 submittal, which repeals R307–342 and amends R307–328, Gasoline Transfer and Storage, to account for the repeal of R307–342.

These rule submissions, except for revisions to R307–101–2, R307–103, and R307–328, and the repeal of R307–342, were requested for approval as RACM components of the $PM_{2.5}$ SIP submitted by the State of Utah. Two of the non-RACM rule revisions do not pertain at all to the Utah $PM_{2.5}$ SIPs: revisions to R307–328 and the repeal of R307–342. At the request of the State, EPA is not finalizing our proposed approval of a third non-RACM rule; R307–103, Administrative Procedures.

For details of our evaluation of these rules, see the proposed notice and associated TSD.

## II. Response to Comments

EPA did not receive any comments on our proposed action.

## III. Final Action

For the reasons stated in our proposed notice and associated TSD, EPA is finalizing approval of revisions to Administrative Rule R307–101–2, along with the additions/revisions/repeals in R307–300 Series; Requirements for Specific Locations (Within Nonattainment and Maintenance Areas), R307–303, R307–307, R307–335, R307–340 (repealed), R307–342 (repealed and replaced), R307–343, R307–344, R307–345, R307–346, R307–347, R307–348, R307–349, R307–350, R307–351, R307–352, R307–353, R307–354, R307–355, R307–356, R307–357, and R307–361 for incorporation into the Utah SIP as submitted by the State of Utah on May 9, 2013, June 8, 2013, February 18, 2014, April 17, 2014, May 20, 2014, July 10, 2014, August 6, 2014, and December 9, 2014. We are also finalizing approval of Utah's determination that the above rules in R307–300 Series; Requirements for Specific Locations (Within Nonattainment and Maintenance Areas) constitute RACM for the Utah $PM_{2.5}$ SIP for the specific source categories addressed; however, we are not acting to determine that Utah's $PM_{2.5}$ attainment plan has met all requirements regarding RACM under subparts 1 and 4 of Part D, title I of the Act. We intend to act separately on the remainder of Utah's $PM_{2.5}$ attainment plan.

EPA is finalizing the conditional approval of revisions for R307–312 found in the May 9, 2013 submittal and for R307–328 found in the February 2, 2012 submittal. Additionally, EPA is finalizing the conditional approval of Utah's determination that R307–312 constitutes RACM for the Utah $PM_{2.5}$ SIP for aggregate processing operations. As stated above, we are not determining, however, that Utah's $PM_{2.5}$ attainment plan has met all requirements regarding RACM under subparts 1 and 4 of Part D, title I of the Act. Under section 110(k)(4) of the Act, EPA may approve a SIP revision based on a commitment by the State to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. On August 4, 2015, Utah submitted a commitment letter to adopt and submit specific revisions within one year of our final action on these submittals; specifically to remove the phrase ''or equivalent method'' in one rule and to specify three equivalent methods in the other rule. Since we are finalizing our conditional approval, Utah must adopt and submit the specific revisions it has committed to within one year of our finalization. If Utah does not submit these revisions within one year, or if we find Utah's revisions to be incomplete, or we disapprove Utah's revisions, this conditional approval will convert to a disapproval. If any of these occur and our conditional approvals convert to a disapproval, that will constitute a disapproval of a required plan element under part D of title I of the Act, which starts an 18-month clock for sanctions, see CAA section 179(a)(2), and the two-year clock for a federal implementation plan (FIP) to address the disapproved plan element, see CAA section 110(c)(1)(B).

EPA is not finalizing our proposed approval of R307–103, Administrative Procedures. The State informed us that they did not intend for R307–103 to be submitted for incorporation into the SIP. As the administrative procedures in R307–103 are unrelated to $PM_{2.5}$ attainment plan requirements, this does not affect the remainder of our action. With the exception of provisions to meet the requirements of section 128 of the Act, which Utah plans to address separately, these administrative procedures are not required to be incorporated into the SIP.

Finally, EPA is finalizing approval of the repeal of R307–342, Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks, submitted by DAQ on February 2, 2012.

## IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Utah Department of Air Quality rules promulgated in the DAR, R307–300 Series as discussed in section III, Final Action, of this preamble. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves of state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organization compounds.

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

Dated: September 28, 2015.

**Shaun L. McGrath,**

*Regional Administrator, Region 8.*

**Editorial note:** This document was received for publication by the Office of the Federal Register on February 19, 2016.

40 CFR part 52 is amended to read as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(83) to read as follows:

**§ 52.2320 Identification of plan.**

* * * * *

(c) * * *

(83) On February 2, 2012, May 9, 2013, June 8, 2013, February 18, 2014, April 17, 2014, May 20, 2014, July 10, 2014, August 6, 2014, and December 9, 2014, the Governor submitted revisions to the Utah State Implementation Plan (SIP) rules. The EPA is approving the repeal of R307–340 and R307–342. The EPA is approving the submitted revisions and associated nonsubstantive changes to the following rules: R307–307, R307–351–2, R307–351–4, and R307–355–5. The EPA is conditionally approving the submitted revisions to the following rules: R307–101 (including nonsubstantive changes to R307–101–2), R307–312–5(2)(a), and R307–328–4(6). The EPA is approving the submitted revisions to the following rules: R307–303, R307–307, R307–312 (except R307–312–5(2)(a) which is conditionally approved), R307–328 (except R307–328–4(6) which is conditionally approved), R307–335, R307–342, R307–343, R307–344, R307–345, R307–346, R307–347, R307–348, R307–349, R307–350, R307–351 (except R307–351–2 which is approved with nonsubstantive changes), R307–352, R307–353, R307–354, R307–355 (except R307–355–5 which is approved with nonsubstantive changes), R307–356, R307–357, R307–357–4, and R307–361.

(i) *Incorporation by reference.*

(A) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–101, *General Requirements,* R307–101–2, *Definitions;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012, and published as effective in the Utah State Bulletin on February 15, 2013.

(B) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–303, *Commercial Cooking;* effective April 10, 2013, as proposed in the Utah State Bulletin on August 1, 2012, December 1, 2012 and March 1, 2013 and published as effective in the Utah State Bulletin on May 1, 2013.

(C) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–328, *Gasoline Transfer and Storage;* effective June 7, 2011, as proposed in the Utah State Bulletin on February 1, 2011 and May 1, 2011, and published as effective in the Utah State Bulletin on June 15, 2011.

(D) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–335, *Degreasing and Solvent Cleaning Operations;* effective January 1, 2013, as proposed in the Utah State Bulletin on August 1, 2012 and December 1, 2012, and published as effective in the Utah State Bulletin on January 15, 2013.

(E)(*1*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–342, *Adhesives and Sealants;* effective August 1, 2013, as proposed in the Utah State Bulletin on March 1, 2013 and July 1, 2013, and published as effective in the Utah State Bulletin on August 15, 2013.

(*2*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–357, *Consumer Products* (except R307–357–4, *Standards*); effective August 1, 2013, as proposed in the Utah State Bulletin on March 1, 2013 and July 1, 2013, and published as effective in the Utah State Bulletin on August 15, 2013.

(F)(*1*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–343, *Emissions Standards for Wood Furniture Manufacturing Operations;* effective May 1, 2013, as proposed in the Utah State Bulletin on October 1,

2012, January 1, 2013 and April 1, 2013, and published as effective in the Utah State Bulletin on May 15, 2013.

(*2*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–353, *Plastic Parts Coatings;* effective May 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012, January 1, 2013 and April 1, 2013, and published as effective in the Utah State Bulletin on May 15, 2013.

(G)(*1*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–312, *Aggregate Processing Operations for* $PM_{2.5}$ *Nonattainment Areas;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(*2*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–344, *Paper, Film and Foil Coatings;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(*3*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–345, *Fabric and Vinyl Coatings;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(*4*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–346, *Metal Furniture Surface Coatings;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(*5*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–347, *Large Appliance Surface Coatings;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(*6*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–348, *Magnet Wire Coatings;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(*7*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–349, *Flat Wood Panel Coatings;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(*8*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–352, *Metal Container, Closure and Coil Coatings;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(*9*) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–354, *Automotive Refinishing Coatings;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(H) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–350, *Miscellaneous Metal Parts and Products Coatings;* effective December 3, 2013, as proposed in the Utah State Bulletin on August 1, 2013 and November 1, 2013, and published as effective in the Utah State Bulletin on January 1, 2014.

(I) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–356, *Appliance Pilot Light;* effective January 1, 2013, as proposed in the Utah State Bulletin on August 15, 2012, and December 1, 2012, and published as effective in the Utah State Bulletin on January 15, 2013.

(J) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–357, *Consumer Products,* R307–357–4, *Consumer Products, Standards;* effective May 8, 2014, as proposed in the Utah State Bulletin on April 1, 2014, and published as effective in the Utah State Bulletin on June 1, 2014.

(K) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–361, *Architectural Coatings;* effective October 31, 2013, as proposed in the Utah State Bulletin on July 1, 2013 and October 1, 2013, and published as effective in the Utah State Bulletin on November 15, 2013.

(L) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–307, *Road Salting and Sanding;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(M) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–351, *Graphic Arts;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

(N) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* R307–355, *Control of Emissions from Aerospace Manufacture and Rework Facilities;* effective February 1, 2013, as proposed in the Utah State Bulletin on October 1, 2012 and January 1, 2013, and published as effective in the Utah State Bulletin on February 15, 2013.

[FR Doc. 2016–03898 Filed 2–24–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R07–OAR–2015–0438; FRL–9942–76–Region 7]**

### Approval and Promulgation of Air Quality Implementation Plans; State of Missouri; Emissions Inventory and Emissions Statement for the Missouri Portion of the St. Louis MO-IL Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) for the state of Missouri. The revisions address base year Emissions Inventory (EI) and emissions statement requirements of the Clean Air Act (CAA) for the Missouri portion of the St. Louis marginal ozone nonattainment area (''St. Louis area''). The Missouri counties comprising the St. Louis area are Franklin, Jefferson, St. Charles, and St. Louis along with the City of St. Louis. EPA is taking final action to approve the SIP revisions because they satisfy the CAA section 182 requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). EPA is approving the revisions pursuant to section 110 and part D of the CAA and EPA's regulations. EPA will consider and take action on the Illinois submission for its portion of the St. Louis area in a separate action.

**DATES:** This direct final rule will be effective April 25, 2016, without further

notice, unless EPA receives adverse comment by March 28, 2016. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0438, to *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 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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Publicly available docket materials are available either electronically at *www.regulations.gov* or at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**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,'' or ''our'' refer to EPA.

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I. What is the background for this action?
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## I. What is the background for this action?

Ground-level ozone is a gas that is formed by the reaction of volatile organic compounds (VOCs) and oxides of nitrogen ($NO_X$) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines, and smaller sources, collectively referred to as area sources.

On March 12, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. The level of the 2008 8-Hour ozone NAAQS (hereafter the 2008 $O_3$ NAAQS) was revised from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). EPA finalized designations for the 2008 $O_3$ NAAQS on May 21, 2012 (77 FR 30088). At the time of designations, the bi-state Missouri area was classified as Marginal nonattainment for the 2008 $O_3$ NAAQS. Based on the nonattainment designations, Missouri was required to submit a SIP revision to EPA addressing certain CAA requirements.

CAA sections 172(c)(3) and 182(a)(1) require states to develop and submit as a SIP revision a comprehensive, accurate, current emissions inventory (EI) for all areas designated as nonattainment for the $O_3$ NAAQS. 42 U.S.C. 7502(c) and 7511a(a). An EI is an estimation of actual emissions of air pollutants in an area that provides data for a variety of air quality planning tasks including establishing baseline emission levels, calculating Federally required emission reduction targets, emission inputs into air quality simulation models, and tracking emissions over time. The total EI of VOC and $NO_X$ for a given area are summarized from the estimates developed for five general categories of emissions sources: Point, area, on-road mobile, non-road mobile, and biogenic. EPA's final 2008 ozone standard SIP requirements rule suggested that states use 2011 as a base year to address the EI requirements (80 FR 12264, March 6, 2015).

## II. What is EPA's analysis of the State's submission?

The primary CAA requirements are found in sections 110(l), and 182(a). CAA section 110(l) requires that a SIP revision submitted to EPA be adopted after reasonable notice and public hearing. Section 110(l) also requires that EPA not approve a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA section 182(a) requires states with areas designated nonattainment for the ozone NAAQS to submit a SIP revision that contains a comprehensive, accurate, current inventory of actual emissions from all sources.

On September 9, 2014, the State of Missouri submitted a SIP revision containing the base year emissions inventory and emissions statement requirements related to the 2008 8-hour ozone NAAQS for the Missouri portion of the St. Louis area.[1]

### *A. Base Year Emissions Inventory*

Missouri selected 2011 as its base year inventory, as suggested by EPA in its final SIP requirements Rule which is the year corresponding with the first triennial inventory required under 40 CFR part 51, subpart A. This base year is one of the three years of ambient air quality data used to designate the area nonattainment. Missouri's emissions inventory for its portion of the St. Louis area provides 2011 actual emissions of the pollutants that contribute to ozone formation for the nonattainment area: VOCs, $NO_X$, and Carbon Monoxide (CO). A detailed discussion of the inventory is located in appendix A to Missouri's submission which is provided in the docket for this action. The tables below provide a summary of the emissions inventory for the Missouri portion of the St. Louis nonattainment area.

Table 1 displays the 2011 anthropogenic emissions inventory summary for the Missouri portion of the 2008 St. Louis ozone nonattainment area in tons per ozone season day. The anthropogenic source categories include point, area, onroad mobile, and nonroad sources. Table 2 displays the 2011 emissions inventory summary for the biogenic and wildfire (event) source categories in the Missouri portion of the 2008 St. Louis ozone nonattainment area in tons per ozone season day. Event emissions include wild fire emissions, prescribed burning and agricultural burning; however, when annual emissions from these three event source categories are temporally allocated to ozone season day emissions, only wild fire emissions are projected to occur during the high ozone season.

[1] As Missouri noted in its SIP revision, other required elements of Marginal nonattainment area plans in CAA Section 182(a) have already been addressed in state regulations or in prior SIP actions.

TABLE 1—2011 ANTHROPOGENIC EMISSIONS INVENTORY SUMMARY FOR THE MISSOURI PORTION OF THE NONATTAINMENT AREA

[Tons/ozone season day]

| County name | Source category | VOC | $NO_X$ | CO |
|---|---|---|---|---|
| Franklin County | Point Sources | 2.52 | 27.75 | 7.55 |
| Jefferson County | | 1.63 | 16.66 | 7.23 |
| St. Charles County | | 3.34 | 25.04 | 2.82 |
| St. Louis County | | 3.5 | 16.74 | 17.68 |
| St. Louis City | | 3.59 | 4.49 | 7.36 |
| Totals * | | 14.58 | 90.69 | 42.65 |
| Franklin County | Area Sources | 3.36 | 0.49 | 3.03 |
| Jefferson County | | 7.48 | 0.62 | 8.14 |
| St. Charles County | | 11.21 | 0.68 | 1.35 |
| St. Louis County | | 38.68 | 2.65 | 4.72 |
| St. Louis City | | 12.04 | 1.16 | 1.76 |
| Totals * | | 72.77 | 5.6 | 19.01 |
| Franklin County | Onroad Mobile Sources | 2.40 | 7.83 | 21.18 |
| Jefferson County | | 4.24 | 12.45 | 34.91 |
| St. Charles County | | 6.73 | 21.04 | 56.63 |
| St. Louis County | | 20.17 | 66.34 | 176.34 |
| St. Louis City | | 4.46 | 16.55 | 42.14 |
| Totals * | | 38.00 | 124.20 | 331.20 |
| Franklin County | Nonroad Sources | 3.31 | 5.72 | 18.55 |
| Jefferson County | | 3.12 | 3.33 | 28.68 |
| St. Charles County | | 6.23 | 8.34 | 62.81 |
| St. Louis County | | 22.99 | 23.85 | 315.24 |
| St. Louis City | | 3.38 | 6.31 | 48.14 |
| Totals * | | 39.03 | 47.55 | 473.42 |
| Grand Total * | | 164.38 | 268.04 | 866.28 |

**Note:** Figures may not total exactly due to rounding.

TABLE 2—2011 WILDFIRE AND BIOGENIC EMISSIONS INVENTORY SUMMARY FOR THE MISSOURI PORTION OF THE NONATTAINMENT AREAS

[Tons/ozone season day]

| County name | Source category | VOC | $NO_X$ | CO |
|---|---|---|---|---|
| Franklin County | Wild Fires (Event) | 0.09 | 0.00 | 0.40 |
| Jefferson County | | 0.07 | 0.00 | 0.28 |
| St. Charles County | | 0.00 | 0.00 | 0.01 |
| St. Louis County | | 0.00 | 0.00 | 0.01 |
| St. Louis City | | 0.00 | 0.00 | 0.00 |
| Totals * | | 0.16 | 0.01 | 0.69 |
| Franklin County | Biogenic Sources | 126.84 | 1.09 | 11.58 |
| Jefferson County | | 104.17 | 0.51 | 9.29 |
| St. Charles County | | 65.94 | 1.05 | 7.09 |
| St. Louis County | | 60.84 | 0.68 | 5.55 |
| St. Louis City | | 10.93 | 0.13 | 1.03 |
| Totals * | | 368.71 | 3.47 | 34.55 |

* **Note**: Figures may not total exactly due to rounding.

Missouri's inventory contains point sources, nonpoint, onroad mobile, and nonroad sources. The state developed the point source emissions inventory using actual emissions directly reported by electric generating unit (EGU) and non EGU sources in the area. Point sources are large, stationary, identifiable sources of emissions that release pollutants into the atmosphere. The point source emissions inventory for Missouri's portion of the St. Louis area was developed using facility-specific emissions data, and is included in the docket for this action.

Nonpoint sources are small emission stationary sources which due to their large number, collectively have significant emissions. Emissions from these sources were estimated by

multiplying an emission factor by some known indicator of collective activity for each source category at the county level. Non-road mobile sources include vehicles, engines, and equipment used for construction, agriculture, recreation, and other purposes that do not use roadways. Missouri calculated emissions for its nonroad mobile sources using EPA's NONROAD2008a model. NONROAD2008a estimates fuel consumption and emissions for all nonroad mobile source categories except for aircraft, commercial marine vessels, and railroad locomotives. Onroad mobile sources include vehicles used on roads for transportation of passengers or freight. Missouri developed its inventory using the EPA's highway mobile source emissions model MOVES 2010a.

Biogenic emissions sources are emissions that come from natural sources. The biogenic source emissions were extracted from the EPA's 2011 National Emissions Inventory (NEI) for the counties located in the nonattainment area. A detailed account of biogenic source emissions by county can be found in appendix A of the state's submission.

For the reasons discussed above, EPA has determined that Missouri's emissions inventory is complete, accurate, and comprehensive and meets the requirements under CAA section 182(a)(1) and the SIP Requirements Rule for the 2008 ozone NAAQs.

*B. Emissions Statement*

Pursuant to section 182(a)(3)(B), states with Marginal ozone nonattainment areas must require annual emission statements from owners or operators of each $NO_X$ and VOC stationary source within the nonattainment area. Missouri regulation 10 CSR 10–6.110 *Reporting Emission Data, Emission Fees, and Process Information* requires permitted sources to file an annual report on air pollutant emissions to include emission data, process information, and annual emissions fees. The full emissions report identifying actual $NO_X$ and VOC emissions is due April 1 after each reporting year. However, if the full emissions report is filed electronically via Missouri's Emissions Inventory System (MoEIS), this due date is extended to May 1. EPA has reviewed the regulation and determined that it meets the requirements of section 182(a)(3)(B) of the CAA, and in addition EPA has approved this regulation into the SIP.

## III. Final Action

EPA is approving the SIP revision submitted by Missouri on September 9, 2014, addressing the base year emissions inventory and emissions statement requirements for their portion of the St. Louis area. EPA has concluded that the state's submission meets the requirements of sections 110 and 182 of the CAA. We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: February 17, 2016.

**Mark Hague,**

*Regional Administrator, Region 7.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding entry (69) at the end of the table to read as follows:

**§ 52.1320 Identification of Plan.**

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic area or nonattainment area | State submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| (69) Marginal Plan for the Missouri Portion of the St. Louis Ozone Nonattainment Area for the 2008 NAAQS. | Statewide ..... | 9/9/14 | 2/25/16 [*Insert* ***Federal Register*** *citation*]. | EPA–R07–OAR–2015–0438; 9942–76–Region 7. |

[FR Doc. 2016–03901 Filed 2–24–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[EPA–HQ–OAR–2014–0492; FRL–9940–76–OAR]**

**RIN 2060–AR97**

## Clarification of Requirements for Method 303 Certification Training

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to better define the requirements associated with conducting Method 303 training courses. Method 303 is an air pollution test method used to determine the presence of visible emissions (VE) from coke ovens. This action adds language that further clarifies the criteria used by the EPA to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method. These changes will help entities interested in conducting the required training courses by clearly defining the requirements necessary to do so.

**DATES:** This rule is effective on April 25, 2016 without further notice, unless the EPA receives adverse comment by March 28, 2016. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0492, to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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 *http://www2.epa.gov/dockets/commenting-epa-dockets*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kim Garnett, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–1158; fax number: (919) 541–0516; email address: *garnett.kim@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. General Information

*A. Why is the EPA using a direct final rule?*

The EPA is publishing this rule without a prior proposed rule because

we view this as a non-controversial action and anticipate no adverse comment. This action better defines the requirements associated with conducting Method 303 training courses. Method 303 is an air pollution test method used to determine the presence of VE from coke ovens.

However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to announce the EPA's intent to revise the Method 303 training requirements, if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

*B. Does this action apply to me?*

This action applies to you if you are a potential provider of Method 303 training services, someone seeking training to conduct Method 303, or a facility subject to Method 303.

*C. What should I consider as I prepare my comments for the EPA?*

(1) *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to 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.

(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—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

*D. Where can I obtain a copy of this action?*

In addition to being available in the docket, an electronic copy of this rule will also be available on the Worldwide Web (www) through the Technology Transfer Network (TTN) Web site. Following publication, the EPA will post the **Federal Register** version of the promulgation and key technical documents at *http://www.epa.gov/ttn/emc/promgate.html.*

*E. Judicial Review*

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this direct final rule is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by April 25, 2016. Under section 307(d)(7)(B) of the CAA, only an objection to this direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the subject of this direct final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

## II. This Action

On October 27, 1993, we published Method 303 for determining VE from coke ovens (58 FR 57898). Method 303 is applicable for the determination of VE from the following by-product coke oven battery sources: Charging systems during charging; doors, topside port lids and offtake systems on operating coke ovens; and collecting mains. Method 303 is also applicable to qualifying observers for visually determining the presence of VE from by-product coke ovens. The EPA received inquiries from state/local agencies seeking the specifics of the procedures used to qualify observers. As a result of these inquiries, the EPA is revising Method 303 to provide more detail to better explain the requirements necessary to qualify observers and, therefore, assist those entities who seek to understand what is needed in order to conduct and maintain an Administrator-approved training program. Additionally, we are removing the statement indicating that these courses be conducted by or under the sanction of the EPA. Instead, Administrator-approved training providers will be allowed to conduct Method 303 training and certification. We are, therefore, revising Method 303 to define the administrative and recordkeeping requirements that must be followed by Method 303 training providers. This action: (1) Defines Administrator approval of Method 303 training providers, clarifies the minimum training course requirements, and details the recordkeeping requirements that the training provider must follow in order to attain Administrator approval (section 10.1); (2) adds language to clarify that VE readers must demonstrate a perfect score on the recertification exam (section 10.1.2); (3) updates and expands the criteria used to determine who is qualified to participate on the proficiency test panel (section 10.1.3); (4) adds criteria for training certificates, submittal of this information, and recordkeeping (sections 10.1.4–10.1.6); and (5) defines conditions for suspension of the training provider's approval by the Administrator (section 10.1.7). There are no changes to the requirements for conducting the test method.

## III. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. These changes do not add information collection requirements beyond those currently required under the applicable regulations.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action better defines the requirements associated with conducting Method 303 training courses

and does not impose additional regulatory requirements on sources.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175. This action adds additional language that clarifies the criteria used by the EPA to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action does not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective April 25, 2016.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Test method.

Dated: February 12, 2016.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 63—[AMENDED]

■ 1. The authority citation for Part 63 continues to read as follows:

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

■ 2. In Appendix A, amend Method 303:
■ a. In section 5.0 by revising paragraph 5.2; and
■ b. In section 10.0 by:
■ i. Revising paragraphs 10.1, 10.1.1, 10.1.2, and 10.1.3;
■ ii. Adding paragraphs 10.1.4, 10.1.5, 10.1.6, and 10.1.7; and
■ iii. Revising paragraph 10.2.

The revisions and additions read as follows.

**Appendix A to Part 63—Test Methods**

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**Method 303—Determination of Visible Emissions From By-Product Coke Oven Batteries**

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*5.0 Safety*

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5.2 Safety Training. Because coke oven batteries have hazardous environments, the training materials and the field training (Section 10.0) shall cover the precautions required to address health and safety hazards.

* * * * *

*10.0 Calibration and Standardization*

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10.1 Certification Procedures. This method requires only the determination of whether VE occur and does not require the determination of opacity levels; therefore, observer certification according to Method 9 in appendix A to Part 60 of this chapter is not required to obtain certification under this method. However, in order to receive Method 303 observer certification, the first-time observer (trainee) shall have attended the lecture portion of the Method 9 certification course. In addition, the trainee shall successfully complete the Method 303 training course, satisfy the field observation requirement, and demonstrate adequate performance and sufficient knowledge of Method 303. The Method 303 training provider and course shall be approved by the Administrator and shall consist of classroom instruction, field training, and a proficiency test. In order to apply for approval as a Method 303 training provider, an applicant must submit their credentials and the details of their Method 303 training course to Group Leader, Measurement Technology Group (E143–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. Those details should include, at a minimum:

(a) A detailed list of the provider's credentials.

(b) An outline of the classroom and the field portions of the class.

(c) Copies of the written training and lecture materials, to include:

(1) The classroom audio-visual presentation(s).

(2) A classroom course manual with instructional text and practice questions and problems for each of the elements of the Method 303 inspection (*i.e.,* charging, doors, lids and offtakes, and collecting mains). A copy of Method 303 and any related guidance documents should be included as appendices.

(3) A copy of the Method 303 demonstration video, if not using the one available on the EPA Web site: *http://www3.epa.gov/ttn/emc/methods/method303trainingvideo.mp4.*

(4) Multiple-choice certification tests, with questions sufficient to demonstrate knowledge of the method, as follows: One (1) initial certification test and three (3) third-year recertification tests (the questions on any one recertification test must be at least 25 percent different from those on the other recertification tests).

(5) A field certification checklist and inspection forms for each of the elements of the Method 303 inspection (*i.e.,* charging, doors, lids and offtakes, and collecting mains).

(6) The criteria used to determine proficiency.

(7) The panel members to be utilized (see Section 10.1.3) along with their qualifications.

(8) An example certificate of successful course completion.

10.1.1 A trainee must verify completion of at least 12 hours of field observation prior to attending the Method 303 certification course. Trainees shall observe the operation of a coke oven battery as it pertains to Method 303, including topside operations, and shall also practice conducting Method 303 or similar methods. During the field observations, trainees unfamiliar with coke battery operations shall receive instruction from an experienced coke oven observer who is familiar with Method 303 or similar methods and with the operation of coke batteries.

10.1.2 The classroom instruction shall familiarize the trainees with Method 303 through lecture, written training materials, and a Method 303 demonstration video. Successful completion of the classroom portion of the Method 303 training course shall be demonstrated by a perfect score on the initial certification test. Those attending the course for third-year recertification must complete one of the recertification tests selected at random.

10.1.3 All trainees must demonstrate proficiency in the application of Method 303 to a panel of three certified Method 303 observers, including an ability to differentiate coke oven emissions from condensing water vapor and smoldering coal. The panel members will be EPA, state or local agency personnel, or industry contractors listed in 59 FR 11960 (March 15, 1994) or qualified as part of the training provider approval process of Section 10.1 of this method.

Each panel member shall have at least 120 days experience in reading visible emissions from coke ovens. The visible emissions inspections that will satisfy the experience requirement must be inspections of coke oven battery fugitive emissions from the emission points subject to emission standards under subpart L of this part (*i.e.,* coke oven doors, topside port lids, offtake system(s), and charging operations), using either Method 303 or predecessor state or local test methods. A ''day's experience'' for a particular inspection is a day on which one complete inspection was performed for that emission point under Method 303 or a predecessor state or local method. A ''day's experience'' does not mean 8 or 10 hours performing inspections, or any particular time expressed in minutes or hours that may have been spent performing them. Thus, it would be possible for an individual to qualify as a Method 303 panel member for some emission points, but not others (*e.g.,* an individual might satisfy the experience requirement for coke oven doors, but not topside port lids). Until November 15, 1994, the EPA may waive the certification requirement (but not the experience requirement) for panel members. The composition of the panel shall be approved by the EPA.

The panel shall observe the trainee in a series of training runs and a series of certification runs. There shall be a minimum of 1 training run for doors, topside port lids, and offtake systems, and a minimum of 5 training runs (*i.e.,* 5 charges) for charging. During training runs, the panel can advise the trainee on proper procedures. There shall be a minimum of 3 certification runs for doors, topside port lids, and offtake systems, and a minimum of 15 certification runs for charging (*i.e.,* 15 charges). The certification runs shall be unassisted. Following the certification test runs, the panel shall approve or disapprove certification based on the trainee's performance during the certification runs. To obtain certification, the trainee shall demonstrate to the satisfaction of the panel a high degree of proficiency in performing Method 303. To aid in evaluating the trainee's performance, a checklist, approved by the EPA, will be used by the panel members.

10.1.4 Those successfully completing the initial certification or third-year recertification requirements shall receive a certificate showing certification as a Method 303 observer and the beginning and ending dates of the certification period.

10.1.5 The training provider will submit to the EPA or its designee the following information for each trainee successfully completing initial certification or third-year recertification training: Name, employer, address, telephone, cell and/or fax numbers, email address, beginning and ending dates of certification, and whether training was for 3-year certification or 1-year recertification. This information must be submitted within 30 days of the course completion.

10.1.6 The training provider will maintain the following records, to be made available to EPA or its designee on request (within 30 days of a request):

(a) A file for each Method 303 observer containing the signed certification checklists, certification forms and test results for their initial certification, and any subsequent third-year recertifications. Initial certification records must also include documentation showing successful completion of the training prerequisites. Testing results from any interim recertifications must also be included, along with any relevant communications.

(b) A searchable master electronic database of all persons for whom initial certification, third-year recertification or interim recertification has been provided. Information contained therein must include: The observer's name, employer, address, telephone, cell and fax numbers and email address, along with the beginning and ending dates for each successfully completed initial, third-year and interim recertification.

10.1.7 Failure by the training provider to submit example training course materials and/or requested training records to the Administrator may result in suspension of the approval of the provider and course.

10.2 Observer Certification/Recertification. The coke oven observer certification is valid for 1 year. The observer shall recertify annually by reviewing the training material, viewing the training video and answering all of the questions on the recertification test correctly. Every 3 years, an observer shall be required to pass the proficiency test in Section 10.1.3 in order to be certified. The years between proficiency tests are referred to as interim years.

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[FR Doc. 2016–03757 Filed 2–24–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2014–0314 and EPA–HQ–OPP–2014–0489; FRL–9941–87]**

### Triclopyr; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation amends the tolerances for residues of triclopyr in milk and livestock commodities which are identified and discussed later in this document, and amends the tolerance expressions to include triclopyr choline salt. Dow AgroSciences, LLC requested these tolerance changes under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective February 25, 2016. Objections and requests for hearings must be received on or before April 25, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The dockets for this action, identified by docket identification (ID) numbers EPA–HQ–OPP–2014–0314 and EPA–HQ–OPP–2014–0489, are available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/test-guidelines-pesticides-and-toxic-substances.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify by docket ID numbers EPA–HQ–OPP–2014–0314 and EPA–HQ–OPP–2014–0489 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 25, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID numbers EPA–HQ–OPP–2014–0314 and EPA–HQ–OPP–2014–0489, by one of the following methods:

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

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

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of Wednesday, November 25, 2015 (80 FR 73695) (FRL–9937–14), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a revised pesticide petition (PP 4F8249) by Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268–1054. The revised petition requested that 40 CFR part 180.417(a)(1) be amended by establishing a tolerance for residues of the herbicide triclopyr, [(3,5,6-trichloro-2-pyridinyl)oxy] acetic acid, in or on the raw agricultural commodity milk, fat at 0.7 parts per million (ppm); and increasing the tolerance in or on milk from 0.01 ppm to 0.6 ppm. The petition also requested that 40 CFR part 180.417(a)(2) be amended by establishing tolerances for residues of triclopyr, [(3,5,6-trichloro-2-pyridinyl)oxy] acetic acid and its metabolite 3,5,6-trichloro-2-pyridinol (TCP), calculated as the stoichiometric equivalent of triclopyr, in or on the raw agricultural commodities of cattle, goat, hog, horse, and sheep meat byproducts at 0.7 ppm; by increasing tolerances in cattle, goat, hog, horse, and sheep fat from 0.05 ppm to 0.09 ppm; and increasing tolerances in cattle, goat, hog, horse, and sheep meat from 0.05 ppm to 0.08 ppm.

In the **Federal Register** of Friday, September 5, 2014 (79 FR 53009) (FRL–9914–98), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F8279) by Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268–1054. The petition requested that 40 CFR part 180.417(a)(1) and 180.417(a)(2) be amended to include residues of the herbicide triclopyr choline salt as triclopyr, [(3,5,6-trichloro-2-pyridinyl)oxy] acetic acid, including its metabolites and degradates, in or on the raw agricultural commodities listed.

The documents referenced summaries of the petitions prepared by Dow AgroSciences, LLC, the registrant, which are available in the dockets at *http://www.regulations.gov.* The petition summary for PP 4F8249 is located in docket number EPA–HQ–OPP–2014–0314, and the petition summary for PP 4F8279 is located in docket number EPA–HQ–OPP–2014–0489. Several comments were received on the notices of filing. EPA's response to those comments are discussed in Unit IV.D.

Based upon review of the data supporting the petitions, EPA has (1) determined that a tolerance for milk fat is not required; (2) increased the proposed tolerances for the fat and meat of cattle, goat, hog, horse, and sheep; (3) decreased the proposed tolerances for the meat byproducts of cattle, goat, hog, horse, and sheep; and (4) determined that the current tolerances for kidney, liver, and meat byproducts except kidney and liver of cattle, goat, hog, horse, and sheep are not required.

EPA is also revising the tolerance expressions to correct the nomenclature of the chemical name, clarify the chemical moieties that are covered by the tolerances, and specify how compliance will be measured. The reasons for these changes are explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

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

aggregate exposure to the pesticide chemical residue. . . .''

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

*A. Toxicological Profile*

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

The bioequivalence of the three chemical forms of triclopyr (acid, triethylamine salt, and butoxyethyl ester) has been addressed through a variety of special studies with the salt and ester forms, including data on comparative disposition, plasma half-life, tissue distribution, and hydrolytic cleavage. Those studies were found to adequately address the issue of bioequivalence amongst these forms of triclopyr. Additionally, the currently available information supports the bioequivalence of triclopyr and triclopyr choline salt. Therefore, studies conducted with any one form of triclopyr have been used to support the toxicology database for triclopyr as a whole.

Triclopyr has been classified as having low acute toxicity via the oral, dermal, and inhalation routes. It is minimally-irritating (butoxyethyl ester) to corrosive (triethylamine salt) to the eye. It is a dermal sensitizer but not a dermal irritant.

Overall, effects in the triclopyr database were indicative of kidney and liver toxicity in rats and dogs, respectively. The primary effect observed in rats was degeneration of the proximal tubule of the kidney, which was seen at approximately the same dose in the subchronic oral and 2-generation reproduction toxicity studies. Body-weight decreases in rats were observed in the subchronic neurotoxicity and immunotoxicity studies at doses approximately ten times higher than doses resulting in kidney effects. In dogs, liver toxicity was evidenced by increased liver enzymes, increased liver weights, and liver histopathology at a similar dose as kidney effects in the rat. Changes in hematological parameters (decreased packed-cell volume, decreased hemoglobin, and decreased red blood cell count) were also observed in dogs at the same dose.

There is evidence of increased qualitative susceptibility to offspring from triclopyr exposure in the rat 2-generation reproduction study, based on increased incidence of rare pup malformations observed in the presence of parental toxicity. There is also potential qualitative susceptibility in the rat developmental toxicity study; however, the evidence was not as conclusive as the reproduction toxicity study. Concern is low since effects are well-characterized with clearly established no-observed adverse-effect level/lowest-observed adverse-effect level (NOAEL/LOAEL) values, effects were seen in the presence of parental toxicity, and selected endpoints are protective of the observed effects.

Triclopyr has been classified as a ''Group D Chemical—unable to be classified as to human carcinogenicity.'' Although there was marginal evidence of carcinogenicity in animal studies (adrenal tumors in male rats and mammary gland tumors in female rats and mice), EPA has determined that the chronic reference dose (cRfD) will adequately account for all chronic effects, including carcinogenicity, likely to result from exposure to triclopyr. The Agency reached this conclusion employing a weight-of-evidence (WOE) approach after considering the following factors: (1) A lack of statistical significance at the high dose in pair-wise tests for all the tumors of concern; (2) for the adrenal tumors, there was a lack of dose-response and any pre-neoplastic lesions in the adrenal glands, along with evidence that the tumors were mainly benign; (3) for the mammary gland tumors, incidence in the concurrent control mice was at the low end of the historical control range; and (4) the chronic RfD is approximately 700-fold lower than the dose that induced the mammary gland tumors in female rats.

Acceptable subchronic neurotoxicity and immunotoxicity studies have been submitted and show no evidence of neurotoxicity or immunotoxicity.

Specific information on the studies received and the nature of the adverse effects caused by triclopyr as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document, ''Triclopyr. Human Health Risk Assessment for Petition to Amend Tolerance Expressions to Include Triclopyr Choline Salt; and Petition to Remove Grazing Restrictions for Dairy Cattle'' on pp. 13–15 in docket ID numbers EPA–HQ–OPP–2014–0314 and EPA–HQ–OPP–2014–0489.

*B. Toxicological Points of Departure/Levels of Concern*

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

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

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

| Exposure/Scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (Females 13–49 years of age) ... | NOAEL = 5 mg/kg/day .....<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 0.05 mg/kg/day ..<br>aPAD = 0.05 mg/kg/day ..... | *2-Generation Rat Reproduction Study with Triclopyr Acid*<br>LOAEL = 25 mg/kg/day based on increased incidence of rare malformations (exencephaly and ablepharia). |
| Acute dietary (General population including infants and children). | NOAEL = 100 mg/kg/day .....<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 1.0 mg/kg/day ....<br>aPAD = 1.0 mg/kg/day ..... | *Developmental Rat Toxicity Study with Triclopyr BEE*<br>LOAEL = 300 mg/kg/day based on maternal mortality. Additional effects seen at this dose included clinical signs, necropsy findings, decreased food and water consumption, and increased kidney and liver weights. |
| Chronic dietary (All populations) ..... | NOAEL= 5 mg/kg/day .....<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.05 mg/kg/day<br>cPAD = 0.05 mg/kg/day ..... | *2-Generation Rat Reproduction Study with Triclopyr Acid*<br>LOAEL = 25 mg/kg/day based on degeneration of the proximal renal tubules. |
| Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months). | NOAEL= 5 mg/kg/day .....<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | LOC for MOE = 100 ..... | *Subchronic Oral Rat Toxicity Study with Triclopyr Acid*<br>LOAEL = 20 mg/kg/day based on degeneration of the proximal renal tubules. |
| Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months). | Inhalation (or oral) study .....<br>NOAEL= 5 mg/kg/day (inhalation absorption rate = 100%)<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF/$UF_{DB}$ = 10x | LOC for MOE = 1000 ..... | *Subchronic Oral Rat Toxicity Study with Triclopyr Acid*<br>LOAEL = 20 mg/kg/day based on degeneration of the proximal renal tubules. |

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

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to triclopyr, EPA considered exposure under the petitioned-for tolerances as well as all existing triclopyr tolerances in 40 CFR 180.417. EPA assessed dietary exposures from triclopyr in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for triclopyr. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed that triclopyr residues were present at tolerance levels in all commodities for which tolerances have been established or proposed, and that 100% of those crops were treated with triclopyr.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 NHANES/WWEIA. As to residue levels in food, EPA assumed that triclopyr residues were present at tolerance levels in all commodities for which tolerances have been established or proposed except milk, and that 100% of those crops were treated with triclopyr. An average anticipated residue (AR) calculated from a livestock feeding study was used for all milk commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has determined that the chronic RfD will adequately account for all chronic effects, including carcinogenicity, that are likely to result from triclopyr exposure. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use PCT information in the dietary assessment for triclopyr. However, EPA did use anticipated residue information for milk commodities in the chronic dietary assessment. Tolerance-level residues and 100 PCT were assumed for all other food commodities.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section

408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* EPA calculated and required setback distances from the application site to the functional potable water intake in order to maintain average drinking water concentration levels below 400 parts per billion (ppb). Since potable water intakes are required to be turned off until triclopyr concentration levels are below 400 ppb, EPA has determined that for acute and chronic dietary risk assessments, the water concentration value of 400 ppb is appropriate to use to assess the contribution to drinking water.

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

Triclopyr is currently registered for the following uses that could result in residential exposures: Aquatic and turf areas. EPA assessed residential exposure using the following assumptions: Handler inhalation exposure from spot applications to turf for adults, post-application inhalation and ingestion exposures of water from swimming for children 3 to <6 years old, and post-application incidental oral exposure to turf for children 1 to <2 years old. The dermal route of exposure is not quantitatively assessed because there is no dermal hazard. Short-term residential handler exposure, and short- and intermediate-term residential post-application exposures are expected. Chronic exposures are not expected. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to triclopyr and any other substances.

3,5,6-trichloro-2-pyridinol, commonly known as TCP, is a metabolite of triclopyr, chlorpyrifos, and chlorpyrifos-methyl. Risk assessment of TCP was conducted in 2002, and the previous conclusions that the acute and chronic dietary aggregate exposure estimates are below EPA's level of concern (LOC) are still valid since the tolerances changes will not have a noticeable effect on dietary exposures to TCP. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

### *D. Safety Factor for Infants and Children*

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

2. *Prenatal and postnatal sensitivity.* As summarized in Unit III.A., there is evidence of increased qualitative susceptibility to offspring from triclopyr exposure in the 2-generation reproduction toxicity study and potential qualitative susceptibility in the rat developmental toxicity study. However, the concern is low since effects are well-characterized with clearly established NOAEL/LOAEL values, effects were seen in the presence of parental toxicity, and selected endpoints, which are protective of the effects in adult animals, are protective of the observed effects.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X, with the exception for inhalation exposures where the FQPA SF is retained at 10X. These decisions are based on the following findings:

i. The toxicity database for triclopyr is adequate for characterizing triclopyr toxicity and quantification of hazard exposures. For assessing risks associated with inhalation exposures, the FQPA SF is retained at 10X to incorporate the database uncertainty factor ($UF_{DB}$) to account for the lack of a subchronic inhalation toxicity study.

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

iii. There is evidence of increased qualitative susceptibility to offspring from triclopyr exposure. However, the concern is low since effects are well-characterized with clearly established NOAEL/LOAEL values, effects were seen in the presence of parental toxicity, and selected endpoints, which are protective of the effects in adult animals, are protective of the observed effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues for all crops except milk commodities and drinking water in which anticipated residues were used. EPA used conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by triclopyr.

### *E. Aggregate Risks and Determination of Safety*

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to triclopyr will occupy 53% of the aPAD for females 13–49 years old, and 8% of the aPAD for all infants less than 1 year

old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to triclopyr from food and water will utilize 46% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3. regarding residential use patterns, chronic residential exposure to residues of triclopyr is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Triclopyr is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to triclopyr.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 120 for children 1 to <2 years old (dietary exposure with post-application incidental oral exposure from turf use). Because EPA's level of concern for triclopyr is a MOE of 100 or below, this MOE is not of concern.

For adults and children 3 to <6 years old, an aggregate risk index (ARI) is used since the POD for the oral and inhalation routes of exposure are the same, but the LOC values for oral (MOE<100) and inhalation (MOE<1000) exposures are different. The ARIs are 3.6 for children 3 to <6 years old (dietary exposure with post-application inhalation and ingestion from aquatic use), and 1.4 for adults (dietary exposure with handler inhalation exposure from turf use). Since EPA's level of concern is an ARI below 1, these ARIs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Although triclopyr is currently registered for uses that could result in intermediate-term residential exposure, EPA determined that a quantified intermediate-term aggregate assessment is unnecessary since the short- and intermediate-term PODs are the same and the short-term aggregate provides a worst-case estimate of residential exposure and is therefore protective of the longer-term exposures.

5. *Aggregate cancer risk for U.S. population.* As summarized in Unit III.A., EPA has determined that an aggregate exposure risk assessment for cancer risk is not required based on WOE conclusions on the marginal evidence of carcinogenicity in two adequate rodent carcinogenicity studies and the use of the chronic RfD which will adequately account for any potential carcinogenic effects.

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

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodologies (Methods ACR 77.2 and ACR 77.4, using gas chromatography with electron-capture detection (GC/ECD); Method GRM 97.02 using gas chromatography with mass-spectrometry detection (GC/MS)) are available to enforce the tolerance expression. The Food and Drug Administration (FDA) PESTDATA database dated 1/94 (Pesticide Analytical Manual (PAM) Vol. I, Appendix I) indicates that triclopyr is completely recovered (>80%) using multi-residue method PAM Vol. I Section 402. Data pertaining to multi-residue methods testing of triclopyr and its metabolites through Protocols B, C, D, and E have been submitted and forwarded to FDA.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established any MRL for triclopyr.

### *C. Revisions to Petitioned-for Tolerances*

Based on the available residue chemistry data, EPA has determined that a tolerance for milk fat is not required. Also, EPA is increasing the proposed tolerances for fat (0.09 ppm) and meat (0.08 ppm) of cattle, goat, hog, horse, and sheep to 0.10 ppm, and decreasing the proposed tolerances for meat byproducts of cattle, goat, hog, horse, and sheep from 0.7 ppm to 0.50 ppm in order to harmonize with established Canadian MRLs. The current tolerances for kidney (0.5 ppm), liver (0.5 ppm), and meat byproducts except kidney and liver (0.05 ppm) of cattle, goat, hog, horse, and sheep are being removed and replaced by establishing tolerances for meat byproducts of cattle, goat, hog, horse, and sheep at 0.50 ppm.

EPA is also revising the chemical name of triclopyr in the tolerance expressions to reflect the preferred Chemical Abstract Service (CAS) nomenclature. Lastly, in accordance with Agency guidance on tolerance expressions, the tolerance expressions for triclopyr are revised by clarifying that the tolerances cover ''residues of the herbicide triclopyr, including its metabolites and degradates as well as how residues of triclopyr are to be measured.''

### *D. Response to Comments*

Several comments were received in both dockets, EPA–HQ–OPP–2014–0314 and EPA–HQ–OPP–2014–0489, containing general comments disapproving of the use and EPA's approval of pesticides, and two similar comments stating that triclopyr should be banned due to its toxic effects on aquatic animals and its soil half-life. EPA understands these commenters' concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by Section 408 of the FFDCA states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. These comments appear to be directed at the underlying statute and not EPA's implementation of it; the commenters have made no contention that EPA has acted in violation of the statutory framework. In addition, some of the

comments stated that triclopyr's negative effects are detrimental to human health. EPA has concluded that there is a reasonable certainty of no harm to humans after considering the toxicological studies and the exposure levels of humans to triclopyr.

## V. Conclusion

Therefore, tolerances are established for residues of triclopyr, 2-[(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, in or on cattle, meat byproducts at 0.50 ppm; goat, meat byproducts at 0.50 ppm; hog, meat byproducts at 0.50 ppm; horse, meat byproducts at 0.50 ppm; sheep, meat byproducts at 0.50 ppm; amended for milk at 0.60 ppm; cattle, fat at 0.10 ppm; cattle, meat at 0.10 ppm; goat, fat at 0.10 ppm; goat, meat at 0.10 ppm; hog, fat at 0.10 ppm; hog, meat at 0.10 ppm; horse, fat at 0.10 ppm; horse, meat at 0.10 ppm; sheep, fat at 0.10 ppm; and sheep, meat at 0.10 ppm.

The following livestock tolerances for ''kidney,'' ''liver,'' and ''meat byproducts, except kidney and liver'' are removed since these commodities will be combined under the ''meat byproducts'' tolerances: Cattle, kidney at 0.5 ppm; cattle, liver at 0.5 ppm; cattle, meat byproducts, except kidney and liver at 0.05 ppm; goat, kidney at 0.5 ppm; goat, liver at 0.5 ppm; goat, meat byproducts, except kidney and liver at 0.05 ppm; hog, kidney at 0.5 ppm; hog, liver at 0.5 ppm; hog, meat byproducts, except kidney and liver at 0.05 ppm; horse, kidney at 0.5 ppm; horse, liver at 0.5 ppm; horse, meat byproducts, except kidney and liver at 0.05 ppm; sheep, kidney at 0.5 ppm; sheep, liver at 0.5 ppm; and sheep, meat byproducts, except kidney and liver at 0.05 ppm.

## VI. Statutory and Executive Order Reviews

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

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

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

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

## VII. Congressional Review Act

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

## List of Subjects in 40 CFR Part 180

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

Dated: February 11, 2016.

**Susan Lewis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

■ 2. In § 180.417, revise paragraph (a)(1) introductory text, the commodity ''Milk,'' in the table in paragraph (a)(1) and paragraph (a) (2) to read as follows:

### § 180.417 Triclopyr; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide triclopyr, including its metabolites and degradates, in or on the commodities in the table below resulting from the application of the butoxyethyl ester of triclopyr, triethylamine salt of triclopyr, or choline salt of triclopyr. Compliance with the tolerance levels specified below is to be determined by measuring only triclopyr, 2-[(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid.

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Milk | 0.60 |
| * * * * * | |

(2) Tolerances are established for residues of the herbicide triclopyr, including its metabolites and degradates, in or on the commodities in the table below resulting from the application of the butoxyethyl ester of triclopyr, triethylamine salt of triclopyr, or choline salt of triclopyr. Compliance with the tolerance levels specified below is to be determined by measuring the combined residues of triclopyr, 2-[(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, and its metabolite 3,5,6-trichloro-2-pyridinol (TCP), calculated as the stoichiometric equivalent of triclopyr.

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.10 |
| Cattle, meat | 0.10 |
| Cattle, meat byproducts | 0.50 |

| Commodity | Parts per million |
|---|---|
| Goat, fat | 0.10 |
| Goat, meat | 0.10 |
| Goat, meat byproducts | 0.50 |
| Hog, fat | 0.10 |
| Hog, meat | 0.10 |
| Hog, meat byproducts | 0.50 |
| Horse, fat | 0.10 |
| Horse, meat | 0.10 |
| Horse, meat byproducts | 0.50 |
| Sheep, fat | 0.10 |
| Sheep, meat | 0.10 |
| Sheep, meat byproducts | 0.50 |

* * * * *

[FR Doc. 2016–03910 Filed 2–24–16; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[MB Docket No. 15–71; FCC 15–111]**

### Television Market Modification; Statutory Implementation

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Report and Order,* Television Market Modification; Statutory Implementation. This document is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the rules.

**DATES:** The amendments to 47 CFR 76.59(a) and (b), published at 80 FR 59635, October 2, 2015, are effective February 25, 2016.

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

**SUPPLEMENTARY INFORMATION:** This document announces that, on February 18, 2016 and February 19, 2016, OMB approved the information collection requirements contained in the Commission's *Report and Order,* FCC 15–111, published at 80 FR 59635, October 2, 2015. The OMB Control Numbers are 3060–0546 and 3060–0980. The Commission publishes this notice as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Numbers, 3060–0546 and 3060–0980, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

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

**Synopsis**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on February 18, 2016 and February 19, 2016, for the new information collection requirements contained in the Commission's rules at 47 CFR 76.59(a)–(b) and 76.66(d)(6).

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

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Numbers are 3060–0546 and 3060–0980.

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

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

*OMB Control Number:* 3060–0546.

*OMB Approval Date:* February 18, 2016.

*OMB Expiration Date:* February 28, 2019.

*Title:* Section 76.59 Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business and other for-profit entities.

*Number of Respondents and Responses:* 180 respondents and 200 responses.

*Estimated Time per Response:* 0.5 to 40 hours.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

*Total Annual Burden:* 1,486 hours.

*Total Annual Costs:* $1,387,950.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 303(r), 338 and 534.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* On September 2, 2015, the Commission released a Report and Order (Order), FCC 15–111, in MB Docket No. 15–71, adopting satellite television market modification rules to implement Section 102 of the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (STELAR). The STELAR amended the Communications Act and the Copyright Act to give the Commission authority to modify a commercial television broadcast station's local television market—defined by The Nielsen Company's Designated Market Area (DMA) in which it is located—to include additional communities or exclude communities for purposes of better effectuating satellite carriage rights. The Commission previously had the authority to modify a station's market only in the cable carriage context. Market modification allows the Commission to modify the local television market of a particular commercial television broadcast station to enable commercial television stations, cable operators and satellite carriers to better serve the interests of local communities. Market modification provides a means to avoid rigid adherence to DMA designations and to promote consumer access to in-state and other relevant television programming. Section 338(l) of the Communications Act (the satellite market modification provision) and Section 614(h)(1)(C) of the Communications Act (the corresponding cable provision) permit the Commission to add communities to or delete communities from a station's local television market following a written request. Furthermore, the Commission may determine that particular communities are part of more than one television market.

Section 76.59(a) of the Commission's Rules authorizes the filing of market modification petitions and governs who may file such a petition. With respect to cable market modification petitions, a commercial TV broadcast station and cable system operator may file a market modification petition to modify the local television market of a particular

commercial television broadcast station for purposes of cable carriage rights. With respect to satellite market modification petitions, a commercial TV broadcast stations, satellite carrier and county governmental entity (such as a county board, council, commission or other equivalent subdivision) may file a market modification petition to modify the local television market of a particular commercial television broadcast station for purposes of satellite carriage rights. Section 76.59(b) of the Commission's Rules requires that market modification petitions and responsive pleadings (*e.g.,* oppositions, comments, reply comments) must be submitted in accordance with the procedures for filing Special Relief petitions in Section 76.7 of the rules. Section 76.59(b) of the Commission's Rules requires petitioners (*e.g.,* commercial TV broadcast stations, cable system operators, satellite carriers and county governments) to include the specific evidence in support of market modification petitions.

Section 338(l)(3) of the Communications Act provides that ''[a] market determination . . . shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.'' If a satellite carrier opposes a market modification petition because the resulting carriage would be technically or economically infeasible pursuant to Section 338(l)(3), the carrier must provide specific evidence in its opposition or response to a pre-filing coordination request (see below) to demonstrate its claim of infeasibility. If the satellite carrier is claiming infeasibility based on insufficient spot beam coverage, then the carrier may instead provide a detailed certification submitted under penalty of perjury. Although the Commission will not require satellite carriers to provide supporting documentation as part of their certification, the Commission may decide to look behind any certification and require supporting documentation when it deems it appropriate, such as when there is evidence that the certification may be inaccurate. In the event that the Commission requires supporting documentation, it will require a satellite carrier to provide its ''satellite link budget'' calculations that were created for the new community. Because the Commission may determine in a given case that supporting documentation should be provided to support a detailed certification, satellite carriers are required to retain such ''satellite link budget'' information in the event that the Commission determines further review by the Commission is necessary. Satellite carriers must retain such information throughout the pendency of Commission or judicial proceedings involving the certification and any related market modification petition. If satellite carriers have concerns about providing proprietary and confidential information underlying their analysis, they may request confidentiality.

The Report and Order establishes a ''pre-filing coordination'' process that will allow a prospective petitioner for market modification (*i.e.,* broadcaster or county government), at its option, to request/obtain a certification from a satellite carrier about whether or not (and to what extent) carriage resulting from a contemplated market modification is technically and economically feasible for such carrier before the prospective petitioner undertakes the time and expense of preparing and filing a satellite market modification petition. To initiate this process, a prospective petitioner may make a request in writing to a satellite carrier for the carrier to provide the certification about the feasibility or infeasibility of carriage. A satellite carrier must respond to this request within a reasonable amount of time by providing a feasibility certification to the prospective petitioner. A satellite carrier must also file a copy of the correspondence and feasibility certification it provides to the prospective petitioner in this docket electronically via ECFS so that the Media Bureau can track these certifications and monitor carrier response time.

If the carrier is claiming spot beam coverage infeasibility, then the certification provided by the carrier must be the same type of detailed certification that would be required in response to a market modification petition. For any other claim of infeasibility, the carrier's feasibility certification must explain in detail the basis of such infeasibility and must be prepared to provide documentation in support of its claim, in the event the prospective petitioner decides to seek a Commission determination about the validity of the carrier's claim. If carriage is feasible, a statement to that effect must be provided in the certification. To obtain a Commission determination about the validity of the carrier's claim of infeasibility, a prospective petitioner must either file a (separate) petition for special relief or its market modification petition.

*OMB Control Number:* 3060–0980.

*OMB Approval Date:* February 24, 2016.

*OMB Expiration Date:* February 28, 2019.

*Title:* Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues, 47 CFR Section 76.66.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 10,300 respondents; 11,978 responses.

*Estimated Time per Response:* 1 hour to 5 hours.

*Frequency of Response:* Third party disclosure requirement; On occasion reporting requirement; Once every three years reporting requirement; Recordkeeping requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 325, 338, 339 and 340.

*Total Annual Burden:* 12,186 hours.

*Total Annual Cost:* $24,000.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* On September 2, 2015, the Commission released a Report and Order (Order), FCC 15–111, in MB Docket No. 15–71, adopting satellite television market modification rules to implement Section 102 of the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (STELAR). With respect to this collection, the Order amended Section 76.66 of the Commission's Rules by adding a new paragraph (d)(6) that addresses satellite carriage after a market modification is granted by the Commission.

47 CFR Section 76.66(d)(6) addresses satellite carriage after a market modification is granted by the Commission. The rule states that television broadcast stations that become eligible for mandatory carriage with respect to a satellite carrier (pursuant to § 76.66) due to a change in the market definition (by operation of a market modification pursuant to § 76.59) may, within 30 days of the effective date of the new definition, elect retransmission consent or mandatory carriage with respect to such carrier.

A satellite carrier shall commence carriage within 90 days of receiving the carriage election from the television

broadcast station. The election must be made in accordance with the requirements of 47 CFR Section 76.66(d)(1).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary. Office of the Secretary.*

[FR Doc. 2016–03957 Filed 2–24–16; 8:45 am]

**BILLING CODE 6712–01–P**

# Proposed Rules

Federal Register
Vol. 81, No. 37
Thursday, February 25, 2016

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. FAA–2015–7689; Notice No. 25–16–03–SC]**

## Special Conditions: Lufthansa Technik AG; Boeing Model 747–8 Series Airplanes, Large Non-Structural Glass in the Passenger Compartment

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for the Boeing Model 747–8 airplane. This airplane, as modified by Lufthansa Technik AG, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is large, non-structural glass panels in the passenger compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Send your comments on or before March 16, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2015–7689 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jayson Claar, FAA, Airframe and Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2194; facsimile 425–227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

### Background

On March 8, 2012, Lufthansa Technik AG applied for a supplemental type certificate for large, non-structural glass panels in the passenger compartment in a Boeing Model 747–8 airplane. The Model 747–8 airplane is a derivative of the Boeing Model 747–400 airplane currently approved under type certificate no. A20WE. The airplane, as modified by Lufthansa Technik AG, is a four-engine, jet-transport airplane that will have a maximum takeoff weight of 970,000 lbs, capacity for 24 crewmembers, and taxi, takeoff, and landing seating for 143 passengers.

### Type Certification Basis

The certification basis for the Boeing Model 747–8 airplane, as defined in type certificate no. A20WE, is title 14, Code of Federal Regulations (14 CFR) part 25 as amended by amendments 25–1 through 25–120, with exceptions for structures and systems that were unchanged from the 747–400 design.

Under the provisions of § 21.101, Lufthansa Technik AG must show that the Model 747–8 airplane, as changed, continues to meet the applicable provisions of the regulations listed in type certificate no. A20WE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

The regulations listed in the type certificate are commonly referred to as the ''original type certification basis.''

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 747–8 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model 747–8 airplane must comply with the fuel-vent and

exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

**Novel or Unusual Design Features**

Lufthansa Technik AG is modifying a Boeing Model 747–8 airplane to install a head-of-state interior arrangement. This airplane, as modified, will have a novel or unusual design feature associated with the installation of large, non-structural glass panels in the cabin area of an executive interior occupied by passengers and crew. The installation of these glass items in the passenger compartment, which can be occupied during taxi, takeoff, and landing, is a novel or unusual design feature with respect to the material being installed. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

The use of glass has resulted in trade-offs between the one unique characteristic of glass—its capability for undistorted or controlled light transmittance, or transparency—and the negative aspects of the material, such as extreme notch-sensitivity, low fracture resistance, low modulus of elasticity, and highly variable properties. While reasonably strong, glass is nonetheless not a desirable material for traditional airplane applications because it is heavy (about the same density as aluminum), and when it fails, it breaks into extremely sharp fragments that have the potential for injury and have been known to be lethal. Thus the use of glass traditionally has been limited to windshields, and instrument and display transparencies. The regulations for certification of transport-category airplanes only address, thus only recognize, the use of glass in windshield or window applications. These regulations do address the adverse properties of glass, but even so, pilots are occasionally injured from shattered glass windshields. FAA policy allows glass on instruments and display transparencies.

Other installations of large, non-structural glass items have included the following:

- Glass panels integrated onto a stairway handrail closeout.
- Glass panels mounted in doors to allow visibility through the door when desired.
- Glass doors on some galley compartments containing small amounts of service items.

**Discussion**

No specific regulations address the design and installation of large glass components in airplane passenger cabins. Existing requirements, such as §§ 25.561, 25.562, 25.601, 25.603, 25.613, 25.775, and 25.789, in the Boeing Model 747–8 airplane certification basis applicable to this supplemental type certificate project, provide some design standards appropriate for large glass component installations. However, additional design standards for non-structural glass augmenting the existing design are needed to complement the existing requirements. The addition of glass involved in this installation, and the potentially unsafe conditions caused by damage to such components from external sources, necessitate assuring that adequate safety standards are applied to the design and installation of the feature in Boeing Model 747–8 airplanes.

For purposes of these special conditions, a large glass component is defined as a glass component weighing 4 kg (9 lbs) or more. Groupings of glass items that individually weigh less than 4 kg, but collectively weigh 4 kg or more, also would need to be included. The proposed special conditions also apply when showing compliance with the applicable performance standards in the regulations for the installation of these components. For example, heat-release and smoke-density testing must not result in fragmentation of the component.

These proposed special conditions will reduce the hazards from breakage, or from these panels' potential separation from the cabin interior. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**Applicability**

As discussed above, these special conditions are applicable to Boeing Model 747–8 series airplanes. Should Lufthansa Technik AG apply at a later date for a supplemental type certificate to modify any other model included on type certificate no. A20WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

**Conclusion**

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Proposed Special Conditions**

For large glass components installed in a cabin occupied by passengers or crew who are not otherwise protected from the injurious effects of failure of the glass installations, the Lufthansa Technik AG glass installations on this Boeing 747–8 airplane must meet the following conditions:

1. Material: The glass used must be tempered or otherwise treated to ensure that when fractured, it breaks into small pieces with relatively dull edges. This must be demonstrated by testing to failure.

2. Fragmentation: The glass-component installation must control the fragmentation of the glass to minimize the danger from flying glass shards or pieces. This must be demonstrated by impact and puncture testing to failure.

3. Component Strength: The glass component must be strong enough to meet the load requirements for all flight and landing loads, including any of the applicable emergency-landing conditions in subparts C & D of 14 CFR part 25. In addition, glass components that are located such that they are not protected from contact with cabin occupants must not fail due to abusive loading, such as impact from occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact with the glass component. The effect of design details such as geometric discontinuities or surface finish, *e.g.,* embossing, etching, etc., must be assessed.

4. Component Retention: The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing. Both the directional loading and rebound conditions must be assessed. The effect of design details such as geometric discontinuities or surface finish, *e.g.,* embossing, etching, etc., must be assessed.

5. Instructions for Continued Airworthiness: The instructions for continued airworthiness must reflect the method used to fasten the panel to the cabin interior and must ensure the reliability of the methods used, *e.g.,* life limit of adhesives, or clamp connection.

The applicant must define any inspection methods and intervals based upon adhesion data from the manufacturer of the adhesive, or upon actual adhesion-test data, if necessary.

Issued in Renton, Washington, on February 16, 2016.

**Dionne Palermo,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–03997 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. FAA–2015–3324; Notice No. 25–16–04–SC]**

## Special Conditions: L–3 Communications Integrated Systems; Boeing Model 747–8 Series Airplanes, Large Non-Structural Glass in the Passenger Compartment

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for the Boeing Model 747–8 airplane. This airplane, as modified by L–3 Communications Integrated Systems, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is large, non-structural glass panels in the passenger compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Send your comments on or before March 28, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2015–3324 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jayson Claar, FAA, Airframe and Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2194; facsimile 425–227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

### Background

On May 10, 2011, L–3 Communications Integrated Systems applied for a supplemental type certificate for large, non-structural glass panels in the passenger compartment in Boeing Model 747–8 airplanes. The Model 747–8 airplane is a derivative of the Boeing Model 747–400 airplane currently approved under type certificate no. A20WE. The airplane, as modified by L–3 Communications Integrated Systems, is a four-engine, jet-transport airplane that will have a maximum takeoff weight of 970,000 lbs, capacity for 24 crewmembers, and taxi, takeoff, and landing seating for 143 passengers.

### Type Certification Basis

The certification basis for the Boeing Model 747–8 airplane, as defined in type certificate no. A20WE, is title 14, Code of Federal Regulations (14 CFR) part 25 as amended by amendments 25–1 through 25–120, with exceptions for structures and systems that were unchanged from the 747–400 design.

Under the provisions of § 21.101, L–3 Communications Integrated Systems must show that the Model 747–8 airplane, as changed, continues to meet the applicable provisions of the regulations listed in type certificate no. A20WE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

The regulations listed in the type certificate are commonly referred to as the ''original type certification basis.''

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 747–8 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model 747–8 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

**Novel or Unusual Design Features**

L–3 Communications Integrated Systems is modifying a Boeing Model 747–8 airplane to install a head-of-state interior arrangement. This airplane, as modified, will have a novel or unusual design feature associated with the installation of large, non-structural glass panels in the cabin area of an executive interior occupied by passengers and crew. The installation of these glass items in the passenger compartment, which can be occupied during taxi, takeoff, and landing, is a novel or unusual design feature with respect to the material being installed. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

The use of glass has resulted in trade-offs between the one unique characteristic of glass—its capability for undistorted or controlled light transmittance, or transparency—and the negative aspects of the material, such as extreme notch-sensitivity, low fracture resistance, low modulus of elasticity, and highly variable properties. While reasonably strong, glass is nonetheless not a desirable material for traditional airplane applications because it is heavy (about the same density as aluminum), and when it fails, it breaks into extremely sharp fragments that have the potential for injury and have been known to be lethal. Thus the use of glass traditionally has been limited to windshields, and instrument or display transparencies. The regulations only address, and thus only recognize, the use of glass in windshield or window applications. These regulations do address the adverse properties of glass, but even so, pilots are occasionally injured from shattered glass windshields. FAA policy allows glass on instruments and display transparencies.

Other installations of large, non-structural glass items have included the following:

- Glass panels integrated onto a stairway handrail closeout.
- Glass panels mounted in doors to allow visibility through the door when desired.
- Glass doors on some galley compartments containing small amounts of service items.

**Discussion**

No specific regulations address the design and installation of large glass components in airplane passenger cabins. Existing requirements, such as §§ 25.561, 25.562, 25.601, 25.603, 25.613, 25.775, and 25.789, in the Boeing Model 747–8 airplane certification basis applicable to this supplemental type certificate project, provide some design standards appropriate for large glass component installations. However, additional design standards for non-structural glass augmenting the existing design are needed to complement the existing requirements. The addition of glass involved in this installation, and the potentially unsafe conditions caused by damage to such components from external sources, necessitate assuring that adequate safety standards are applied to the design and installation of the feature in Boeing Model 747–8 airplanes.

For purposes of these special conditions, a large glass component is defined as a glass component weighing 4 kg (9 lbs) or more. Groupings of glass items that individually weigh less than 4 kg, but collectively weigh 4 kg or more, also would need to be included. The proposed special conditions also apply when showing compliance with the applicable performance standards in the regulations for the installation of these components. For example, heat-release and smoke-density testing must not result in fragmentation of the component.

These proposed special conditions will reduce the hazards from breakage, or from these panels' potential separation from the cabin interior. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**Applicability**

As discussed above, these special conditions are applicable to Boeing Model 747–8 series airplanes. Should L–3 Communications Integrated Systems apply at a later date for a supplemental type certificate to modify any other model included on type certificate no. A20WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

**Conclusion**

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Proposed Special Conditions**

For large glass components installed in a cabin occupied by passengers or crew who are not otherwise protected from the injurious effects of failure of the glass installations, the L–3 Communications Integrated Systems glass installations on this Boeing 747–8 airplane must meet the following conditions:

1. Material: The glass used must be tempered or otherwise treated to ensure that when fractured, it breaks into small pieces with relatively dull edges. This must be demonstrated by testing to failure.

2. Fragmentation: The glass-component installation must control the fragmentation of the glass to minimize the danger from flying glass shards or pieces. This must be demonstrated by impact and puncture testing to failure.

3. Component Strength: The glass component must be strong enough to meet the load requirements for all flight and landing loads, including any of the applicable emergency-landing conditions in subparts C & D of 14 CFR part 25. In addition, glass components that are located such that they are not protected from contact with cabin occupants must not fail due to abusive loading, such as impact from occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact with the glass component. The effect of design details such as geometric discontinuities or surface finish, *e.g.,* embossing, etching, etc., must be assessed.

4. Component Retention: The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing. Both the directional loading and rebound conditions must be assessed. The effect of design details such as geometric discontinuities or surface finish, *e.g.,* embossing, etching, etc., must be assessed.

5. Instructions for Continued Airworthiness: The instructions for continued airworthiness must reflect the method used to fasten the panel to the cabin interior and must ensure the reliability of the methods used, *e.g.,* life limit of adhesives, or clamp connection. The applicant must define any inspection methods and intervals based upon adhesion data from the manufacturer of the adhesive, or upon actual adhesion-test data, if necessary.

Issued in Renton, Washington, on February 16, 2016.

**Dionne Palermo,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–03996 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2011–0254; Directorate Identifier 2010–NM–180–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), which would have applied to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. For certain airplanes, the NPRM would have required a one-time inspection for damage of the hydraulic actuator rod ends and actuator attach fittings on the thrust reversers, and repair or replacement if necessary. For all airplanes, the NPRM would have required repetitive inspections for damage of the hydraulic actuator rod ends, attach bolts, and nuts; repetitive inspections for damage of fitting assemblies, wear spacers, and actuator attach fittings on the thrust reverser; repetitive measurements of the wear spacer; and corrective actions if necessary. Since the NPRM was issued, the manufacturer notified us that an assumption regarding a failure mode of the rod ends or attachment fittings for the thrust reverser actuator used in the original safety assessment was incorrect. A new safety analysis was conducted and we determined that this issue is no longer a safety concern. Accordingly, the NPRM is withdrawn.

**DATES:** As of February 25, 2016, the proposed rule, which was published in the **Federal Register** on March 22, 2011 (76 FR 15864), is withdrawn.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2011–0254; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD action, the NPRM (76 FR 15864, March 22, 2011), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6499; fax: 425–917–6590; email: *Takahisa.Kobayashi@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for a new AD for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The NPRM published in the **Federal Register** on March 22, 2011 (76 FR 15864) (''the NPRM''). For certain airplanes, the NPRM would have required a one-time inspection for damage of the hydraulic actuator rod ends and actuator attach fittings on the thrust reversers, and repair or replacement if necessary. For all airplanes, the NPRM would have required repetitive inspections for damage of the hydraulic actuator rod ends, attach bolts, and nuts; repetitive inspections for damage of fitting assemblies, wear spacers, and actuator attach fittings on the thrust reverser; repetitive measurements of the wear spacer; and corrective actions if necessary.

The NPRM was prompted by reports of in-service damage of the attachment fittings for the thrust reverser actuator. The proposed actions were intended to detect and correct such damage, which could result in actuator attach fitting failure, loss of the thrust reverser auto restow function, and consequent loss of control of the airplane.

### Actions Since NPRM Was Issued

Since we issued the NPRM, the manufacturer has notified us that an assumption regarding a failure mode of the attachment fittings for the thrust reverser actuator used in the original safety assessment was incorrect. It was originally assumed that all hydraulic actuators attached to the thrust reverser have the failure mode (failure of the hydraulic actuator rod end or attach fitting due to severe wear-out) addressed in the NPRM. Based on field reports and design review, the manufacturer found that certain hydraulic actuators do not have this failure mode. Based on this new manufacturer finding, a new safety analysis was conducted and we determined that this issue is no longer a safety concern.

### FAA's Conclusions

Upon further consideration, we have determined that the safety concern identified in the NPRM does not affect The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes identified in the NPRM. Accordingly, the NPRM is withdrawn.

Withdrawal of the NPRM does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

### Regulatory Impact

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

### List of Subjects in 14 CFR Part 39

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

### The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2011–0254, Directorate Identifier 2010–NM–180–AD, which was published in the **Federal Register** on March 22, 2011 (76 FR 15864).

Issued in Renton, Washington, on February 15, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–03693 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2016–3703; Directorate Identifier 2015–NM–115–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 767–200, –300, and –400ER series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that the skin lap splice is subject to widespread fatigue damage (WFD). This proposed AD would require repetitive external detailed and surface high frequency eddy current (HFEC) inspections of the outer skin for cracking around fastener heads common to the inboard fastener row of the skin lap splice. We are proposing this AD to detect and correct fatigue cracking of the skin lap splice, which, if not detected, could grow and result in possible rapid decompression and reduced structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by April 11, 2016.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3703.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3703; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–3703; Directorate Identifier 2015–NM–115–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global 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, in a condition known as WFD. 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 ADs 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.

We have received an evaluation by the DAH indicating that the skin lap splice is subject to WFD. As a result of WFD analysis, the stringer S–2R skin lap splice from station (STA) 368 to STA 434 requires additional supplemental inspection beyond the inspections specified in the Boeing Model 767 airplane maintenance planning document. This condition, if not corrected, could result in cracking of the skin lap splice, which could grow and result in possible rapid

decompression and reduced structural integrity of the airplane.

**Related Service Information Under 1 CFR Part 51**

We reviewed Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014. The service information describes procedures for a detailed inspection and a surface HFEC inspection at section 41, stringer S–2R skin lap splice from STA 368 to STA 434, for any cracking, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements**

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3703.''

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

**Costs of Compliance**

We estimate that this proposed AD affects 356 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections ..... | 3 work-hours × $85 per hour = $255 per inspection cycle. | $0 | $255 per inspection cycle ..... | $90,780 per inspection cycle. |

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2016–3703; Directorate Identifier 2015–NM–115–AD.

**(a) Comments Due Date**

We must receive comments by April 11, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the Boeing Company Model 767–200, –300, and –400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by an evaluation by the design approval holder indicating that the skin lap splice is subject to widespread fatigue damage. We are issuing this AD to detect and correct fatigue cracking of this skin lap splice, which, if not detected, could grow and result in possible rapid decompression and reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Inspection and Corrective Actions**

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, except as required by paragraph (h) of this AD: Do a detailed inspection and a surface high frequency eddy current (HFEC) inspection at section 41, stringer S–2R skin lap splice from body station (STA) 368 to STA 434, for any cracking, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert

Service Bulletin 767–53A0260, dated August 26, 2014. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014. If any existing external repair is found in the inspection area, then the inspections in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, are not required in the area hidden by the repair, provided that the repair was previously approved by the Manager, Seattle Aircraft Certification Office (ACO), or by the Authorized Representative of the Boeing Commercial Airplanes Organization Designation Authorization (ODA), or installed as specified in Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014. Inspections in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, remain applicable in areas not hidden by the repair.

**(h) Exception to the Service Information**

Where Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

**(i) Alternative Methods of Compliance (AMOCs)**

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

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

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

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

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

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

**(j) Related Information**

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 15, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–03698 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2016–3702; Directorate Identifier 2015–NM–103–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2013–24–12, which applies to all The Boeing Company Model 747–8 and 747–8F airplanes. AD 2013–24–12 currently requires repetitive ultrasonic or dye penetrant inspections for cracking of the barrel nuts and bolts on each forward engine mount, and related investigative and corrective actions if necessary. Since we issued AD 2013–24–12, we have determined that it is necessary to mandate the installation of new barrel nuts or new inspections to adequately address the unsafe condition. This proposed AD would retain the requirements of AD 2013–24–12 and add requirements to install new barrel nuts at the forward engine mounts; or identify the part number of the barrel nuts, inspect affected barrel nuts for gaps of the strut bulkhead and forward engine mount, and do related investigative and corrective actions if necessary. This proposed AD would also remove airplanes from the applicability. We are proposing this AD to detect and correct cracked barrel nuts on a forward engine mount, which could result in reduced load capacity of the forward engine mount, separation of an engine under power from the airplane, and consequent loss of control of the airplane.

**DATES:** We must receive comments on this proposed AD by April 11, 2016.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3702.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3702; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office

(phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.p.weigand@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–3702; Directorate Identifier 2015–NM–103–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

## Discussion

On November 19, 2013, we issued AD 2013–24–12, Amendment 39–17686 (78 FR 71989, December 2, 2013) (''AD 2013–24–12''), for all The Boeing Company Model 747–8 and 747–8F airplanes. AD 2013–24–12 requires repetitive ultrasonic or dye penetrant inspections for cracking of the barrel nuts and bolts, as applicable, on each forward engine mount, and related investigative and corrective actions if necessary. AD 2013–24–12 resulted from a report of cracked barrel nuts found on a forward engine mount. We issued AD 2013–24–12 to detect and correct cracked barrel nuts on a forward engine mount, which could result in reduced load capacity of the forward engine mount, separation of an engine under power from the airplane, and consequent loss of control of the airplane.

## Actions Since AD 2013–24–12 Was Issued

The preamble to AD 2013–24–12 explains that we considered the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

## Related Service Information Under 1 CFR Part 51

We reviewed the following service information:

- Boeing Service Bulletin 747–71A2329, Revision 1, dated May 28, 2015. The service information describes procedures for inspecting for cracked bolts and barrel nuts on the forward engine mounts, replacing cracked bolts and barrel nuts, and sending the inspection results and cracked parts to Boeing.
- Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015. The service information describes procedures for installing new barrel nuts, inspecting the barrel nuts at the forward engine mount to determine the part number (P/N), inspecting for gaps of the strut bulkhead and forward engine mount, and doing applicable related investigative and corrective actions.
- 747–8/–8F Airworthiness Limitation (AWL), Document Number D011U721–02–01, dated September 2015, which includes a limitation for Structurally Significant Item (SSI) 54–50–003c, which describes procedures for structural inspections.

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

## FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

## Proposed AD Requirements

This proposed AD would retain all requirements of AD 2013–24–12. This proposed AD would also require accomplishing the actions specified in Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015, described previously, except as discussed under ''Differences Between Proposed AD and Service Information.'' For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3702.

The phrase ''related investigative actions'' is used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

## Differences Between Proposed AD and Service Information

Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

## Costs of Compliance

We estimate that this proposed AD affects 7 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections (retained actions from AD 2013–24–12). | Up to 24 work-hours × $85 per hour = $2,040 per inspection cycle. | $0 | Up to $2,040 per inspection cycle. | Up to $14,280 per inspection cycle. |
| Installation (new proposed action) ..... | 17 work-hours × $85 per hour = $1,445. | 6,384 | $7,829 ..... | Up to $54,803. |

ESTIMATED COSTS—Continued

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections (new proposed alternative actions). | 4 work-hours × $85 per hour = $340. | 0 | $340 | Up to $2,380. |
| Maintenance program revision (new proposed requirement). | 1 work-hour × $85 per hour = $85. | 0 | $85 | $595. |

We have received no definitive data that would enable us to provide cost estimates for the bootstrap installation specified in this proposed AD. We estimate the following costs to do other necessary related investigative and corrective actions that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Ultrasonic inspection | 5 work-hours × $85 per hour = $425 | $0 | $425 |

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

**Paperwork Reduction Act**

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–24–12, Amendment 39–17686 (78 FR 71989, December 2, 2013), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2016–3702; Directorate Identifier 2015–NM–103–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by April 11, 2016.

**(b) Affected ADs**

This AD replaces AD 2013–24–12, Amendment 39–17686 (78 FR 71989, December 2, 2013).

**(c) Applicability**

This AD applies to The Boeing Company Model 747–8F and 747–8 airplanes, certificated in any category, as identified in Boeing Service Bulletin 747–71A2329, Revision 1, dated May 28, 2015.

**(d) Subject**

Air Transport Association (ATA) of America Code 71, Powerplant.

**(e) Unsafe Condition**

This AD was prompted by a report of cracked barrel nuts found on a forward engine mount, and by the determination that additional actions are necessary to address the unsafe condition. We are issuing this AD to detect and correct cracked barrel nuts on a forward engine mount, which could result in reduced load capacity of the forward engine mount, separation of an engine under power from the airplane, and consequent loss of control of the airplane.

**(f) Compliance**

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

**(g) Retained Repetitive Inspections and Corrective Actions, With Revised Service Information**

This paragraph restates the actions required by paragraph (g) of AD 2013–24–12, Amendment 39–17686 (78 FR 71989, December 2, 2013) (''AD 2013–24–12''), with revised service information: Except as required by paragraph (h)(1) of this AD, at the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–71A2329, dated September 27, 2013: Do the inspection specified in paragraph (g)(1) or (g)(2) of this AD, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–71A2329, dated September 27, 2013; or Boeing Service Bulletin 747–71A2329, Revision 1, dated May 28, 2015. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–71A2329, dated September 27, 2013. As of the effective date of this AD, use only Boeing Service Bulletin 747–71A2329, Revision 1, dated May 28, 2015.

(1) Ultrasonic inspection for cracking of the barrel nuts on each forward engine mount, except as required by paragraph (h)(2) of this AD.

(2) Dye penetrant inspection for cracking of the bolts and barrel nuts. Whenever a dye penetrant inspection is done, all the bolts and barrel nuts on that engine mount must be removed and replaced with new or serviceable parts.

**(h) Retained Exceptions to Service Information Specifications, With Revised Service Information References**

(1) Where Boeing Alert Service Bulletin 747–71A2329, dated September 27, 2013; or Boeing Service Bulletin 747–71A2329, Revision 1, dated May 28, 2015; specify a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after December 17, 2013 (the effective date of AD 2013–24–12).

(2) Where Appendix B of Boeing Alert Service Bulletin 747–71A2329, dated September 27, 2013, and Appendix B of Boeing Service Bulletin 747–71A2329, Revision 1, dated May 28, 2015, state that alternate instruments and transducers can be used, this AD requires that only equivalent instruments and transducers can be used.

(3) Where Appendix A of Boeing Alert Service Bulletin 747–71A2329, dated September 27, 2013, and Appendix A of Boeing Service Bulletin 747–71A2329, Revision 1, dated May 28, 2015, state to record flight hours and flight cycles, record the flight hours and flight cycles on the airplane and the flight hours and flight cycles for each engine since change or removal.

**(i) Retained Reporting and Sending Parts, With Revised Service Information**

After any inspection required by paragraph (g) of this AD: Submit a report of the inspection results (both positive and negative), and return all cracked bolts and barrel nuts, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the information requested in Appendix A of Boeing Alert Service Bulletin 747–71A2329, dated September 27, 2013, or Appendix A of Boeing Service Bulletin 747–71A2329, Revision 1, dated May 28, 2015, except as required by paragraph (h)(3) of this AD. Both the report and all cracked bolts and barrel nuts must be sent to the address specified in Appendix A of Boeing Alert Service Bulletin 747–71A2329, dated September 27, 2013, or Appendix A of Boeing Service Bulletin 747–71A2329, Revision 1, dated May 28, 2015.

(1) For airplanes on which an ultrasonic inspection was done and no cracking was found, do the required actions at the time specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD, as applicable.

(i) If the inspection was done on or after December 17, 2013 (the effective date of AD 2013–24–12): Submit the report within 10 days after the inspection.

(ii) If the inspection was done before December 17, 2013 (the effective date of AD 2013–24–12): Submit the report within 10 days after December 17, 2013 (the effective date of AD 2013–24–12).

(2) For airplanes on which a dye penetrant inspection was done, do the required actions at the time specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD, as applicable.

(i) If the inspection was done on or after December 17, 2013 (the effective date of AD 2013–24–12): Submit the report and return all cracked bolts and barrel nuts within 10 days after replacing the bolts and barrel nuts with new or serviceable bolts and barrel nuts in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–71A2329, dated September 27, 2013; or Boeing Service Bulletin 747–71A2329, Revision 1, dated May 28, 2015.

(ii) If the inspection was done before December 17, 2013 (the effective date of AD 2013–24–12): Submit the report and return all cracked bolts and barrel nuts within 10 days after December 17, 2013 (the effective date of AD 2013–24–12).

**(j) Retained Paperwork Reduction Act Burden Statement, With No Changes**

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

**(k) New Installation or Inspections**

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015, except as required by paragraph (o)(1) of this AD: Do the actions specified in paragraph (k)(1) or (k)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015, except as required by paragraph (o)(2) of this AD.

(1) Install new barrel nuts using the bootstrap installation method identified in Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015.

(2) Do a general visual inspection to determine the part number (P/N) of the barrel nuts at the forward engine mount. If any barrel nut P/N SL4081C14SP1 is installed, before further flight, do a general visual inspection for gaps of the strut bulkhead and forward engine mount to determine if the nut-by-but method identified in Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015, can be used, and do all applicable related investigative and corrective actions. Do all applicable related investigative and corrective actions before further flight, including the nut-by-nut replacement identified in Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015. If the nut-by-nut replacement identified in Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015 cannot be accomplished, install new nuts, in accordance with paragraph (k)(1) of this AD.

**(l) Maintenance Program Revision**

Within 30 days after accomplishment of the actions required by paragraph (k) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Revise the maintenance or inspection program, as applicable, to incorporate the 747–8/–8F Airworthiness Limitation (AWL), Document Number D011U721–02–01, Structurally Significant Item (SSI) 54–50–003c.

**(m) Terminating Action**

Accomplishment of the actions required by paragraphs (k) and (l) of this AD terminate the requirements of paragraphs (g) and (i) of this AD.

**(n) Parts Installation Prohibition**

As of the effective date of this AD, no person may install or reinstall any barrel nut P/N SL4081C14SP1 at the forward engine mount assembly on any airplane, and only P/N SL4750NA may be installed.

**(o) New Exceptions to Service Information Specifications**

(1) Where Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Special Attention Service Bulletin 747–71–2332, Revision 1, dated May 28, 2015, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (r) of this AD.

**(p) No Alternative Actions or Intervals**

After the maintenance or inspection program has been revised as required by paragraph (l) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (r) of this AD.

**(q) Credit for Previous Actions**

This paragraph provides credit for the actions specified in paragraph (k) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 747–71–2332, dated May 30, 2014, which is not incorporated by reference in this AD.

**(r) Alternative Methods of Compliance (AMOCs)**

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

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

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

(4) AMOCs approved for AD 2013–24–12 are approved as AMOCs for the corresponding provisions of this AD.

(5) Except as required by paragraph (o)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (r)(5)(i) and (r)(5)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

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

**(s) Related Information**

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.p.weigand@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 15, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–03690 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2016–3701; Directorate Identifier 2015–NM–015–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2013–25–08, for all Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. AD 2013–25–08 currently requires a repetitive inspection program on certain check valves in the hydraulic systems that includes, among other things, inspections for lock wire presence and integrity, traces of seepage or black deposits, proper torque, alignment of the check valve and manifold, installation of new lock wire, and corrective actions if needed. Since we issued AD 2013–25–08, Airbus has developed an improved check valve. This proposed AD would add airplanes to the applicability, and require modifying the green, blue and yellow high pressure hydraulic manifolds by replacing certain check valves with improved check valves, which would terminate the repetitive inspections required by this proposed AD. We are proposing this AD to detect and correct hydraulic check valve loosening; loosened valves could result in hydraulic leaks, possibly leading to the loss of all three hydraulic systems and consequent loss of control of the airplane.

**DATES:** We must receive comments on this proposed AD by April 11, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *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.

For service information identified in this NPRM, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on

the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3701; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–3701; Directorate Identifier 2015–NM–015–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

**Discussion**

On November 26, 2013, we issued AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013) (''AD 2013–25–08''). AD 2013–25–08 requires actions intended to address an unsafe condition on all Airbus Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes.

Since we issued AD 2013–25–08, which superseded AD 2009–24–09 Amendment 39–16068 (74 FR 62208, November 27, 2009), the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0009, dated January 16, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition. The MCAI states:

An A330 operator experienced a Yellow hydraulic circuit low level due to a loose check valve, Part Number (P/N) CAR401. During the inspection on the other two hydraulic systems, the other three check valves P/N CAR401 were also found to be loose with their lock wire broken in two instances. Airbus A340 aeroplanes are also equipped with P/N CAR401 high pressure manifold check valves.

Additional cases of P/N CAR401 check valve loosening have been reported on aeroplanes having accumulated more than 1,000 flight cycles (FC). The check valve fitted on the Yellow hydraulic system is more affected, due to additional system cycles induced by cargo door operation.

This condition, if not detected and corrected, could result in hydraulic leaks, possibly leading to the loss of all three hydraulic systems and consequent loss of control of the aeroplane.

To address this unsafe condition, EASA issued Emergency AD 2009–0223–E (*http://ad.easa.europa.eu/blob/easa_ad_2009_0223E_superseded.pdf/EAD_2009-0223-E_1*) [which corresponds to FAA AD 2009–24–09, Amendment 39–16068 (74 FR 62208, November 27, 2009)] to require an inspection programme to detect any check valve loosening and, if necessary, to apply the applicable corrective actions.

EASA AD 2010–0145 (*http://ad.easa.europa.eu/blob/easa_ad_2010_0145_Superseded.pdf/AD_2010-0145_1*), which superseded EASA EAD 2009–0223–E retaining its requirements, was issued to expand the applicability to the newly certified models A330–223F and A330–243F.

Prompted by further reported in-service events of check valve P/N CAR401 loosening before reaching the threshold of 700 FC, EASA AD 2011–0139 (*http://ad.easa.europa.eu/blob/easa_ad_2011_0139_superseded.pdf/AD_2011-0139_1*), which superseded EASA AD 2010–0145, retaining its requirements, was issued to:

—extend the requirement to identify the P/N CAR401 check valves to all aeroplanes, and

—reduce the inspection threshold for aeroplanes fitted with check valve P/N CAR401, either installed in production through Airbus modification 54491, or installed in service through Airbus Service Bulletin (SB) A330–29–3101 or Airbus SB A340–29–4078.

EASA AD 2012–0070 (*http://ad.easa.europa.eu/blob/easa_ad_2012_0070_Correction_superseded.pdf/AD_2012-0070_1*), which superseded EASA AD 2011–0139, retaining its requirements, was issued to require an increased torque value of the check valve tightening and High Pressure (HP) manifold re-identification.

Since EASA AD 2012–0070 was issued, additional in-service events have been reported on aeroplanes fitted with check valves on which the increased torque value had been applied. Based on those events, it has been concluded that the action to re-torque the check valves with an increased value is not a satisfactory terminating action for addressing the issue of those check valves.

To address that, EASA issued AD 2012–0244, which partially retained the requirements of EASA AD 2012–0070, which was superseded. Additionally, for aeroplanes equipped with P/N CAR401 on which the increased torque value had been applied, EASA AD 2012–0244 required repetitive inspections of the check valves and HP manifolds. Finally, EASA AD 2012–0244 also required application of a lower torque value when a check valve P/N CAR401 is installed on an aeroplane.

Note: The reporting and the torque value increase requirements for check valves P/N CAR401 of EASA AD 2012–0070 were no longer part of EASA AD 2012–0244.

EASA AD was revised to clarify which actions are required for P/N CAR401 check valves, depending on applied (or not) torque value.

Since EASA AD 2012–0244R1 (*http://ad.easa.europa.eu/blob/easa_ad_2012_0244_R1_superseded.pdf/AD_2012-0244R1_1*) was issued, Airbus developed an improved check valve P/N CAR402, which is embodied in production through Airbus modification 203972, and in service through associated Airbus SB A330–29–3125, or Airbus SB A340–29–4096, as applicable to aeroplane type. In addition, these SBs provide instructions about the torque value (between 230 and 250 Nm) and re-identification of HP manifolds after check valve P/N CAR402 installation.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2012–0244R1, which is superseded, and requires the installation of check valves P/N CAR402 as terminating action to the repetitive inspections [and adds airplanes to the applicability].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3701.

**Related Service Information Under 1 CFR Part 51**

Airbus has issued Service Bulletin A330–29–3125, Revision 01, including Appendixes 01 and 02, dated July 30, 2015; and Service Bulletin A340–29–4096, Revision 01, including Appendixes 01 and 02, dated July 30, 2015. This service information describes procedures for modifying the green, blue, and yellow high pressure hydraulic manifolds by replacing each check valve having part number (P/N) CAR401 with an improved check valve having P/N CAR402. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination and Requirements of This Proposed 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 and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

**Explanation of a Certain Alternative Method of Compliance (AMOC)**

Paragraph (t)(1)(iii) of this proposed AD states that AMOC ANM–116–14–429 is not approved as an AMOC for the corresponding provisions of this AD. This AMOC defines a terminating action when Airbus Modification 203972 is introduced in production or when the Airbus Service Bulletin A330–29–3125, dated August 8, 2014, is embodied in service. This proposed AD will exclude from the applicability airplanes with Airbus Modification 203972 and will mandate actions in accordance with Airbus Service Bulletin A330–29–3125, Revision 01, including Appendixes 01 and 02, dated July 30, 2015.

**Costs of Compliance**

We estimate that this proposed AD affects 88 airplanes of U.S. registry.

The actions required by AD 2013–25–08, and retained in this proposed AD take about 10 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2013–25–08 is $850 per product.

We also estimate that it would take about 32 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $239,360, or $2,720 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of aircraft that might need these actions.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), and adding the following new AD:

**Airbus:** Docket No. FAA–2016–3701; Directorate Identifier 2015–NM–015–AD.

**(a) Comments Due Date**

We must receive comments by April 11, 2016.

**(b) Affected ADs**

This AD replaces AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013).

**(c) Applicability**

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

(1) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; all manufacturer serial numbers except those on which Airbus modification 203972 has been embodied in production.

(2) Model A340–211, –212, –213, –311, –312, and –313 airplanes; all manufacturer serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 29, Hydraulic power.

**(e) Reason**

This AD was prompted by multiple reports of hydraulic line check valves loosening. We are issuing this AD to detect and correct hydraulic check valve loosening, which could result in hydraulic leaks, possibly leading to the loss of all three hydraulic systems and consequent loss of control of the airplane.

**(f) Compliance**

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

**(g) Retained Inspections, With No Changes**

This paragraph restates the requirements of paragraph (g) of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), with no changes. Except for Model A330–223F and A330–243F airplanes: Do the actions required by paragraphs (g)(1) and (g)(2) of this AD.

(1) For airplanes that do not have Airbus Modification 54491 embodied in production, or Airbus Service Bulletin A330–29–3101 or Airbus Service Bulletin A340–29–4078 embodied in service: Within 100 flight cycles or 28 days after December 14, 2009 (the effective date of AD 2009–24–09, Amendment 39–16068 (74 FR 62208, November 27, 2009)), whichever occurs first, inspect the check valves on the blue, green, and yellow hydraulic systems to identify their part numbers (P/Ns), in accordance with the instructions of Airbus All Operators Telex (AOT) A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes); or AOT A340–29A4086, Revision 1, dated October 8, 2009

(for Model A340–200 and –300 series airplanes). Accomplishment of the inspection required by paragraph (h) of this AD terminates the requirements of this paragraph.

(i) If check valves having P/N CAR401 are installed on all three hydraulic systems, before further flight, do the actions specified in paragraph (g)(2)(i) of this AD. After accomplishing the actions required by paragraph (g)(2)(i) of this AD, do the actions specified in paragraphs (g)(2)(ii) and (g)(2)(iii) of this AD at the applicable compliance times specified in those paragraphs. Accomplishment of the inspection required by paragraph (i) of this AD terminates the requirements of this paragraph.

(ii) If check valves having P/N CAR401 are not installed on all three hydraulic systems, no further action is required by this paragraph until any check valve having P/N CAR400 is replaced with a check valve having P/N CAR401. If any check valve having P/N CAR400 is replaced by a check valve having P/N CAR401, before further flight, do the inspection specified in paragraph (g)(1) of this AD to determine if all three hydraulic systems are equipped with check valves having P/N CAR401. Accomplishment of the inspection required by paragraph (h) of this AD terminates the requirements of this paragraph.

(2) For airplanes on which Airbus Modification 54491 was embodied in production, or Airbus Service Bulletin A330–29–3101; or Airbus Service Bulletin A340–29–4078 was embodied in service, do the actions specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Except as required by paragraph (g)(1)(i) of this AD, at the applicable times specified in paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this AD, as applicable: Do the inspection program (detailed inspection of the lock wire for presence and integrity, a detailed inspection for traces of seepage or black deposits, and an inspection for proper torque) on yellow and blue high pressure manifolds, install new lock wires, and do all applicable corrective actions, in accordance with the instructions of paragraph 4.1.1 of Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes); or AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Airbus Model A340–200 and –300 series airplanes). Do all applicable corrective actions before further flight. Accomplishment of the inspection required by paragraph (h)(1) of this AD terminates the requirements of this paragraph.

(A) For airplanes on which Airbus Modification 54491 has been embodied in production: At the later of the times specified in paragraphs (g)(2)(i)(A)(*1*) and (g)(2)(i)(A)(*2*) of this AD.

(*1*) Before the accumulation of 1,000 total flight cycles since first flight but no earlier than the accumulation of 700 total flight cycles since first flight.

(*2*) Within 100 flight cycles or 28 days after December 14, 2009 (the effective date of AD 2009–24–09, Amendment 39–16068 (74 FR 62208, November 27, 2009)), whichever occurs first.

(B) For airplanes on which Airbus Service Bulletin A330–29–3101 or A340–29–4078 was embodied in service: At the later of the times specified in paragraphs (g)(2)(i)(B)(*1*) and (g)(2)(i)(B)(*2*) of this AD.

(*1*) Within 1,000 flight cycles since the embodiment of Airbus Service Bulletin A330–29–3101 or A340–29–4078 but no earlier than 700 flight cycles after the embodiment of Airbus Service Bulletin A330–29–3101 or A340–29–4078.

(*2*) Within 100 flight cycles or 28 days after December 14, 2009 (the effective date of AD 2009–24–09, Amendment 39–16068 (74 FR 62208, November 27, 2009)), whichever occurs first.

(ii) Within 900 flight hours after accomplishment of paragraph (g)(2)(i) of this AD, do the inspection program (detailed inspection of the lock wire for presence and integrity, a detailed inspection for traces of seepage or black deposits, and an inspection for proper torque) and install a new lock wire on the green high pressure manifold; and do an inspection (detailed inspection for traces of seepage or black deposits, and detailed inspection to determine alignment of the check valve and manifold) on the yellow and blue high pressure manifolds, and do all applicable corrective actions; in accordance with the instructions of paragraph 4.1.2 of Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes); or AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and –300 series airplanes). Do all applicable corrective actions before further flight. Accomplishment of the inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph.

(iii) Within 900 flight hours after accomplishment of paragraph (g)(2)(ii) of this AD, and thereafter at intervals not to exceed 900 flight hours, do the inspection program (detailed inspection for traces of seepage or black deposits, and detailed inspection to determine alignment of the check valve and manifold) on the green, yellow, and blue high pressure manifolds, and do all applicable corrective actions, in accordance with the instructions of paragraph 4.1.3 of Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes); or AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and –300 series airplanes). Do all applicable corrective actions before further flight. Accomplishment of the inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph.

**(h) Retained Inspection, With No Changes**

This paragraph restates the requirements of paragraph (h) of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), with no changes. For airplanes equipped with check valves having P/N CAR400; and for airplanes equipped with check valves having P/N CAR401, except for airplanes on which Airbus Modification 201384 has been embodied during production, or on which Airbus Service Bulletin A330–29–3119 (for Model A330–200, –200F, and –300 series airplanes) or Airbus Service Bulletin A340–29–4091 (for Model A340–200 and –300 series airplanes) has been embodied in service: Within 900 flight hours after January 31, 2014 (the effective date of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013)), inspect the check valves on the blue, green, and yellow hydraulic systems to identify their part numbers, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3111, Revision 02, dated June 23, 2011 (for Model A330–200, –200F and –300 series airplanes); or Airbus Service Bulletin A340–29–4086, Revision 02, dated June 23, 2011 (for Model A340–200 and –300 series airplanes). Accomplishment of the actions required by this paragraph terminates the requirements specified in paragraphs (g)(1) and (g)(1)(ii) of this AD.

(1) If check valves having P/N CAR401 are installed on all three hydraulic systems: Before further flight, do the inspection program (detailed inspection for red mark presence and alignment integrity of the check valve and manifold, a detailed inspection for traces of seepage or black deposits, and an inspection for proper torque) on yellow and blue high pressure manifolds, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3111, Revision 02, dated June 23, 2011 (for Model A330–200, –200F, and –300 series airplanes); or Airbus Service Bulletin A340–29–4086, Revision 02, dated June 23, 2011 (for Model A340–200 and –300 series airplanes). Accomplishment of the actions required by this paragraph terminates the requirements specified in paragraph (g)(2)(i) of this AD.

(2) If check valves having P/N CAR401 are not installed on all three hydraulic systems, no further action is required by this paragraph until any check valve having P/N CAR400 is replaced with a check valve having P/N CAR401. If any check valve having P/N CAR400 is replaced by a check valve having P/N CAR401: Before further flight after such replacement, do the actions specified in paragraph (h) of this AD, to determine if all three hydraulic systems are equipped with check valves having P/N CAR401. If check valves having P/N CAR401 are installed on all three hydraulic systems: Before further flight, do the actions specified in paragraphs (h)(1) and (i) of this AD.

**(i) Retained Repetitive Inspection Program and Corrective Actions, With No Changes**

This paragraph restates the requirements of paragraph (i) of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), with no changes. Within 900 flight hours after accomplishment of paragraph (h)(1) of this AD, do the inspection program (detailed inspection for red mark presence and alignment integrity of the check valve and manifold, a detailed inspection for traces of seepage or black deposits, and an inspection for proper torque) on the green, yellow, and blue system check valves, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3111, Revision 02, dated June 23, 2011 (for Model A330–200, –200F, and –300 series airplanes);

or Airbus Service Bulletin A340–29–4086, Revision 02, dated June 23, 2011 (for Model A340–200 and –300 series airplanes). Do all applicable corrective actions before further flight. Repeat the inspection program thereafter at intervals not to exceed 900 flight hours. Accomplishment of the actions required by this paragraph terminates the requirements specified in paragraphs (g)(1)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

**(j) Retained Repetitive Inspection for Certain Airplanes, With No Changes**

This paragraph restates the requirements of paragraph (j) of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), with no changes. For airplanes equipped with check valves having P/N CAR401 and on which Airbus Modification 201384 has been embodied during production, or on which Airbus Service Bulletin A330–29–3119 (for Model A330–200, –200F, and –300 series airplanes); or Airbus Service Bulletin A340–29–4091 (for Model A340–200 and –300 series airplanes) has been embodied in service: Within 1,000 flight hours after January 31, 2014 (the effective date of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013)), do a general visual inspection of the green, yellow, and blue high pressure manifolds and check valves having P/N CAR401 for any sign of rotation of the check valve head, and for any signs of hydraulic fluid leakage or seepage (including black deposits), in accordance with the instructions of Airbus Alert Operators Transmission A29L001–12, dated October 11, 2012. Repeat the inspection thereafter at interval not to exceed 900 flight hours.

**(k) Retained Corrective Action for Certain Airplanes, With No Changes**

This paragraph restates the requirements of paragraph (k) of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), with no changes. If, during any inspection required by paragraph (j) of this AD, any sign of rotation of the check valve head is found, or any sign of hydraulic fluid leakage or seepage (including black deposits) is found: Before further flight, do all applicable corrective actions, in accordance with the instructions of Airbus Alert Operators Transmission A29L001–12, dated October 11, 2012.

**(l) Retained Provisions Regarding Terminating Action, With No Changes**

This paragraph restates the provisions of paragraph (l) of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), with no changes. Accomplishment of the corrective actions required by this AD does not constitute terminating action for the repetitive inspections required by this AD.

**(m) Retained Replacement Check Valve Torque Value, With No Changes**

This paragraph restates the requirements of paragraph (m) of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), with no changes. As of January 31, 2014 (the effective date of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013)), at each replacement of a check valve with a check valve having P/N CAR401, apply a torque of 141 to 143 newton meter (N.m) (103.98 to 105.45 pounds-foot (lbf.ft)) during installation.

**(n) Retained Credit for Previous Actions, With No Changes**

This paragraph restates the provisions of paragraph (n) of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), with no changes.

(1) This paragraph provides credit for actions required by paragraph (g)(2)(i) of this AD, if those actions were performed before December 14, 2009 (the effective date of AD 2009–24–09, Amendment 39–16068 (74 FR 62208, November 27, 2009)), using the applicable service information specified in paragraphs (n)(1)(i) and (n)(1)(ii) of this AD.

(i) Airbus AOT A330–29A3111, dated September 2, 2009 (for Model A330–200 and -300 series airplanes), which is not incorporated by reference in this AD.

(ii) Airbus AOT A340–29A4086, dated September 2, 2009 (for Model A340–200 and -300 series airplanes), which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before January 31, 2014 (the effective date of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013)) using the applicable service information specified in paragraphs (n)(2)(i) through (n)(2)(iv) of this AD.

(i) Airbus AOT A330–29A3111, dated September 2, 2009 (for Model A330–200 and –300 series airplanes), which is not incorporated by reference in this AD.

(ii) Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes).

(iii) Airbus AOT A340–29A4086, dated September 2, 2009, (for Model A340–200 and –300 series airplanes), which is not incorporated by reference in this AD.

(iv) Airbus AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and –300 series airplanes).

**(o) Retained Provisions for Reporting, With No Changes**

This paragraph restates the provisions of paragraph (o) of AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), with no changes. Although the service information specified in paragraphs (o)(1) through (o)(5) of this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(1) Airbus Alert Operators Transmission A29L001–12, dated October 11, 2012.

(2) Airbus Mandatory Service Bulletin A330–29–3111, Revision 02, dated June 23, 2011.

(3) Airbus Mandatory Service Bulletin A340–29–4086, Revision 02, dated June 23, 2011.

(4) Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009.

(5) Airbus AOT A340–29A4086, Revision 1, dated October 8, 2009.

**(p) New Requirement of This AD: Modify Hydraulic Systems**

Within 36 months after the effective date of this AD, modify the green, blue, and yellow high pressure hydraulic manifolds by replacing each check valve having P/N CAR401 with an improved check valve having P/N CAR402, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3125, Revision 01, including Appendixes 01 and 02, dated July 30, 2015; or Airbus Service Bulletin A340–29–4096, Revision 01, including Appendixes 01 and 02, dated July 30, 2015; as applicable.

**(q) New Requirement of This AD: Repetitive Inspection Terminating Action**

Modification of an airplane, as required by paragraph (p) of this AD, constitutes terminating action for the repetitive inspections required by this AD.

**(r) New Requirement of This AD: Parts Installation Limitations**

(1) For an airplane that, as of the effective date of this AD, has a check valve having P/N CAR401 installed, after modification of an airplane as required by paragraph (p) of this AD, no person may install a check valve having P/N CAR401, on that airplane.

(2) For an airplane that does not have a check valve having P/N CAR401 installed, as of the effective date of this AD, no person may install a check valve having P/N CAR401, on that airplane.

**(s) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (p) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–29–3125, dated August 8, 2014; or Airbus Service Bulletin A340–29–4096, dated August 8, 2014; as applicable; which are not incorporated by reference in this AD.

**(t) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) 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. The AMOC approval letter must specifically reference this AD.

(ii) AMOC ANM–116–14–180 R1, dated February 21, 2014, is approved as an AMOC for the corresponding provisions of this AD.

(iii) AMOC ANM–116–14–429, dated September 25, 2014, is not approved as an AMOC for the corresponding provisions of this AD.

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

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

**(u) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0009, dated January 16, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3701.

(2) Service information identified in this AD that is not incorporated by reference may be obtained at Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(3) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 15, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–03699 Filed 2–24–16; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–150349–12]**

**RIN 1545–BL39**

## Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations concerning the compliance-monitoring duties of a State or local housing credit agency (Agency) for purposes of the low-income housing credit. The final and temporary regulations revise and clarify certain rules relating to the requirements to conduct physical inspections and review low-income certifications and other documentation. The text of the temporary regulations also serves as the text of these proposed regulations.

**DATES:** Comments and requests for a public hearing must be received by May 25, 2016.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–150349–12), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–150349–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Submissions may also be sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–150349–12).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Jian H. Grant, (202) 317–4137, and Martha M. Garcia, (202) 317–6853 (not toll-free numbers); concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor at (202) 317–6901 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Final and temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 42 and serve as the text for these proposed regulations.

### Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ''ADDRESSES'' heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal authors of these regulations are Jian H. Grant and Martha M. Garcia, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation continues to read in part as follows:

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

■ **Par. 2.** Section 1.42–5 is amended by revising paragraphs (a)(2)(iii), (c)(2)(ii) and (iii), and (c)(3), and adding two sentences to paragraph (h) to read as follows:

**§ 1.42–5 Monitoring compliance with low-income housing credit requirements.**

(a) * * *

(2) * * *

(iii) [The text of proposed amendments to § 1.42–5(a)(2)(iii) is the same as the text of § 1.42–5T(a)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c) * * *

(2) * * *

(ii) [The text of proposed amendments to § 1.42–5(c)(2)(ii) is the same as the text of § 1.42–5T(c)(2)(ii) published elsewhere in this issue of the **Federal Register**].

(iii) [The text of proposed amendments to § 1.42–5(c)(2)(iii) is the same as the text of § 1.42–5T(c)(2)(iii) published elsewhere in this issue of the **Federal Register**].

(3) [The text of proposed amendments to § 1.42–5(c)(3) is the same as the text of § 1.42–5T(c)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

(h) * * *

[The text of the proposed addition to § 1.42–5(h) is the same as the text of the first two sentences of § 1.42–5T(h)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2016–04004 Filed 2–23–16; 4:15 pm]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100 and 165

**[Docket No. USCG–2015–1052]**

**RIN 1625–AA08; AA00**

## Special Local Regulations and Safety Zones; Recurring Marine Events Held in the Coast Guard Sector Northern New England Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to update special local regulations and permanent safety zones in the Coast Guard Sector Northern New England Captain of the Port Zone for annual recurring marine events. When enforced, these proposed special local regulations and safety zones would restrict vessels from portions of water areas during certain annually recurring events. The proposed special local regulations and safety zones are intended to expedite public notification and ensure the protection of the maritime public and event participants from the hazards associated with certain maritime events. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 25, 2016.

**ADDRESSES:** You may submit comments identified by docket number USCG–2015–1052 the Federal eRulemaking Portal *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Chief Marine Science Technician Chris Bains, Waterways Management Division at Coast Guard Sector Northern New England, telephone (207) 347–5003, or email *Chris.D.Bains@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

Swim events, fireworks displays, and marine events are held on an annual recurring basis on the navigable waters within the Coast Guard Sector Northern New England COTP Zone. In the past, the Coast Guard has established special local regulations, regulated areas, and safety zones for these annual recurring events on a case by case basis to ensure the protection of the maritime public and event participants from the hazards associated with these events. As mentioned above, the Coast Guard has not received public comments or concerns regarding the impact to waterway traffic from the Coast Guard's regulations associated with these annually recurring events. In the past year, events were assessed for their likelihood to recur in subsequent years or to discontinue, and were added to or deleted from the tables accordingly. In addition, minor changes to existing events were made to ensure the accuracy of event details.

The purpose of this rulemaking is to reduce administrative overhead, expedite public notification of events, and ensure the protection of the maritime public during marine events in the Sector Northern New England area. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### III. Discussion of Proposed Rule

The proposed rule would update the tables of annual recurring events in the existing regulation for the Coast Guard Sector Northern New England COTP Zone. The tables provide the event name, sponsor, and type, as well as approximate times, dates, and locations of the events. Advanced public notification of specific times, dates, regulated areas, and enforcement periods for each event will be provided through appropriate means, which may include, but are not limited to, the Local Notice to Mariners, Broadcast Notice to Mariners, or a Notice of Enforcement published in the **Federal Register** at least 30 days prior to the event date. If an event does not have a date and time listed in this regulation, then the precise dates and times of the enforcement period for that event will be announced through a Local Notice to Mariners and, if time permits, a Notice of Enforcement in the **Federal Register**.

### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

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

We expect the economic impact of this proposed rule to be minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the

following reason: the Coast Guard is only modifying an existing regulation to account for new information.

*B. Impact on Small Entities*

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves water activities including swimming events and fireworks displays and maybe categorically excluded from further review under paragraph 34(g) (Safety Zones) and (34)(h) (Special Local Regulations) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist supporting this is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

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

**V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

**List of Subjects**

*33 CFR Part 100*

Marine safety, Navigation (water), Reporting and record-keeping requirements, Waterways.

*33 CFR Part 165*

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

For the reasons discussed in the preamble, the Coast Guard proposes to

amend 33 CFR parts 100 and 165 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for Part 100 continues to read as follows:

**Authority: 33 U.S.C. 1233.**

■ 2. In § 100.120, revise the table to read as follows:

**§ 100.120 Special Local Regulations; Marine Events Held in the Coast Guard Sector Northern New England COTP Zone.**

* * * * *

TABLE TO § 100.120

| | |
|---|---|
| 5.0 | May occur May through September |
| 5.1 Tall Ships Visiting Portsmouth | • Event Type: Regatta and Boat Parade.<br>• Sponsor: Portsmouth Maritime Commission, Inc.<br>• Date: A four day event from Friday through Monday.*<br>• Time (Approximate): 9:00 a.m. to 8:00 p.m. each day.<br>• Location: The regulated area includes all waters of Portsmouth Harbor, New Hampshire in the vicinity of Castle Island within the following points (NAD 83):<br>43°03′11″ N., 070°42′26″ W.<br>43°03′18″ N., 070°41′51″ W.<br>43°04′42″ N., 070°42′11″ W.<br>43°04′28″ N., 070°44′12″ W.<br>43°05′36″ N., 070°45′56″ W.<br>43°05′29″ N., 070°46′09″ W.<br>43°04′19″ N., 070°44′16″ W.<br>43°04′22″ N., 070°42′33″ W. |
| 6.0 | JUNE |
| 6.1 Bar Harbor Blessing of the Fleet | • Event Type: Regatta and Boat Parade.<br>• Sponsor: Town of Bar Harbor, Maine.<br>• Date: A one day event between the 15th of May and the 15th of June.*<br>• Time (Approximate): 12:00 p.m. to 1:30 p.m.<br>• Location: The regulated area includes all waters of Bar Harbor, Maine within the following points (NAD 83):<br>44°23′32″ N., 068°12′19″ W.<br>44°23′30″ N., 068°12′00″ W.<br>44°23′37″ N., 068°12′00″ W.<br>44°23′35″ N., 068°12′19″ W. |
| 6.2 Charlie Begin Memorial Lobster Boat Races | • Event Type: Power Boat Race.<br>• Sponsor: Boothbay Harbor Lobster Boat Race Committee.<br>• Date: A one day event in June.*<br>• Time (Approximate): 10:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Boothbay Harbor, Maine in the vicinity of John's Island within the following points (NAD 83):<br>43°50′04″ N., 069°38′37″ W.<br>43°50′54″ N., 069°38′06″ W.<br>43°50′49″ N., 069°37′50″ W.<br>43°50′00″ N., 069°38′20″ W. |
| 6.3 Rockland Harbor Lobster Boat Races | • Event Type: Power Boat Race.<br>• Sponsor: Rockland Harbor Lobster Boat Race Committee.<br>• Date: A one day event in June.*<br>• Time (Approximate): 9:00 a.m. to 5:00 p.m.<br>• Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of the Rockland Breakwater Light within the following points (NAD 83):<br>44°05′59″ N., 069°04′53″ W.<br>44°06′43″ N., 069°05′25″ W.<br>44°06′50″ N., 069°05′05″ W.<br>44°06′05″ N., 069°04′34″ W. |
| 6.4 Windjammer Days Parade of Ships | • Event Type: Tall Ship Parade.<br>• Sponsor: Boothbay Region Chamber of Commerce.<br>• Date: A one day event in June.*<br>• Time (Approximate): 12:00 p.m. to 5:00 p.m.<br>• Location: The regulated area includes all waters of Boothbay Harbor, Maine in the vicinity of Tumbler's Island within the following points (NAD 83):<br>43°51′02″ N., 069°37′33″ W.<br>43°50′47″ N., 069°37′31″ W.<br>43°50′23″ N., 069°37′57″ W.<br>43°50′01″ N., 069°37′45″ W.<br>43°50′01″ N., 069°38′31″ W.<br>43°50′25″ N., 069°38′25″ W. |

TABLE TO § 100.120—Continued

| | |
|---|---|
| | 43°50′49″ N., 069°37′45″ W. |
| 6.5 Bass Harbor Blessing of the Fleet Lobster Boat Race | • Event Type: Power Boat Race.<br>• Sponsor: Tremont Congregational Church.<br>• Date: A one day event in June.*<br>• Time (Approximate): 10:00 a.m. to 2:00 p.m.<br>• Location: The regulated area includes all waters of Bass Harbor, Maine in the vicinity of Lopaus Point within the following points (NAD 83):<br>44°13′28″ N., 068°21′59″ W.<br>44°13′20″ N., 068°21′40″ W.<br>44°14′05″ N., 068°20′55″ W.<br>44°14′12″ N., 068°21′14″ W. |
| 6.6 Long Island Lobster Boat Race | • Event Type: Power Boat Race.<br>• Sponsor: Long Island Lobster Boat Race Committee.<br>• Date: A one day event in June.*<br>• Time (Approximate): 10:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Casco Bay, Maine in the vicinity of Great Ledge Cove and Dorseys Cove off the north west coast of Long Island, Maine within the following points (NAD 83):<br>43°41′59″ N., 070°08′59″ W.<br>43°42′04″ N., 070°09′10″ W.<br>43°41′41″ N., 070°09′38″ W.<br>43°41′36″ N., 070°09′30″ W. |
| 7.0 | JULY |
| 7.1 Burlington 3rd of July Air Show | • Event Type: Air Show.<br>• Sponsor: Dan Marcotte Airshows.<br>• Date: A one day event held near July 4th.*<br>• Time (Approximate): 8:30 p.m. to 9:00 p.m.<br>• Location: The regulated area includes all waters of Lake Champlain, Burlington, VT within the following points (NAD 83):<br>44°28′51″ N., 073°14′21″ W.<br>44°28′57″ N., 073°13′41″ W.<br>44°28′05″ N., 073°13′26″ W.<br>44°27′59″ N., 073°14′03″ W. |
| 7.2 Moosabec Lobster Boat Races | • Event Type: Power Boat Race.<br>• Sponsor: Moosabec Boat Race Committee.<br>• Date: A one day event held near July 4th.*<br>• Time (Approximate): 10:00 am to 12:30 p.m.<br>• Location: The regulated area includes all waters of Jonesport, Maine within the following points (NAD 83):<br>44°31′21″ N., 067°36′44″ W.<br>44°31′36″ N., 067°36′47″ W.<br>44°31′44″ N., 067°35′36″ W.<br>44°31′29″ N., 067°35′33″ W. |
| 7.3 The Great Race | • Event Type: Rowing and Paddling Boat Race.<br>• Sponsor: Franklin County Chamber of Commerce.<br>• Date: A one day event on a Sunday between the 15th of August and the 15th of September.*<br>• Time (Approximate): 10:00 a.m. to 12:30 p.m.<br>• Location: The regulated area includes all waters of Lake Champlain in the vicinity of Saint Albans Bay within the following points (NAD 83):<br>44°47′18″ N., 073°10′27″ W.<br>44°47′10″ N., 073°08′51″ W. |
| 7.4 Searsport Lobster Boat Races | • Event Type: Power Boat Race.<br>• Sponsor: Searsport Lobster Boat Race Committee.<br>• Date: A one day in July.*<br>• Time (Approximate): 9:00 a.m. to 4:00 p.m.<br>• Location: The regulated area includes all waters of Searsport Harbor, Maine within the following points (NAD 83):<br>44°26′50″ N., 068°55′20″ W.<br>44°27′04″ N., 068°55′26″ W.<br>44°27′12″ N., 068°54′35″ W.<br>44°26′59″ N., 068°54′29″ W. |
| 7.5 Stonington Lobster Boat Races | • Event Type: Power Boat Race.<br>• Sponsor: Stonington Lobster Boat Race Committee.<br>• Date: A one day event in July.*<br>• Time (Approximate): 8:00 a.m. to 3:30 p.m.<br>• Location: The regulated area includes all waters of Stonington, Maine within the following points (NAD 83):<br>44°08′55″ N., 068°40′12″ W. |

TABLE TO § 100.120—Continued

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| | 44°09′00″ N., 068°40′15″ W.<br>44°09′11″ N., 068°39′42″ W.<br>44°09′07″ N., 068°39′39″ W. |
| 7.6 Mayor's Cup Regatta | • Event Type: Sailboat Parade.<br>• Sponsor: Plattsburgh Sunrise Rotary.<br>• Date: A one day event in July.*<br>• Time (Approximate): 10:00 a.m. to 4:00 p.m.<br>• Location: The regulated area includes all waters of Cumberland Bay on Lake Champlain in the vicinity of Plattsburgh, New York within the following points (NAD 83):<br>44°41′26″ N., 073°23′46″ W.<br>44°40′19″ N., 073°24′40″ W.<br>44°42′01″ N., 073°25′22″ W. |
| 7.7 The Challenge Race | • Event Type: Rowing and Paddling Boat Race.<br>• Sponsor: Lake Champlain Maritime Museum.<br>• Date: A one day event in July.*<br>• Time (Approximate): 11:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Lake Champlain in the vicinity of Button Bay State Park within the following points (NAD 83):<br>44°12′25″ N., 073°22′32″ W.<br>44°12′00″ N., 073°21′42″ W.<br>44°12′19″ N., 073°21′25″ W.<br>44°13′16″ N., 073°21′36″ W. |
| 7.8 Yarmouth Clam Festival Paddle Race | • Event Type: Rowing and Paddling Boat Race.<br>• Sponsor: Maine Island Trail Association.<br>• Date: A one day event in July.*<br>• Time (Approximate): 8:00 a.m. to 4:00 p.m.<br>• Location: The regulated area includes all waters in the vicinity of the Royal River outlet and Lane's Island within the following points (NAD 83):<br>43°47′47″ N., 070°08′40″ W.<br>43°47′50″ N., 070°07′13″ W.<br>43°47′06″ N., 070°07′32″ W.<br>43°47′17″ N., 070°08′25″ W. |
| 7.9 Maine Windjammer Lighthouse Parade | • Event Type: Wooden Boat Parade.<br>• Sponsor: Maine Windjammer Association.<br>• Date: A one day event in July.*<br>• Time (Approximate): 1:00 p.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of the Rockland Harbor Breakwater within the following points (NAD 83):<br>44°06′14″ N., 069°03′48″ W.<br>44°05′50″ N., 069°03′47″ W.<br>44°06′14″ N., 069°05′37″ W.<br>44°05′50″ N., 069°05′37″ W. |
| 7.10 Friendship Lobster Boat Races | • Event Type: Power Boat Race.<br>• Sponsor: Friendship Lobster Boat Race Committee.<br>• Date: A one day event during a weekend between the 15th of July and the 15th of August.*<br>• Time (Approximate): 9:30 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Friendship Harbor, Maine within the following points (NAD 83):<br>43°57′51″ N., 069°20′46″ W.<br>43°58′14″ N., 069°19′53″ W.<br>43°58′19″ N., 069°20′01″ W.<br>43°58′00″ N., 069°20′46″ W. |
| 7.11 Harpswell Lobster Boat Races | • Event Type: Power Boat Race.<br>• Sponsor: Harpswell Lobster Boat Race Committee.<br>• Date: A one day event between the 15th of July and the 15th of August.*<br>• Time (Approximate): 10:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes waters of Middle Bay near Harpswell, Maine within the following points (NAD 83):<br>43°44′15″ N., 070°02′06″ W.<br>43°44′59″ N., 070°01′21″ W.<br>43°44′51″ N., 070°01′05″ W.<br>43°44′06″ N., 070°01′49″ W. |
| 8.0 | AUGUST |
| 8.1 Eggemoggin Reach Regatta | • Event Type: Wooden Boat Parade.<br>• Sponsor: Rockport Marine, Inc. and Brookline Boat Yard.<br>• Date: A one day event on a Saturday between the 15th of July and the 15th of August.* |

TABLE TO § 100.120—Continued

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| | • Time (Approximate): 11:00 a.m. to 7:00 p.m.<br>• Location: The regulated area includes all waters of Eggemoggin Reach and Jericho Bay in the vicinity of Naskeag Harbor, Maine within the following points (NAD 83):<br>44°15′16″ N., 068°36′26″ W.<br>44°12′41″ N., 068°29′26″ W.<br>44°07′38″ N., 068°31′30″ W.<br>44°12′54″ N., 068°33′46″ W. |
| 8.2 Southport Rowgatta Rowing and Paddling Boat Race | • Event Type: Rowing and Paddling Boat Race.<br>• Sponsor: Boothbay Region YMCA.<br>• Date: A one day event in August.*<br>• Time (Approximate): 8:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Sheepscot Bay and Boothbay, on the shore side of Southport Island, Maine within the following points (NAD 83):<br>43°50′26″ N., 069°39′10″ W.<br>43°49′10″ N., 069°38′35″ W.<br>43°46′53″ N., 069°39′06″ W.<br>43°46′50″ N., 069°39′32″ W.<br>43°49′07″ N., 069°41′43″ W.<br>43°50′19″ N., 069°41′14″ W.<br>43°51′11″ N., 069°40′06″ W. |
| 8.3 Winter Harbor Lobster Boat Races | • Event Type: Power Boat Race.<br>• Sponsor: Winter Harbor Chamber of Commerce.<br>• Date: A one day event in August.*<br>• Time (Approximate): 9:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Winter Harbor, Maine within the following points (NAD 83):<br>44°22′06″ N., 068°05′13″ W.<br>44°23′06″ N., 068°05′08″ W.<br>44°23′04″ N., 068°04′37″ W.<br>44°22′05″ N., 068°04′44″ W. |
| 8.4 Lake Champlain Dragon Boat Festival | • Event Type: Rowing and Paddling Boat Race.<br>• Sponsor: Dragonheart Vermont.<br>• Date: A one day event in August.*<br>• Time (Approximate): 7:00 a.m. to 5:00 p.m.<br>• Location: The regulated area includes all waters of Burlington Bay within the following points (NAD 83):<br>44°28′49″ N., 073°13′22″ W.<br>44°28′41″ N., 073°13′36″ W.<br>44°28′28″ N., 073°13′31″ W.<br>44°28′38″ N., 073°13′18″ W. |
| 8.5 Merritt Brackett Lobster Boat Races | • Event Type: Power Boat Race.<br>• Sponsor: Town of Bristol, Maine.<br>• Date: A one day event in August.*<br>• Time (Approximate): 10:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Pemaquid Harbor, Maine within the following points (NAD 83):<br>43°52′16″ N., 069°32′10″ W.<br>43°52′41″ N., 069°31′43″ W.<br>43°52′35″ N., 069°31′29″ W.<br>43°52′09″ N., 069°31′56″ W. |
| 8.6 Multiple Sclerosis Regatta | • Event Type: Regatta and Sailboat Race.<br>• Sponsor: Maine Chapter, Multiple Sclerosis Society.<br>• Date: A one day event in August.*<br>• Time (Approximate): 10:00 a.m. to 4:00 p.m.<br>• Location: The regulated area for the start of the race includes all waters of Casco Bay, Maine in the vicinity of Peaks Island within the following points (NAD 83):<br>43°40′24″ N., 070°14′20″ W.<br>43°40′36″ N., 070°13′56″ W.<br>43°39′58″ N., 070°13′21″ W.<br>43°39′46″ N., 070°13′51″ W. |
| 8.7 Multiple Sclerosis Harborfest Lobster Boat/Tugboat Races | • Event Type: Power Boat Race.<br>• Sponsor: Maine Chapter, National Multiple Sclerosis Society.<br>• Date: A one day event in August.*<br>• Time (Approximate): 10:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Maine State Pier within the following points (NAD 83):<br>43°40′25″ N., 070°14′21″ W.<br>43°40′36″ N., 070°13′56″ W.<br>43°39′58″ N., 070°13′21″ W.<br>43°39′47″ N., 070°13′51″ W. |

TABLE TO § 100.120—Continued

| 9.0 | SEPTEMBER |
|---|---|
| 9.1 Pirates Festival Lobster Boat Races | • Event Type: Power Boat Race.<br>• Sponsor: Eastport Pirates Festival.<br>• Date: A one day event in September.*<br>• Time (Approximate): 11:00 a.m. to 6:00 p.m.<br>• Location: The regulated area includes all waters in the vicinity of Eastport Harbor, Maine within the following points (NAD 83):<br>44°54′14″ N., 066°58′52″ W.<br>44°54′14″ N., 068°58′56″ W.<br>44°54′24″ N., 066°58′52″ W.<br>44°54′24″ N., 066°58′56″ W. |

* Date subject to change. Exact date will be posted in Notice of Enforcement and Local Notice to Mariners.

* * * * *

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. In § 165.171, revise the table to read as follows:

**§ 165.171 Safety Zones for fireworks displays and swim events held in Coast Guard Sector Northern New England COTP Zone.**

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TABLE TO § 165.171

| 5.0 | MAY |
|---|---|
| 5.1 Ride into Summer | • Event Type: Fireworks Display.<br>• Sponsor: Gardiner Maine Street.<br>• Date: One night event between the 15th of May and the 15th of June.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: In the vicinity of the Gardiner Waterfront, Gardiner, Maine in approximate position:<br>44°13′52″ N., 069°46′08″ W. (NAD 83). |
| 6.0 | JUNE |
| 6.1 Rotary Waterfront Days Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Gardiner Rotary.<br>• Date: Two night event on a Wednesday and Saturday in June.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: In the vicinity of the Gardiner Waterfront, Gardiner, Maine in approximate position:<br>44°13′52″ N., 069°46′08″ W. (NAD 83). |
| 6.2 LaKermesse Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Ray Gagne.<br>• Date: One night event in June.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: Biddeford, Maine in approximate position:<br>43°29′37″ N., 070°26′47″ W. (NAD 83). |
| 6.3 Windjammer Days Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Boothbay Harbor Region Chamber of Commerce.<br>• Date: One night event in June.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position:<br>43°50′38″ N., 069°37′57″ W. (NAD 83). |
| 7.0 | JULY |
| 7.1 Vinalhaven 4th of July Fireworks | • Event Type: Firework Display.<br>• Sponsor: Vinalhaven 4th of July Committee<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Grime's Park, Vinalhaven, Maine in approximate position:<br>44°02′34″ N., 068°50′26″ W. (NAD 83). |
| 7.2 Burlington Independence Day Fireworks | • Event Type: Firework Display.<br>• Sponsor: City of Burlington, Vermont.<br>• Date: One night event in July.*<br>• Time (Approximate): 9:00 p.m. to 11:00 p.m. |

TABLE TO § 165.171—Continued

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| | • Location: From a barge in the vicinity of Burlington Harbor, Burlington, Vermont in approximate position: 44°28′31″ N., 073°13′31″ W. (NAD 83). |
| 7.3 Camden 3rd of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Camden, Rockport, Lincolnville Chamber of Commerce.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: In the vicinity of Camden Harbor, Maine in approximate position: 44°12′32″ N., 069°02′58″ W. (NAD 83). |
| 7.4 Bangor 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Bangor 4th of July Fireworks.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of the Bangor Waterfront, Bangor, Maine in approximate position: 44°47′27″ N., 068°46′31″ W. (NAD 83). |
| 7.5 Bar Harbor 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Bar Harbor Chamber of Commerce.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Bar Harbor Town Pier, Bar Harbor, Maine in approximate position: 44°23′31″ N., 068°12′15″ W. (NAD 83). |
| 7.6 Boothbay Harbor 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Boothbay Harbor.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position: 43°50′38″ N., 069°37′57″ W. (NAD 83). |
| 7.7 Colchester 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Colchester, Recreation Department.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: In the vicinity of Bayside Beach and Mallets Bay in Colchester, Vermont in approximate position: 44°32′44″ N., 073°13′10″ W. (NAD 83). |
| 7.8 Eastport 4th of July Fireworks | • Event Type: Fireworks Display/<br>• Sponsor: Eastport 4th of July Committee/<br>• Date: One night event in July.*<br>• Time (Approximate): 9:00 p.m. to 9:30 p.m.<br>• Location: From the Waterfront Public Pier in Eastport, Maine in approximate position: 44°54′25″ N., 066°58′55″ W. (NAD 83). |
| 7.9 Ellis Short Sand Park Trustee Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: William Burnham.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:30 p.m. to 11:00 p.m.<br>• Location: In the vicinity of York Beach, Maine in approximate position: 43°10′27″ N., 070°36′26″ W. (NAD 83). |
| 7.10 Hampton Beach 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Hampton Beach Village District.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:30 p.m. to 11:00 p.m.<br>• Location: In the vicinity of Hampton Beach, New Hampshire in approximate position: 42°54′40″ N., 070°36′25″ W. (NAD 83). |
| 7.11 Jonesport 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Jonesport 4th of July Committee.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Beals Island, Jonesport, Maine in approximate position: 44°31′18″ N., 067°36′43″ W. (NAD 83). |
| 7.12 Lubec Bicentennial Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Lubec, Maine.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of the Lubec Public Boat Launch in approximate position: 44°51′52″ N., 066°59′06″ W. (NAD 83). |
| 7.13 Main Street Heritage Days 4th of July Fireworks | • Event Type: Fireworks Display. |

TABLE TO § 165.171—Continued

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|---|---|---|
| | | • Sponsor: Main Street Inc.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Reed and Reed Boat Yard, Woolwich, Maine in approximate position:<br>43°54′56″ N., 069°48′16″ W. (NAD 83). |
| 7.14 | Portland Harbor 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Department of Parks and Recreation, Portland, Maine.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:30 p.m. to 10:30 p.m.<br>• Location: In the vicinity of East End Beach, Portland, Maine in approximate position:<br>43°40′16″ N., 070°14′44″ W. (NAD 83). |
| 7.15 | St. Albans Day Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: St. Albans Area Chamber of Commerce.<br>• Date: One night event in July.*<br>• Time (Approximate): 9:00 p.m. to 10:00 p.m.<br>• Location: From the St. Albans Bay dock in St. Albans Bay, Vermont in approximate position:<br>44°48′25″ N., 073°08′23″ W. (NAD 83). |
| 7.16 | Stonington 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Deer Isle—Stonington Chamber of Commerce.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Two Bush Island, Stonington, Maine in approximate position:<br>44°08′57″ N., 068°39′54″ W. (NAD 83). |
| 7.17 | Southwest Harbor 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Sharon Gilley.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: Southwest Harbor, Maine in approximate position:<br>44°16′25″ N., 068°19′21″ W. (NAD 83). |
| 7.18 | Prentice Hospitality Group Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Prentice Hospitality Group.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: Chebeague Island, Maine in approximate position:<br>43°45′12″ N., 070°06′27″ W. (NAD 83). |
| 7.19 | Shelburne Triathlons | • Event Type: Swim Event.<br>• Sponsor: Race Vermont.<br>• Date: Up to three Saturdays throughout July and August.*<br>• Time (Approximate): 7:00 a.m. to 11:00 a.m.<br>• Location: The regulated area includes all waters of Lake Champlain in the vicinity of Shelburne Beach in Shelburne, Vermont within a 400 yard radius of the following point:<br>44°21′45″ N., 075°15′58″ W. (NAD 83). |
| 7.20 | St. George Days Fireworks | • Event Type: Fireworks.<br>• Sponsor: Town of St. George.<br>• Date: One night event in July.*<br>• Time (Approximate): 8:30 p.m. to 10:30 p.m.<br>• Location: The regulated area includes all waters of Inner Tenants Harbor, ME, in approximate position:<br>43°57′41.37″ N., 069°12′45″ W. (NAD 83). |
| 7.21 | Tri for a Cure Swim Clinics and Triathlon | • Event Type: Swim Event.<br>• Sponsor: Maine Cancer Foundation.<br>• Date: A multi-day event held throughout July.*<br>• Time (Approximate): 8:30 a.m. to 11:30 a.m.<br>• Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Spring Point Light within the following points (NAD 83):<br>43°39′01″ N., 070°13′32″ W.<br>43°39′07″ N., 070°13′29″ W.<br>43°39′06″ N., 070°13′41″ W.<br>43°39′01″ N., 070°13′36″ W. |
| 7.22 | Richmond Days Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Richmond, Maine.<br>• Date: A one day event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: From a barge in the vicinity of the inner harbor, Tenants Harbor, Maine in approximate position:<br>44°08′42″ N., 068°27′06″ W. (NAD83) |
| 7.23 | Colchester Triathlon | • Event Type: Swim Event.<br>• Sponsor: Colchester Parks and Recreation Department. |

TABLE TO § 165.171—Continued

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| 7.24 Peaks to Portland Swim | • Date: A one day event in July.*<br>• Time (Approximate): 7:00 a.m. to 11:00 a.m.<br>• Location: The regulated area includes all waters of Malletts Bay on Lake Champlain, Vermont within the following points (NAD 83):<br>44°32′18″ N., 073°12′35″ W.<br>44°32′28″ N., 073°12′56″ W.<br>44°32′57″ N., 073°12′38″ W. |
| 7.25 Friendship Days Fireworks | • Event Type: Swim Event.<br>• Sponsor: Cumberland County YMCA.<br>• Date: A one day event in July.*<br>• Time (Approximate): 5:00 a.m. to 1:00 p.m.<br>• Location: The regulated area includes all waters of Portland Harbor between Peaks Island and East End Beach in Portland, Maine within the following points (NAD 83):<br>43°39′20″ N., 070°11′58″ W.<br>43°39′45″ N., 070°13′19″ W.<br>43°40′11″ N., 070°14′13″ W.<br>43°40′08″ N., 070°14′29″ W.<br>43°40′00″ N., 070°14′23″ W.<br>43°39′34″ N., 070°13′31″ W.<br>43°39′13″ N., 070°11′59″ W. |
| 7.26 Bucksport Festival and Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Friendship.<br>• Date: A one day event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of the Town Pier, Friendship Harbor, Maine in approximate position:<br>43°58′23″ N., 069°20′12″ W. (NAD83) |
| 7.27 Nubble Light Swim Challenge | • Event Type: Fireworks Display.<br>• Sponsor: Bucksport Bay Area Chamber of Commerce.<br>• Date: A one day event in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of the Verona Island Boat Ramp, Verona, Maine, in approximate position:<br>44°34′9″ N., 068°47′28″ W. (NAD83) |
| 7.28 Paul Coulombe Anniversary Fireworks | • Event Type: Swim Event.<br>• Sponsor: Nubble Light Challenge.<br>• Date: A one day event in July.*<br>• Time (Approximate): 9:00 a.m. to 12:30 p.m.<br>• Location: The regulated area includes all waters around Cape Neddick, Maine and within the following coordinates:<br>43°10′28″ N., 070°36′26″ W.<br>43°10′34″ N., 070°36′06″ W.<br>43°10′30″ N., 070°35′45″ W.<br>43°10′17″ N., 070°35′24″ W.<br>43°09′54″ N., 070°35′18″ W.<br>43°09′42″ N., 070°35′37″ W.<br>43°09′51″ N., 070°37′05″ W. |
| 7.29 Castine 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Paul Coulombe.<br>• Date: A one day event in July. *<br>• Time: 8:00 p.m. to 11:30 p.m.<br>• Location: In the vicinity of Pratt Island, Southport, ME, in approximate position:<br>43°48′44″ N., 069°41′11″ W. (NAD83) |
| | • Event Type: Fireworks Display.<br>• Sponsor: Randy Sterns.<br>• Date: One night event in July.*<br>• Time (Approximate): 9:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of the town dock in the Castine Harbor, Castine, Maine in approximate position:<br>44°23′10″ N., 068°47′28″ W. (NAD 83). |
| 8.0 | AUGUST |
| 8.1 Sprucewold Cabbage Island Swim | • Event Type: Swim Event.<br>• Sponsor: Sprucewold Association.<br>• Date: A one day event in August.*<br>• Time (Approximate): 1:00 p.m. to 6:00 p.m.<br>• Location: The regulated area includes all waters of Linekin Bay between Cabbage Island and Sprucewold Beach in Boothbay Harbor, Maine within the following points (NAD 83):<br>43°50′37″ N., 069°36′23″ W.<br>43°50′37″ N., 069°36′59″ W. |

TABLE TO § 165.171—Continued

| | |
|---|---|
| | 43°50′16″ N., 069°36′46″ W.<br>43°50′22″ N., 069°36′21″ W. |
| 8.2 Westerlund's Landing Party Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Portside Marina.<br>• Date: A one day event in August.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Westerlund's Landing in South Gardiner, Maine in approximate position:<br>44°10′19″ N., 069°45′24″ W. (NAD 83). |
| 8.3 Y-Tri Triathlon | • Event Type: Swim Event.<br>• Sponsor: Plattsburgh YMCA.<br>• Date: A one day event in August.*<br>• Time (Approximate): 9:00 a.m. to 10:00 a.m.<br>• Location: The regulated area includes all waters of Treadwell Bay on Lake Champlain in the vicinity of Point Au Roche State Park, Plattsburgh, New York within the following points (NAD 83):<br>44°46′30″ N., 073°23′26″ W.<br>44°46′17″ N., 073°23′26″ W.<br>44°46′17″ N., 073°23′46″ W.<br>44°46′29″ N., 073°23′46″ W. |
| 8.4 York Beach Fire Department Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: York Beach Fire Department.<br>• Date: A one day event in August.*<br>• Time (Approximate): 8:30 p.m. to 11:30 p.m.<br>• Location: In the vicinity of Short Sand Cove in York, Maine in approximate position:<br>43°10′27″ N., 070°36′25″ W. (NAD 83). |
| 8.5 Rockland Breakwater Swim | • Event Type: Swim Event.<br>• Sponsor: Pen-Bay Masters.<br>• Date: A one day event in August.*<br>• Time (Approximate): 7:30 a.m. to 1:30 p.m.<br>• Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of Jameson Point within the following points (NAD 83):<br>44°06′16″ N., 069°04′39″ W.<br>44°06′13″ N., 069°04′36″ W.<br>44°06′12″ N., 069°04′43″ W.<br>44°06′17″ N., 069°04′44″ W.<br>44°06′18″ N., 069°04′40″ W. |
| 8.6 Tri for Preservation | • Event Type: Swim Event.<br>• Sponsor: Tri-Maine Productions.<br>• Date: A one day event in August.*<br>• Time (Approximate): 7:30 a.m. to 9:00 a.m.<br>• Location: In the vicinity of Crescent Beach State Park in Cape Elizabeth, Maine in approximate position:<br>43°33′46″ N., 070°13′48″ W.<br>43°33′41″ N., 070°13′46″ W.<br>43°33′44″ N., 070°13′40″ W.<br>43°33′47″ N., 070°13′46″ W. |
| 8.7 North Hero Air Show | • Event Type: Air Show.<br>• Sponsor: North Hero Fire Department.<br>• Date: A one day event in August.*<br>• Time (Approximate): 10:00 a.m. to 5:00 p.m.<br>• Location: In the vicinity of Shore Acres Dock, North Hero, Vermont in approximate position:<br>44°48′24″ N., 073°17′02″ W.<br>44°48′22″ N., 073°16′46″ W.<br>44°47′53″ N., 073°16′54″ W.<br>44°47′54″ N., 073°17′09″ W. |
| 8.8 Islesboro Crossing Swim | • Event Type: Swim Event.<br>• Sponsor: Lifeflight Foundation.<br>• Date: A one day event in August.*<br>• Time: (Approximate): 6:00 a.m. to 11:00 a.m.<br>• Location: West Penobscot Bay from Ducktrap Beach, Lincolnville, ME to Grindel Point, Islesboro, ME, in approximate position:<br>44°17′44″ N., 069°00′11″ W.<br>44°16′58″ N., 068°56′35″ W. |
| 8.9 Paul Columbe Party Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Paul Columbe.<br>• Date: A one day event in August.*<br>• Time (Approximate): 9:00 p.m. to 10:30 p.m.<br>• Location: From a barge in the vicinity of Pratt Island, Southport, Maine in approximate position:<br>43°48′69″ N., 069°41′18″ W (NAD 83). |

TABLE TO § 165.171—Continued

| 9.0 | SEPTEMBER |
|---|---|
| 9.1 Windjammer Weekend Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Camden, Maine.<br>• Date: A one night event in September.*<br>• Time (Approximate): 8:00 p.m. to 9:30 p.m.<br>• Location: From a barge in the vicinity of Northeast Point, Camden Harbor, Maine in approximate position:<br>44°12′10″ N., 069°03′11″ W (NAD 83). |
| 9.2 Eastport Pirate Festival Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Eastport Pirate Festival.<br>• Date: A one night event in September.*<br>• Time (Approximate): 7:00 p.m. to 10:00 p.m.<br>• Location: From the Waterfront Public Pier in Eastport, Maine in approximate position:<br>44°54′17″ N., 066°58′58″ W (NAD 83). |
| 9.3 The Lobsterman Triathlon | • Event Type: Swim Event.<br>• Sponsor: Tri-Maine Productions.<br>• Date: A one day event in September.*<br>• Time (Approximate): 8:00 a.m. to 11:00 a.m.<br>• Location: The regulated area includes all waters in the vicinity of Winslow Park in South Freeport, Maine within the following points (NAD 83):<br>43°47′59″ N., 070°06′56″ W.<br>43°47′44″ N., 070°06′56″ W.<br>43°47′44″ N., 070°07′27″ W.<br>43°47′57″ N., 070°07′27″ W. |
| 9.4 Eliot Festival Day Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Eliot Festival Day Committee.<br>• Date: A one night event in September.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Eliot Town Boat Launch, Eliot, Maine in approximate position:<br>43°08′56″ N., 070°49′52″ W (NAD 83). |
| 9.5 Lake Champlain Swimming Race | • Event Type: Swim Event.<br>• Sponsor: Christopher Lizzaraque.<br>• Date: A one day event in September.<br>• Time (Approximate): 9:00 a.m. to 3 p.m.<br>• Location: Essex Beggs Point Park, Essex, NY, to Charlotte Beach, Charlotte, VT.<br>44°18′32″ N., 073°20′52″ W.<br>44°20′03″ N., 073°16′53″ W. |

* Date subject to change. Exact date will be posted in Notice of Enforcement and Local Notice to Mariners.

Dated: January 22, 2016.

**M. A. Baroody,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.*

[FR Doc. 2016–04052 Filed 2–24–16; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2015–0315; FRL–9942–73–Region 5]**

## Air Plan Approval; Indiana; Removal of Stage II Gasoline Vapor Recovery Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve, as a revision to the State Implementation Plan (SIP), a submittal by the Indiana Department of Environmental Management (IDEM) on April 27, 2015 and September 10, 2015. The submittal concerns the state's Stage II vapor recovery (Stage II) program for Clark and Floyd counties in southern Indiana as part of the Louisville, Kentucky ozone nonattainment area, and Lake and Porter counties in northwest Indiana as part of the Chicago ozone nonattainment area. The submittal removes Stage II requirements from both nonattainment areas, as a component of the Indiana ozone SIP. The submittal also includes a demonstration under the Clean Air Act (CAA) that addresses emission impacts associated with the removal of the Stage II program.

**DATES:** Comments must be received on or before March 28, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0315 at *http://www.regulations.gov* or via email to *blakley.pamela@epa.gov.* For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person

identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
II. What changes have been made to the Indiana Stage II Vapor Recovery Program?
III. What is EPA's analysis of the state's submittal?
IV. What action is EPA proposing to take?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

## I. Background

Stage II and onboard refueling vapor recovery (ORVR) are two types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. Stage II systems are specifically installed at gasoline dispensing facilities (GDF) and capture the refueling fuel vapors at the gasoline pump nozzle. The system carries the vapors back to the underground storage tank at the GDF to prevent the vapors from escaping to the atmosphere. ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the engine when the automobile is in operation.

Both Stage II and ORVR were required by the 1990 Amendments to the CAA under sections 182(b)(3) and 202(a)(6), respectively. In some areas, Stage II has been in place for over 25 years. It was not, however, widely implemented by the states until the early to mid-1990s as a result of the CAA requirements for ''moderate,'' ''serious,'' ''severe,'' and ''extreme'' ozone nonattainment areas, classified under section 181 of the CAA, and for states in the Northeast Ozone Transport Region (OTR) under section 184(b)(2) of the CAA.

Under section 202(a)(6) of the CAA, Congress required EPA to promulgate regulations for ORVR for light-duty vehicles (passenger cars). EPA adopted these requirements in 1994, at which point moderate ozone nonattainment areas were no longer subject to the section 182(b)(3) Stage II requirement. See 59 FR 16262 (April 6, 1994). However, some moderate areas retained Stage II requirements to provide a control method to comply with rate-of-progress emission reduction targets. ORVR equipment has been phased in for new passenger vehicles beginning with model year 1998, and starting in 2001 for light-duty trucks and most heavy-duty gasoline-powered vehicles. ORVR equipment has been installed on nearly all new gasoline-powered light-duty vehicles, light-duty trucks and heavy-duty vehicles since 2006. During the phase-in of ORVR controls, Stage II has provided volatile organic compound (VOC) reductions in ozone nonattainment areas and certain attainment areas of the OTR. Under section 202(a)(6) of the CAA, Congress recognized that ORVR and Stage II could eventually become largely redundant technologies, and provided authority to the EPA to allow states to remove Stage II from their SIPs after EPA finds that ORVR is in widespread use. On May 16, 2012, EPA determined that ORVR was in widespread nationwide use for control of gasoline emissions during refueling of vehicles at GDFs (77 FR 28772).

In 2012, more than 75 percent of gasoline refueling nationwide occurred with ORVR-equipped vehicles, so Stage II programs have become largely redundant control systems and Stage II systems achieve an ever declining emissions benefit as more ORVR-equipped vehicles continue to enter the on-road motor vehicle fleet.[1]

On that date, EPA also exercised its authority under section 202(a)(6) of the CAA to waive certain Federal statutory requirements for Stage II at GDFs. This decision exempted all new ozone nonattainment areas classified serious or above from the requirement to adopt Stage II control programs. Similarly, any state currently implementing Stage II programs was authorized to submit SIP revisions that, once approved by EPA, would allow for the phase-out of Stage II control systems.

To assist states in the development of SIP revisions to remove Stage II requirements from their SIPs, EPA issued its ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures'' (EPA–457/B–12–001) on August 7, 2012. In that document, EPA provided both technical and policy recommendations to states and local areas on how to develop and submit and approvable SIP revision seeking to phase out an existing Stage II program.

## II. What changes have been made to the Indiana Stage II Vapor Recovery Program?

Indiana originally submitted a SIP revision request to EPA on February 25, 1994, to satisfy the requirements of section 182(b)(3) of the CAA. The submission applied to Clark and Floyd counties Indiana as part of the Louisville, Kentucky ozone nonattainment area and Lake and Porter counties Indian as part of the Chicago ozone nonattainment area. EPA fully approved Indiana's Stage II program on April 28, 1994 (59 FR 10111), including the program's legal authority and administrative requirements found in Section 8–4–6 of Title 326 of the Indiana Administrative Code (326 IAC).

In January 2013, IDEM issued a Nonrule Policy Document, Air-036 (NPD), addressing EPA's May 16, 2012 determination. In the NPD, IDEM stated that it would not enforce the requirements for Stage II at new and modified GDFs in Clark, Floyd, Lake and Porter counties. At the same time Indiana also initiated a rulemaking process to revise its SIP to remove Stage II requirements for all facilities in Clark, Floyd, Lake and Porter counties. As part of that process, Indiana completed a state-specific analysis following EPA's recommended methodology. In that analysis, Indiana concluded that, during calendar year 2016, ORVR would be in widespread use in Indiana and that there would no remaining emissions reduction benefit from Stage II requirements beyond the benefits from ORVR.

On April 27, 2015 and September 10, 2015, IDEM submitted rules as SIP revision requests of amendments to 326 IAC 8–4–6 and 326 IAC 8–4–1. These amendments would remove Stage II requirements from the Indiana ozone SIP and allow GDFs currently implementing Stage II in the four program counties to decommission their systems. To support the removal of the Stage II requirements, the revised rules included copies of 326 IAC 8–4–1 and 326 IAC 8–4–6, as published in the Indiana Register on March 4, 2015; a summary of state-specific calculations

[1] In areas where certain types of vacuum-assist Stage II systems are used, the differences in operational design characteristics between ORVR and some configurations of these Stage II systems result in the reduction of overall control system efficiency compared to what could have been achieved relative to the individual control efficiencies of either ORVR or Stage II emissions from the vehicle fuel tank.

based on EPA guidance used to calculate program benefits and demonstrate widespread use of ORVR in Indiana; and a section 110(l) demonstration that includes offset emission documentation that addresses the 2013–2015 period, when Stage II requirements were waived in Indiana but widespread use of ORVR had not yet occurred.

**III. What is EPA's analysis of the state's submittal?**

Revisions to SIP-approved control measures must meet the requirements of section 110(l) of the CAA in order to be approved by EPA. Section 110(l) states:

''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.''

EPA evaluates each section 110(l) non-interference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. EPA also interprets section 110(l) to require a demonstration addressing all criteria pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. The degree of analysis focused on any particular national ambient air quality standards (NAAQS) in a non-interference demonstration varies depending on the nature of the emissions associated with the proposed SIP revision.

In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(l), EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, as long as actual emissions in the air are not increased. ''Equivalent'' emissions reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the SIP. To show that compensating emissions reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emissions in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

The implementation of the Stage II program in Indiana has resulted in reductions of VOC emissions. VOCs contribute to the formation of ground-level ozone. Thus the potential increase in VOC needs to be offset with equivalent (or greater) emissions reductions from another control measure in order to demonstrate non-interference with the 8-hour ozone NAAQS. The Indiana Stage II SIP revision includes a 110(l) demonstration for both areas that uses equivalent emissions reductions to compensate for emission reduction losses between 2013 and 2015 resulting from the removal of Stage II systems at a number of GDFs before ORVR is in widespread use as allowed by Indiana's NPD. IDEM has calculated that by 2016, ORVR will be in widespread use in both areas and the absence of the Indiana Stage II program after 2016 would not result in a net VOC emissions increase compared to the continued utilization of this emissions control technology. The emission reduction losses resulting from removing Stage II before 2016 are transitional and relatively small since ORVR-equipped vehicles will continue to phase into the fleet over the coming years. IDEM's calculation indicates a maximum potential loss of 0.02317 tons per summer day (tpsd) in Lake and Porter counties and 0.00408 tpsd in Clark and Floyd counties from 2013 through 2015.

For Lake and Porter Counties, IDEM is proposing the use of VOC emission reductions associated with the shutdown of the State Line Energy Generating Plant (State Line Energy) formerly located in Lake County, Indiana to offset the 0.02317 tpsd increase in those counties. State Line ceased operations in March 31, 2012 and its operating permit has been revoked. The expiration and revocation of this source's permit enables the state to use the VOC emission credits associated with this facility for other purposes under the SIP and makes such credits permanent and enforceable. Using the last three full years of operations (2009–2011) State Line Energy averaged 0.215 tpsd of VOC of emissions offsets. Table 1 shows the increase of emissions associated with the removal of Stage II systems at facilities in Lake and Porter counties, as well as offset emissions associated with State Line Energy. In the table, the number of facilities removing Stage II equipment for 2013 represents the actual number of facilities that sought an exemption from implementing the Stage II requirements. For 2014 and 2015, the number of facilities removing Stage II equipment is a conservative estimate.[2]

TABLE 1—LAKE AND PORTER COUNTIES OFFSET ANALYSIS

| Year | Number of facilities removing Stage II | Emissions factor VOC tons/ facility/ avg. summer day | Emissions increase VOC tons/avg. summer day | State Line Energy offsets VOC tons/avg. summer day (avg. of 2009–2011) | Offset greater than increase? |
|---|---|---|---|---|---|
| 2013 | 6 | 0.000944006 | 0.005664035 | 0.215 | Yes. |
| 2014 | 12 | 0.000654335 | 0.007852014 | 0.215 | Yes. |
| 2015 | 24 | 0.000402349 | 0.009656365 | 0.215 | Yes. |

As illustrated in Table 1, and documented in Indiana's SIP revision, for Lake and Porter counties, for each year prior to the widespread use of ORVR in Indiana (2016), the VOC emissions increase associated with the removal of Stage II systems is more than offset by the VOC emission reductions

[2] The actual number of facilities expected to remove Stage II equipment during this timeframe believed to be less, thus resulting in lower emissions increase.

attributed to the permanent closure of the State Line Energy facility.

For Clark and Floyd counties, IDEM is proposing the use of offsets generated by the Architectural and Industrial Maintenance (AIM) coatings rule adopted by Indiana at 326 IAC 8–14. Indiana's AIM coatings rule goes above and beyond the Federal AIM rule by adopting a rule that is similar to the Ozone Transport Commission (OTC) model rule. According to a 2006 Lake Michigan Air Directors Consortium (LADCO) white paper, the OTC model rule provides a 31% to 48.4% (depending on the AIM coatings category) reduction in VOC emissions compared to uncontrolled 2002 base case emissions while the Federal AIM rule alone only provides a 20% reduction compared to base case.

The Indiana AIM rule was approved into the SIP on August 30, 2012 (77 FR 52606). Indiana was not required to adopt an AIM coatings rule but did so as a multi-state effort to help reduce ozone levels at the regional level. Indiana did not adopt the AIM rule to comply with any Indiana SIP planning requirements and has not taken credit for it in air quality plans, nor has it been included in maintenance year horizons or rate of further progress (RFP) inventories. Therefore, these SIP approved AIM limits can be used as offsets for other purposes, such as this SIP revision. Offsets of 0.234 tpsd of VOC are available based on calculations derived using the 2011 National Emissions Inventory data. Table 2 shows the increase of VOC emission associated with the removal of Stage II systems at facilities in Clark and Floyd between 2013 and 2015, as well as offset emissions associated with AIM coatings. In the table, the number of facilities removing Stage II equipment for 2013 represents the actual number of facilities that have sought an exemption from implementing the Stage II requirements. For 2014 and 2015, the number of facilities removing Stage II equipment is a conservative estimate.

TABLE 2—CLARK AND FLOYD COUNTIES OFFSET ANALYSIS

| Year | Number of facilities removing Stage II | Emissions factor VOC tons/ facility/ avg. summer day | Emissions increase VOC tons/avg. summer day | AIM Coatings offsets VOC tons/avg. summer day (avg. of 2009–2011) | Offset greater than increase? |
|---|---|---|---|---|---|
| 2013 | 0 | 0.000659923 | 0.0 | 0.292 | Yes. |
| 2014 | 4 | 0.000457424 | 0.001829695 | 0.292 | Yes. |
| 2015 | 8 | 0.000281269 | 0.002250149 | 0.292 | Yes. |

As illustrated in Table 2, and documented in Indiana's SIP revision, for Clark and Floyd counties, for each year prior to the widespread use of ORVR in Indiana (2016), the VOC emissions increase associated with the removal of Stage II systems is more than offset by the VOC emission reductions attributed to reductions in AIM coatings emissions. For both the Clark and Floyd counties and Lake and Porter counties analyses, Indiana is requesting to use only the portion of the emissions offsets necessary to offset the emissions increase due to the removal of Stage II systems before Indiana's 2016 widespread use timeframe. Indiana retains the right to utilize any remaining emissions offsets in the future.

Based on the use of permanent, enforceable, contemporaneous, surplus emissions reductions achieved through the shutdown of the previously permitted State Line Energy facility in Lake and Porter counties and the offsets from VOC reductions in AIM coatings emissions in Clark and Floyd counties, EPA believes that the removal of the Indiana Stage II program does not interfere with southeast Indiana's ability to demonstrate compliance with the 8-hour ozone NAAQS.

EPA also examined whether the removal of Stage II program requirements in both areas will interfere with attainment of other air quality standards. Lake and Porter counties are designated attainment for all standards other than ozone, including sulfur dioxide and nitrogen dioxide. Clark and Floyd counties are designated attainment for all standards other than ozone and particulate matter.[3] EPA has no reason to believe that the removal of the Stage II program in Indiana will cause the areas to become nonattainment for any of these pollutants. In addition, EPA believes that removing the Stage II program requirements in Indiana will not interfere with the areas' ability to meet any other CAA requirement.

Based on the above discussion and the state's section 110(l) demonstration, EPA believes that removal of the Stage II program will not interfere with attainment or maintenance of any of the NAAQS in both the Chicago and Louisville, Kentucky ozone nonattainment areas and would not interfere with any other applicable requirement of the CAA, and thus, are approvable under CAA section 110(l).

[3] Clark and Floyd counties are currently designated nonattainment for the 1997 Annual fine particulate matter ($PM_{2.5}$) standard. While VOC is one of the precursors for particulate matter (NAAQS) formation, studies have indicated that in the southeast which includes the Louisville, KY ozone nonattainment area, emissions of direct $PM_{2.5}$ and the precursor sulfur oxides are more significant to ambient summertime $PM_{2.5}$ concentrations than emissions of nitrogen oxides and anthropogenic VOC. See. *E.g.*, Journal of Environmental Engineering—Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States (June 24, 2009), available at: *http://www.journals.elsevier.com/journal-ofenvironmental-management.* Currently, Clark and Floyd counties are no designated nonattainment for any of the other criteria pollutants (*i.e.* sulfur dioxide, nitrogen dioxide, lead or carbon monoxide) and those pollutants are not affected by the removal of Stage II requirements.

## IV. What action is EPA proposing to take?

EPA is proposing to approve, as a revision to the Indiana ozone SIP, regulations submitted by IDEM on April 27, 2015 and September 10, 2015. EPA finds that the revisions will not interfere with any applicable CAA requirement.

## V. Incorporation by Reference

In this rulemaking, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Indiana rules 326 IAC 8–4–1 ''Applicability'' and 326 IAC 8–4–6 ''Gasoline dispensing facilities'', effective March 5, 2015. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and/or at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: February 11, 2016.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2016–03894 Filed 2–24–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2016–0075; EPA–R05–OAR–2016–0090; FRL–9942–72–Region 5]**

## Air Plan Approval; Indiana; Commissioner's Orders for A.B. Brown and Clifty Creek

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Indiana State Implementation Plan (SIP) submitted by the Indiana Department of Environmental Management (IDEM) to EPA on January 27, 2016, and February 5, 2016, for parallel processing. The submittal consists of orders issued by the Commissioner of IDEM that require more stringent sulfur dioxide ($SO_2$) emissions limits than those currently contained in the SIP for Vectren's A. B. Brown Generating Station (''A.B. Brown'') and Indiana-Kentucky Electric Corporation's Clifty Creek Generating Station (''Clifty Creek''). IDEM submitted these limits to enable the areas near these generating stations to qualify for being designated ''attainment'' of the 2010 primary $SO_2$ National Ambient Air Quality Standards (NAAQS), a matter that will be addressed in a separate future rulemaking. EPA's approval of these revisions to the Indiana SIP would make the Commissioner's orders' $SO_2$ emissions limits federally enforceable.

**DATES:** Comments must be received on or before March 28, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID Nos. EPA–R05–OAR–2016–0075 for A.B. Brown or EPA–R05–OAR–2016–0090 for Clifty Creek at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6832, *Liljegren.Jennifer@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Why did IDEM issue these Commissioner's Orders?
II. What are the $SO_2$ limits in these Commissioner's Orders?
III. By what criterion is EPA reviewing this SIP revision?
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

## I. Why did IDEM issue these Commissioner's Orders?

On January 27, 2016, and February 5, 2016, IDEM submitted for parallel processing draft revisions to its SIP consisting of orders issued by IDEM's Commissioner that establish more stringent $SO_2$ emissions limits than those currently contained in the SIP for A.B. Brown and Clifty Creek. IDEM established these $SO_2$ emissions limits to enable the areas near A.B. Brown and Clifty Creek to qualify in the future for being designated ''attainment'' of the 2010 primary $SO_2$ NAAQS. Under a

Federal consent decree, EPA is required to designate, under the 2010 $SO_2$ NAAQS, certain areas in the United States including the areas near A.B. Brown and Clifty Creek by July 2, 2016. The history of the 2010 $SO_2$ NAAQS and the consent decree is explained below in order to provide a more detailed explanation of the context for IDEM's request for EPA approval of these $SO_2$ limits into the SIP.

On June 3, 2010, pursuant to section 109 of the Clean Air Act (CAA), EPA revised the primary (health-based) $SO_2$ NAAQS by establishing a new one-hour standard codified at 40 CFR 50.17 (75 FR 35520). Pursuant to section 107(d) of the CAA, EPA must designate areas as either ''unclassifiable,'' ''attainment,'' or ''nonattainment'' for the 2010 one-hour $SO_2$ primary NAAQS. Under Section 107(d) of the CAA, a nonattainment area is any area that does not meet the NAAQS or that contributes to a violation in a nearby area. An attainment area is any area, other than a nonattainment area, that meets the NAAQS. Unclassifiable areas are those that cannot be classified on the basis of available information as meeting or not meeting the NAAQS.

On August 5, 2013, EPA published a final rule establishing air quality designations for 29 areas in the United States for the 2010 $SO_2$ NAAQS, based on recorded air quality monitoring data from 2009–2011 that showed violations of the NAAQS (78 FR 47191). In that rulemaking, EPA committed to address, in separate future actions, the designations for all other areas for which EPA was not yet prepared to issue designations.

Following the initial August 5, 2013, designations, three lawsuits were filed against EPA in different U.S. District Courts, alleging EPA had failed to perform a nondiscretionary duty under the CAA by not designating all portions of the country by the June 2013 deadline. In an effort intended to resolve the litigation in one of those cases, plaintiffs Sierra Club and the Natural Resources Defense Council and EPA filed a proposed consent decree with the U.S. District Court for the Northern District of California. On March 2, 2015, the court entered the consent decree and issued an enforceable order for EPA to complete the area designations according to the court-ordered schedule.[1]

By no later than July 2, 2016, (16 months from the court's order), EPA must designate two groups of areas: (1) Areas that have newly monitored violations of the 2010 $SO_2$ NAAQS and (2) areas that contain any stationary sources that had not been announced as of March 2, 2015, for retirement and that according to the EPA's Air Markets Database emitted in 2012 either (i) more than 16,000 tons of $SO_2$ or (ii) more than 2,600 tons of $SO_2$ with an annual average emission rate of at least 0.45 pounds (lbs) of $SO_2$ per million British thermal units (MMBTU). In the consent decree, ''announced for retirement'' means any stationary source with a coal-fired unit that as of January 1, 2010, had a capacity of over 5 megawatts and otherwise meets the emissions criteria is excluded from the July 2, 2016, deadline if it had announced through a company public announcement, public utilities commission filing, consent decree, public legal settlement, final state or federal permit filing, or other similar means of communication, by March 2, 2015, that it will cease burning coal at that unit.

A.B. Brown and Clifty Creek each meet the second criterion for the July 2, 2016, deadline. That is, neither has been ''announced for retirement'' and both emitted in 2012 either (i) more than 16,000 tons of $SO_2$ or (ii) more than 2,600 tons of $SO_2$ with an annual average emission rate of at least 0.45 lbs of $SO_2$ per MMBTU. Specifically, A.B. Brown emitted 7,091 tons of $SO_2$ in 2012 and had an emissions rate of 0.521 lbs $SO_2$/MMBTU in 2012. Clifty Creek emitted 52,839 tons of $SO_2$ in 2012 and had an emissions rate of 1.767 lbs $SO_2$/MMBTU in 2012. In absence of new $SO_2$ emissions limits, A.B. Brown and Clifty Creek cannot demonstrate modeled attainment of the 2010 $SO_2$ NAAQS in accordance with EPA's *Draft $SO_2$ NAAQS Designations Modeling Technical Assistance Document.*[2] Therefore, IDEM conducted air dispersion modeling using the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) version 15181 in accordance with appendix W of part 51 of chapter 40 of the Code of Federal Regulations (CFR) to determine new, more stringent $SO_2$ emissions limits for A.B. Brown and Clifty Creek that should result in the areas near these generating stations showing modeled attainment of the 2010 $SO_2$ NAAQS.

IDEM has requested that EPA approve Commissioner's Order 2016–01 for A.B. Brown and Commissioner's Order 2016–02 for Clifty Creek into Indiana's SIP. EPA's approval of the new $SO_2$ emissions limits contained in these orders into Indiana's SIP would make these $SO_2$ emissions limits federally enforceable. Once these $SO_2$ emissions limits have become federally enforceable, IDEM intends to use them to demonstrate AERMOD-modeled attainment for the 2010 $SO_2$ NAAQS for the areas near A.B. Brown and Clifty Creek. To be clear, the purpose of this rulemaking is to take action on IDEM's request to approve these $SO_2$ emissions limits into the Indiana SIP and thereby make them federally enforceable. The purpose of this rulemaking is *not* to take action on whether these $SO_2$ emissions limits are adequate for EPA to designate attainment of the 2010 $SO_2$ NAAQS for the areas near A.B. Brown and Clifty Creek. EPA intends to designate the areas near the sources that meet the criteria for the first phase of the consent decree designations, including the areas near A.B. Brown and Clifty Creek, under a separate rulemaking.

EPA cannot take final action to approve the orders into Indiana's SIP until the state completes its public comment process and submits the final orders to EPA as SIP revision requests. In the meantime, Indiana requested that EPA ''parallel process'' the SIP revision to expedite action on the Commissioner's orders. Under this procedure, the state submitted a copy of the proposed revisions to EPA before completing its public comment process. EPA is publishing this proposed rulemaking in the **Federal Register** and is soliciting public comment in approximately the same timeframe during which the state is soliciting public comment. After Indiana submits the final SIP revision request, EPA will prepare a final rulemaking for the SIP revision. If changes are made to the SIP revision after EPA's proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking. If the changes are significant, then EPA may need to repropose the rulemaking.

## II. What are the $SO_2$ limits in these Commissioner's Orders?

For A.B. Brown, Indiana issued Commissioner's Order 2016–01 on January 11, 2016, with a compliance date of April 19, 2016. This order established two new limits for A.B. Brown: One limit for Unit 1 when running alone and one limit for Units 1 and 2 when running simultaneously. The emissions limits are 0.855 lbs of $SO_2$ per MMBTU for coal-fired boiler Unit 1 operating alone and 0.426 lbs of $SO_2$ per MMBTU for Units 1 and 2 operating simultaneously. These limits supplement a limit contained in a

[1] *Sierra Club et al.* v. *EPA,* No. 3:13–cv–3953–SI (N.D.Cal.)

[2] *Draft $SO_2$ NAAQS Designations Modeling Technical Assistance Document.* December 2013. *http://www3.epa.gov/airquality/sulfurdioxide/pdfs/SO2ModelingTAD.pdf.*

February 22, 1979, Prevention of Significant Deterioration (PSD) permit of 0.69 pounds per MMBTU for coal-fired boiler Unit 2. Note that the limit on Unit 1 emissions alone (0.855 lbs per MMBTU) is higher (less restrictive) than the limit on combined emissions from Units 1 and 2 (0.426 lbs per MMBTU). Because Unit 2 has more impact per pound of emissions than Unit 1 due to dispersion characteristics, the plant can emit more and still not cause violations of the 2010 $SO_2$ NAAQS when only Unit 1 is operating than when both Units 1 and 2 are operating.

For Clifty Creek, Indiana issued Commissioner's Order 2016–02 on February 1, 2016, with a compliance date of April 19, 2016. This order established a combined emission limit for the six coal-fired boilers (Units No. 1 through No. 6) located at Clifty Creek of 2,624.5 lbs of $SO_2$ per hour as a 720 operating hour rolling average when any of Units No.1 through No. 6, or any combination thereof, is operating.

## III. By what criteria is EPA reviewing this SIP revision?

EPA is evaluating this revision on the basis of whether it strengthens Indiana's SIP. Prior to Commissioner's Order 2016–01, A.B. Brown had an $SO_2$ emissions limit in its operating permit of 6.0 lbs $SO_2$ per MMBTU for coal-fired boiler Unit 1. Prior to Commissioner's Order 2016–02 Clifty Creek had an $SO_2$ emissions limit in its operating permit for Units 1 through 6 not to exceed 7.52 lbs of $SO_2$ per MMBTU on a thirty (30) day rolling weighted average. The new $SO_2$ emissions limits established by IDEM in Commissioner's Order 2016–01 and Commissioner's Order 2016–02 for A.B. Brown and Clifty Creek, respectively, are more stringent than the previous limits and will therefore strengthen Indiana's SIP.

The adequacy of these limits for providing for attainment is not a prerequisite for approval of these limits. Nevertheless, the purpose of these limits is to provide for attainment, and EPA is working with Indiana to assure a proper analysis of the adequacy of these limits for this purpose. If these limits become SIP-approved and thereby federally enforceable in a timely fashion, formal evaluation of the adequacy of these limits to provide for attainment will be conducted as part of the process of rulemaking on the 2010 $SO_2$ NAAQS designation for these areas.

## IV. What action is EPA taking?

EPA is proposing to approve the $SO_2$ emissions limits in Commissioner's Order 2016–01 and Commissioner's Order 2016–02 into the Indiana SIP. EPA confirms that the $SO_2$ emissions limits for A. B. Brown (Commissioner's Order 2016–01) and Clifty Creek (Commissioner's Order 2016–02) are more stringent than the previous $SO_2$ emissions limits for these sources. By approving these Commissioner's orders into the Indiana SIP, these $SO_2$ emissions limits will become federally enforceable and strengthen the Indiana SIP.

## V. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Commissioner's Order No. 2016–01 issued to Vectren's A. B. Brown Generating Station, effective January 11, 2016, and Commissioner's Order No. 2016–02 issued to Indiana-Kentucky Electric Corporation's Clifty Creek Generating Station, effective February 1, 2016. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 11, 2016.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2016–03893 Filed 2–24–16; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R07–OAR–2015–0438; FRL 9942–75–Region 7]**

### Approval and Promulgation of Air Quality Implementation Plans; State of Missouri; Emissions Inventory and Emissions Statement for the Missouri Portion of the St. Louis MO-IL Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for the state of Missouri. The revisions address base year Emissions Inventory (EI) and emissions statement requirements of the Clean Air Act (CAA) for the Missouri portion of the St. Louis marginal ozone nonattainment area (''St. Louis area''). The Missouri counties comprising the St. Louis area are Franklin, Jefferson, St. Charles, and St. Louis along with the City of St. Louis. EPA is proposing to approve the SIP revisions because they satisfy the CAA section 182 requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). EPA is proposing the revisions pursuant to section 110 and part D of the CAA and EPA's regulations. EPA will consider and take action on the Illinois submission for its portion of the St. Louis area in a separate action.

**DATES:** Comments on this proposed action must be received in writing by March 28, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0438, to *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 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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Publicly available docket materials are available either electronically at *www.regulations.gov* or at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**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:** In the final rules section of this **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

**List of Subjects in 40 CFR Part 52**

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

Dated: February 17, 2016.

**Mark Hague,**

*Regional Administrator, Region 7.*

[FR Doc. 2016–03903 Filed 2–24–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2015–0150; FRL–9942–70–Region 4]**

## Approval and Promulgation of Implementation Plans; North Carolina; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of North Carolina, through the Department of Environment and Natural Resources (NC DENR), Division of Air Quality (NC DAQ), on March 18, 2014, for inclusion into the North Carolina SIP. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide ($SO_2$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP submission. NC DAQ certified that the North Carolina SIP contains provisions that ensure the 2010 1-hour $SO_2$ NAAQS is implemented, enforced, and maintained in North Carolina. EPA is proposing to determine that portions of North Carolina's infrastructure SIP submission, provided to EPA on March 18, 2014, satisfy certain infrastructure elements for the 2010 1-hour $SO_2$ NAAQS.

**DATES:** Written comments must be received on or before March 28, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0150 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and

should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via electronic mail at *notarianni.michele@epa.gov* or via telephone at (404) 562–9031.

**SUPPLEMENTARY INFORMATION:**

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V. Proposed Action
VI. Statutory and Executive Order Reviews

## I. Background and Overview

On June 22, 2010 (75 FR 35520), EPA promulgated a revised primary $SO_2$ NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour $SO_2$ NAAQS to EPA no later than June 22, 2013.[1]

Today's action is proposing to approve portions of North Carolina's infrastructure SIP submission for the applicable requirements of the 2010 1-hour $SO_2$ NAAQS. With respect to North Carolina's infrastructure SIP submission related to provisions pertaining to the PSD permitting requirements for major sources of sections 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the state board requirements of section 110(E)(ii), EPA is not proposing any action at this time regarding these requirements. For the aspects of North Carolina's submittal proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that North Carolina's already approved SIP meets certain CAA requirements.

## II. What elements are required under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are summarized below and in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2).'' [2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources [3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas [4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

## III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from North Carolina that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 1-hour $SO_2$ NAAQS. The requirement for states to

[1] In these infrastructure SIP submissions states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the terms ''regulation,'' ''rule,'' or ''15A NCAC'' indicate that the cited regulation has been approved into North Carolina's federally-approved SIP. North Carolina's cited statutes, North Carolina General Statutes (NCGS) are not approved into North Carolina's federally-approved SIP unless explicitly specified.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned above, this element is not relevant to today's proposed rulemaking.

make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] See, *e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007, submittal.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 fine particulate matter ($PM_{2.5}$) NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing

[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the United States (U.S.) Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

## IV. What is EPA's analysis of how North Carolina addressed the elements of the sections 110(a)(1) and (2) ''infrastructure'' provisions?

The North Carolina infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. These requirements are met through several North Carolina Administrative Code (NCAC) regulations. Specifically, 15A NCAC 2D .0500 *Emission Control Standards* establishes emission limits for $SO_2$. The following State rules address additional control measures, means and techniques: 15A NCAC 2D .0600 *Monitoring: Recordkeeping: Reporting,* and 15A NCAC 2D .2600 *Source Testing.* In addition, NCGS 143–215.107(a)(5), *Air quality standards and classifications,* provides the North Carolina Environmental Management Commission (EMC) with the statutory authority, ''To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards.'' EPA has made the preliminary determination that the provisions contained in these regulations, and North Carolina's statutory authority are adequate for Section 110(a)(2)(A) for the 2010 1-hour $SO_2$ NAAQS.

[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during start up, shut down, and malfunction (SSM) operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[18]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) Monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. NCGS 143–215.107(a)(2), *Air quality standards and classifications,* provides the EMC with the statutory authority ''To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.''

Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, and includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[19] The latest monitoring network plan for North Carolina was submitted to EPA on July 23, 2015, and on November 19, 2015, EPA approved this plan. North Carolina's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0150.

NCGS 143–215.107(a)(2), EPA regulations, along with North Carolina's Ambient Air Monitoring Network Plan, provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. EPA has made the preliminary determination that North Carolina's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2010 1-hour $SO_2$ NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). To meet these obligations, North Carolina cited the following State regulations: 15A NCAC 2D. 0500 *Emissions Control Standards;* 15A NCAC 2D. 0530 *Prevention of Significant Deterioration;* 15A NCAC 2D. 0531 *Sources in Nonattainment Areas;* 15A NCAC 2Q .0300 *Construction Operation Permits;* and 15A NCAC 2Q .0500 *Title V Procedures.* Collectively, these regulations enable North Carolina to regulate sources contributing to the 2010 1-hour $SO_2$ NAAQS through enforceable permits. North Carolina also cited to the following statutory provisions as supporting this element: NCGS 143–215.108, *Control of sources of air pollution; permits required;* NCGS 143–215.107(a)(7), *Air quality standards and classifications;* and NCGS 143–215.6A, 6B, and 6C, *Enforcement procedures: civil penalties, criminal penalties,* and *injunctive relief.*

In this action, EPA is proposing to approve North Carolina's infrastructure SIP for the 2010 1-hour $SO_2$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP for enforcement of $SO_2$ emissions controls and measures and the regulation of minor sources and modifications to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas.

*Enforcement:* NC DAQ's above-described, SIP-approved regulations provide for enforcement of $SO_2$ emission limits and control measures through enforceable permits. In addition, North Carolina cited NCGS 143–215.6A, 6B, and 6C, *Enforcement procedures: civil penalties, criminal penalties,* and *injunctive relief,* which provides NC DENR with the statutory authority to enforce air quality rules that contain requirements for emissions limits and controls.

*Preconstruction PSD Permitting for Major Sources:* With respect to North Carolina's infrastructure SIP submission related to the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), EPA is not proposing any action today regarding these requirements and instead will act on this portion of the submission in a separate action.

*Regulation of minor sources and modifications:* Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2010 1-hour $SO_2$ NAAQS. Regulation 15A NCAC 2Q .0300 *Construction Operation Permits* governs the preconstruction permitting of modifications and construction of minor stationary sources.

EPA has made the preliminary determination that North Carolina's SIP is adequate for enforcement of control measures and regulation of minor sources and modifications related to the 2010 1-hour $SO_2$ NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required

[18] On June 12, 2015, EPA published a final action entitled, ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction.'' *See* 80 FR 33840.

[19] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4''). EPA is not proposing any action in this rulemaking related to the interstate transport requirements of section 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II) (prongs 1 through 4).

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement. 15A NCAC 2D .0530 *Prevention of Significant Deterioration* and 15A NCAC 2D .0531 *Sources of Nonattainment Areas* provide how NC DAQ will notify neighboring states of potential impacts from new or modified sources consistent with the requirements of 40 CFR 51.166. These regulations require NC DAQ to provide an opportunity for a public hearing to the public, which includes state or local air pollution control agencies, ''whose lands may be affected by emissions from the source or modification'' in North Carolina. In addition, North Carolina does not have any pending obligation under sections 115 and 126 of the CAA. Accordingly, EPA has made the preliminary determination that North Carolina's SIP is adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2010 1-hour $SO_2$ NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve North Carolina's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). EPA approved North Carolina's infrastructure submission for sub-element (E)(ii) on November 3, 2015. *See* 80 FR 67645. EPA's rationale for today's proposal respecting sub-elements (i) and (iii) is described in turn below.

To satisfy the requirements of sections 110(a)(2)(E)(i) and (iii), North Carolina's infrastructure SIP submission cites several regulations. Rule 15A NCAC 2Q. 0200 ''*Permit Fees,''* provides the mechanism by which stationary sources that emit air pollutants pay a fee based on the quantity of emissions. State statutes NCGS 143–215.3, *General powers of Commission and Department: auxiliary powers,* and NCGS 143–215.107(a)(1), *Air quality standards and classifications,* provide the EMC with the statutory authority ''[t]o prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.'' NCGS 143–215.112, *Local air pollution control programs,* provides the EMC with the statutory authority ''to review and have general oversight and supervision over all local air pollution control programs.'' North Carolina has three local air agencies located in Buncombe, Forsyth, and Mecklenburg Counties that implement the air program in these areas.

In addition, the requirements of 110(a)(2)(E)(i) and (iii) are met when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under state law has been used to carry out the state's implementation plan and related issues. NC DAQ's authority is included in all prehearings and final SIP submittal packages for approval by EPA. NC DAQ is responsible for submitting all revisions to the North Carolina SIP to EPA for approval.

As further evidence of the adequacy of NC DAQ's resources, EPA submitted a letter to North Carolina on March 9, 2015, outlining 105 grant commitments and the current status of these commitments for fiscal year 2014. The letter EPA submitted to North Carolina can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0150. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. North Carolina satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2014, therefore North Carolina's grants were finalized and closed out. Collectively, these rules and commitments provide evidence that NC DAQ has adequate personnel, funding, and legal authority to carry out the State's implementation plan and related issues. EPA has made the preliminary determination that North Carolina has adequate resources and authority to satisfy sections 110(a)(2)(E)(i) and (iii) of the 2010 1-hour $SO_2$ NAAQS.

With respect to North Carolina's infrastructure SIP submission related to the state board requirements of section 110(a)(2)(E)(ii), EPA is not proposing any action today as the Agency has already approved this portion of the submission in a separate action. *See* 80 FR 67645. 7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. North Carolina's infrastructure SIP submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis. NC DAQ uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. North Carolina meets these requirements through 15A NCAC 2D .0604 *Exceptions to Monitoring and Reporting Requirements;* 15A NCAC 2D .0605 *General Recordkeeping and Reporting Requirements;* 15A NCAC 2D .0611 *Monitoring Emissions from Other Sources;* 15A NCAC 2D .0612 *Alternative Monitoring and Reporting Procedures;* 15A NCAC 2D .0613 *Quality Assurance Program;* and 15A NCAC 2D .0614 *Compliance Assurance Monitoring.* In addition, 15A NCAC 2D .0605(c) *General Recordkeeping and Reporting Requirements* allows for the use of credible evidence in the event that the NC DAQ Director has evidence that a source is violating an emission standard or permit condition, the Director may require that the owner or operator of any source submit to the Director any information necessary to determine the compliance status of the source. In addition, EPA is unaware of any provision preventing the use of credible evidence in the North Carolina SIP. Also, NCGS 143–215.107(a)(4), *Air*

*quality standards and classifications,* provides the EMC with the statutory authority ''To collect information or to require reporting from classes of sources which, in the judgment of the [EMC], may cause or contribute to air pollution.''

Stationary sources are required to submit periodic emissions reports to the State by Rule 15A NCAC 2Q .0207 ''Annual Emissions Reporting.'' North Carolina is also required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data. *See* 73 FR 76539. The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, $SO_2$, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. North Carolina made its latest update to the 2011 NEI on June 3, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that North Carolina's SIP and practices are adequate for the stationary source monitoring systems obligations for the 2010 1-hour $SO_2$ NAAQS. Accordingly, EPA is proposing to approve North Carolina's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) *Emergency powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. North Carolina's infrastructure SIP submission cites 15A NCAC 2D .0300 *Air Pollution Emergencies* as identifying air pollution emergency episodes and preplanned abatement strategies, and provides the means to implement emergency air pollution episode measures. Under NCGS 143–215.3(a)(12), *General powers of Commission and Department; auxiliary powers,* if NC DENR finds that such a ''condition of . . . air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department [NC DENR] with the concurrence of the Governor, shall order persons causing or contributing to the . . . air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes.'' In addition, NCGS 143–215.3(a)(12) provides NC DENR with the authority to declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. This statute also allows, in the absence of a generalized condition of air pollution, should the Secretary find ''that the emissions from one or more air contaminant sources . . . is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants . . . or to take such other measures as are, in his judgment, necessary.'' EPA has made the preliminary determination that North Carolina's SIP and practices are adequate to satisfy the emergency powers obligations of the 1-hour $SO_2$ NAAQS.

9. 110(a)(2)(H) *SIP revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. NC DAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in North Carolina. NCGS 143–215.107(a)(1) and (a)(10) grant NC DAQ the authority to prepare and develop, after proper study, a comprehensive plan for the prevention of air pollution and implement the CAA, respectively. These provisions also provide NC DAQ the ability and authority to respond to calls for SIP revisions, and North Carolina has provided a number of SIP revisions over the years for implementation of the NAAQS. In addition, State regulation 15A NCAC 2D .2401(d) states that ''The EMC may specify through rulemaking a specific emission limit lower than that established under this rule for a specific source if compliance with the lower emission limit is required to attain or maintain the ambient air quality standard for ozone or $PM_{2.5}$ or any other ambient air quality standard in Section 15A NCAC 2D .0400.'' EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2010 1-hour $SO_2$ NAAQS, when necessary.

10. 110(a)(2)(J) *Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve North Carolina's infrastructure SIP for the 2010 1-hour $SO_2$ NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, and the public notification requirements of section 127. With respect to North Carolina's infrastructure SIP submission related to the preconstruction PSD permitting, EPA is not proposing any action today regarding these requirements and instead will act on these portions of the submission in a separate action. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility is described below.

*Consultation with government officials (121 consultation):* Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. 15A NCAC 2D.1600 *General Conformity,* 15A NCAC 2D .2000 *Transportation Conformity,* and 15A NCAC 2D .0531 *Sources in Nonattainment Areas,* along with the State's Regional Haze Implementation Plan, provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Specifically, North Carolina adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. These consultation procedures were developed in coordination with the transportation partners in the State and are consistent with the approaches used for development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the

consultation procedures requires NC DAQ to consult with Federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. The Regional Haze SIP provides for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate that the State meets applicable requirements related to consultation with government officials for the 2010 1-hour $SO_2$ NAAQS when necessary for the consultation with government officials element of section 110(a)(2)(J).

*Public notification (127 public notification):* Rule 15A NCAC 2D .0300 *Air Pollution Emergencies* provides North Carolina with the authority to declare an emergency and notify the public accordingly when it finds a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Additionally, the NC DAQ has the North Carolina Air Awareness Program which is a program to educate the public on air quality issues and promote voluntary emission reduction measures. The NC DAQ also features a Web page providing ambient monitoring information regarding current and historical air quality across the State at *http://www.ncair.org/monitor/.* North Carolina participates in the EPA AirNOW program, which enhances public awareness of air quality in North Carolina and throughout the country. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2010 1-hour $SO_2$ NAAQS when necessary for the public notification element of section 110(a)(2)(J).

*Visibility protection:* EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. NC DENR referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so NC DENR does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that North Carolina's infrastructure SIP submission is approvable for the visibility protection element of section 110(a)(2)(J) related to the 2010 1-hour $SO_2$ NAAQS and that North Carolina does not need to rely on its regional haze program to satisfy this element.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. This infrastructure requirement is met through emissions data collected through 15A NCAC 2D .0600 *Monitoring: Recordkeeping: Reporting* (authorized under NCGS 143–215.107(a)(4)), which provides information to model potential impact of major and some minor sources. 15A NCAC 2D .0530 *Prevention of Significant Deterioration* and 15A NCAC 2D .0531 *Sources in Nonattainment Areas* require that air modeling be conducted in accordance with 40 CFR part 51, Appendix W, *Guideline on Air Quality Models.* These regulations demonstrate that North Carolina has the authority to perform air quality modeling and to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2010 1-hour $SO_2$ NAAQS. The NC DAQ currently has personnel with training and experience to conduct source-oriented dispersion modeling that would likely be used in $SO_2$ NAAQS applications with models approved by EPA. Additionally, North Carolina participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2010 1-hour $SO_2$ NAAQS, for the Southeastern states. Taken as a whole, North Carolina's air quality regulations and practices demonstrate that NC DAQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS has been promulgated, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2010 1-hour $SO_2$ NAAQS.

12. 110(a)(2)(L) *Permitting fees:* This element necessitates that the SIP require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

To satisfy these requirements, North Carolina's infrastructure SIP submission cites Regulation 15A NCAC 2Q .0200 *Permit Fees,* which requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a sufficient fee to cover the costs of the permitting program. The 15A NCAC 2D .0500 and 2Q .0500 rules contain the State's title V program which includes provisions to implement and enforce PSD and NNSR permits once these permits have been issued. The fees collected under 15A NCAC 2Q .0200 also support this activity. NCGS 143–215.3, *General powers of Commission and Department; auxiliary Powers,* provides the State the statutory authority for NC DAQ to require a processing fee in an amount sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. EPA has made the preliminary determination that North Carolina's SIP and practices adequately provide for permitting fees related to the 2010 1-hour $SO_2$ NAAQS, when necessary.

13. 110(a)(2)(M) *Consultation and Participation by Affected Local Entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. 15A NCAC 2D .0530 *Prevention of Significant Deterioration* requires that NC DENR notify the public, including affected local entities, of PSD permit applications and associated information related to PSD permits, and the opportunity for comment prior to making final permitting decisions. NCGS 150B–21.1 and 150B–21.2 authorize and require NC DAQ to advise, consult, cooperate and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries

affected by the provisions of this act, rules, or policies of the Department. Also, 15A NCAC 2D .2000 *Transportation Conformity* requires a consultation with all affected partners to be implemented for transportation conformity determinations. Furthermore, NC DAQ has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP, Regional Haze Implementation Plan, and the 8-Hour Ozone Attainment Demonstration for the North Carolina portion of the Charlotte-Gastonia-Rock Hill NC–SC nonattainment area. Additionally, the NC DAQ organizes stakeholder meetings to support SIP development and rulemakings. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour $SO_2$ NAAQS, when necessary.

## V. Proposed Action

EPA is proposing to approve that portions of NC DAQ's infrastructure SIP submission, submitted March 18, 2014, for the 2010 1-hour $SO_2$ NAAQS, has met the above described infrastructure SIP requirements. The PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), will not be addressed by EPA at this time. EPA has already taken action to approve North Carolina's infrastructure SIP submission related to section 110(a)(2)(E)(ii) for the 2010 $SO_2$ NAAQS. EPA is proposing to approve these portions of North Carolina's infrastructure SIP submission for the 2010 1-hour $SO_2$ NAAQS because these aspects of the submission are consistent with section 110 of the CAA.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

## List of Subjects in 40 CFR Part 52

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

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

Dated: February 11, 2016.

**Heather McTeer Toney,**

*Regional Administrator, Region 4.*

[FR Doc. 2016–03897 Filed 2–24–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[EPA–HQ–OAR–2014–0492; FRL–9940–75–OAR]**

**RIN 2060–AR97**

## Clarification of Requirements for Method 303 Certification Training

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing revisions to better define the requirements associated with conducting Method 303 training courses. In the ''Rules and Regulations'' section of this issue of the **Federal Register**, we are approving the revisions to Method 303 as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule. Method 303 is an air pollution test method used to determine the presence of visible emissions (VE) from coke ovens. This action adds language that further clarifies the criteria used by the EPA to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method. These changes will help entities interested in conducting the required training courses by clearly defining the requirements necessary to do so.

**DATES:** Written comments must be received by March 28, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0492, to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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 *http://www2.epa.gov/dockets/commenting-epa-dockets*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kim Garnett, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–1158; fax number: (919) 541–0516; email address: *garnett.kim@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Why is the EPA issuing this proposed rule?

This document proposes to take action on the requirements associated with conducting Method 303 training courses. Method 303 is an air pollution test method used to determine the presence of visible emissions (VE) from coke ovens. We have published a direct final rule approving the revisions to Method 303 in the ''Rules and Regulations'' section of this issue of the **Federal Register** because we view this as a non-controversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble of the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule, and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

## II. Does this action apply to me?

This action applies to you if you are a potential provider of Method 303 training services, someone seeking training to conduct Method 303, or a facility subject to Method 303.

Method 303 is applicable for the determination of VE from the following by-product coke oven battery sources: Charging systems during charging; doors, topside port lids, and offtake systems on operating coke ovens; and collecting mains. This method is also applicable for qualifying observers for visually determining the presence of VE. This action adds language that further clarifies the criteria used by the EPA to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method.

## III. Environmental Justice

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rulemaking does not relax the control measures on sources regulated by the proposed rule and, therefore, will not cause emissions increases from these sources.

## IV. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. This action better defines the requirements associated with conducting Method 303 training courses and does not impose additional regulatory requirements on sources.

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action better defines the requirements associated with conducting Method 303 training courses and does not impose additional regulatory requirements on sources.

### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of $100 million or more for as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action adds additional language that clarifies the criteria used by the EPA to determine the competency of training providers, but does not change the requirements for conducting the test method.

### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action clarifies the criteria used by the EPA to determine the competency of training providers, but does not change the requirements for conducting the test method.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175. This action clarifies the criteria used by the EPA to determine the competency of training providers, but does not change the requirements for conducting the test method. Thus, Executive Order 13175 does not apply to this action.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

### *J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in the **SUPPLEMENTARY INFORMATION** section of

the preamble titled ''III. Environmental Justice.''

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Test methods.

Dated: February 12, 2016.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, the EPA proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

## PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. In Appendix A, amend Method 303:
■ a. In section 5.0 by revising paragraph 5.2; and
■ b. In section 10.0 by:
■ i. Revising paragraphs 10.1, 10.1.1, 10.1.2, and 10.1.3;
■ ii. Adding paragraphs 10.1.4, 10.1.5, 10.1.6, and 10.1.7; and
■ iii. Revising paragraph 10.2.

The revisions and additions read as follows.

**Appendix A to Part 63—Test Methods**

* * * * *

**Method 303—Determination Of Visible Emissions From By-Product Coke Oven Batteries**

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*5.0 Safety*

* * * * *

5.2 Safety Training. Because coke oven batteries have hazardous environments, the training materials and the field training (section 10.0) shall cover the precautions required to address health and safety hazards.

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*10.0 Calibration and Standardization*

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10.1 Certification Procedures. This method requires only the determination of whether VE occur and does not require the determination of opacity levels; therefore, observer certification according to Method 9 in appendix A to part 60 of this chapter is not required to obtain certification under this method. However, in order to receive Method 303 observer certification, the first-time observer (trainee) shall have attended the lecture portion of the Method 9 certification course. In addition, the trainee shall successfully complete the Method 303 training course, satisfy the field observation requirement, and demonstrate adequate performance and sufficient knowledge of Method 303. The Method 303 training provider and course shall be approved by the Administrator and shall consist of classroom instruction, field training, and a proficiency test. In order to apply for approval as a Method 303 training provider, an applicant must submit their credentials and the details of their Method 303 training course to Group Leader, Measurement Technology Group (E143–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. Those details should include, at a minimum:

(a) A detailed list of the provider's credentials.

(b) An outline of the classroom and the field portions of the class.

(c) Copies of the written training and lecture materials, to include:

(1) The classroom audio-visual presentation(s).

(2) A classroom course manual with instructional text and practice questions and problems for each of the elements of the Method 303 inspection (*i.e.,* charging, doors, lids and offtakes, and collecting mains). A copy of Method 303 and any related guidance documents should be included as appendices.

(3) A copy of the Method 303 demonstration video, if not using the one available on the EPA Web site: *http://www3.epa.gov/ttn/emc/methods/method303trainingvideo.mp4.*

(4) Multiple-choice certification tests, with questions sufficient to demonstrate knowledge of the method, as follows: One (1) initial certification test and three (3) third-year recertification tests (the questions on any one recertification test must be at least 25 percent different from those on the other recertification tests).

(5) A field certification checklist and inspection forms for each of the elements of the Method 303 inspection (*i.e.,* charging, doors, lids and offtakes, and collecting mains).

(6) The criteria used to determine proficiency.

(7) The panel members to be utilized (see Section 10.1.3) along with their qualifications.

(8) An example certificate of successful course completion.

10.1.1 A trainee must verify completion of at least 12 hours of field observation prior to attending the Method 303 certification course. Trainees shall observe the operation of a coke oven battery as it pertains to Method 303, including topside operations, and shall also practice conducting Method 303 or similar methods. During the field observations, trainees unfamiliar with coke battery operations shall receive instruction from an experienced coke oven observer who is familiar with Method 303 or similar methods and with the operation of coke batteries.

10.1.2 The classroom instruction shall familiarize the trainees with Method 303 through lecture, written training materials, and a Method 303 demonstration video. Successful completion of the classroom portion of the Method 303 training course shall be demonstrated by a perfect score on the initial certification test. Those attending the course for third-year recertification must complete one of the recertification tests selected at random.

10.1.3 All trainees must demonstrate proficiency in the application of Method 303 to a panel of three certified Method 303 observers, including an ability to differentiate coke oven emissions from condensing water vapor and smoldering coal. The panel members will be EPA, state or local agency personnel, or industry contractors listed in 59 FR 11960 (March 15, 1994) or qualified as part of the training provider approval process of Section 10.1 of this method.

Each panel member shall have at least 120 days experience in reading visible emissions from coke ovens. The visible emissions inspections that will satisfy the experience requirement must be inspections of coke oven battery fugitive emissions from the emission points subject to emission standards under subpart L of this part (*i.e.,* coke oven doors, topside port lids, offtake system(s), and charging operations), using either Method 303 or predecessor state or local test methods. A ''day's experience'' for a particular inspection is a day on which one complete inspection was performed for that emission point under Method 303 or a predecessor state or local method. A ''day's experience'' does not mean 8 or 10 hours performing inspections, or any particular time expressed in minutes or hours that may have been spent performing them. Thus, it would be possible for an individual to qualify as a Method 303 panel member for some emission points, but not others (*e.g.,* an individual might satisfy the experience requirement for coke oven doors, but not topside port lids). Until November 15, 1994, the EPA may waive the certification requirement (but not the experience requirement) for panel members. The composition of the panel shall be approved by the EPA.

The panel shall observe the trainee in a series of training runs and a series of certification runs. There shall be a minimum of 1 training run for doors, topside port lids, and offtake systems,

and a minimum of 5 training runs (*i.e.,* 5 charges) for charging. During training runs, the panel can advise the trainee on proper procedures. There shall be a minimum of 3 certification runs for doors, topside port lids, and offtake systems, and a minimum of 15 certification runs for charging (*i.e.,* 15 charges). The certification runs shall be unassisted. Following the certification test runs, the panel shall approve or disapprove certification based on the trainee's performance during the certification runs. To obtain certification, the trainee shall demonstrate to the satisfaction of the panel a high degree of proficiency in performing Method 303. To aid in evaluating the trainee's performance, a checklist, approved by the EPA, will be used by the panel members.

10.1.4 Those successfully completing the initial certification or third-year recertification requirements shall receive a certificate showing certification as a Method 303 observer and the beginning and ending dates of the certification period.

10.1.5 The training provider will submit to the EPA or its designee the following information for each trainee successfully completing initial certification or third-year recertification training: Name, employer, address, telephone, cell and/or fax numbers, email address, beginning and ending dates of certification, and whether training was for 3-year certification or 1-year recertification. This information must be submitted within 30 days of the course completion.

10.1.6 The training provider will maintain the following records, to be made available to EPA or its designee on request (within 30 days of a request):

(a) A file for each Method 303 observer containing the signed certification checklists, certification forms and test results for their initial certification, and any subsequent third-year recertifications. Initial certification records must also include documentation showing successful completion of the training prerequisites. Testing results from any interim recertifications must also be included, along with any relevant communications.

(b) A searchable master electronic database of all persons for whom initial certification, third-year recertification or interim recertification has been provided. Information contained therein must include: The observer's name, employer, address, telephone, cell and fax numbers and email address, along with the beginning and ending dates for each successfully completed initial, third-year and interim recertification.

10.1.7 Failure by the training provider to submit example training course materials and/or requested training records to the Administrator may result in suspension of the approval of the provider and course.

10.2 Observer Certification/Recertification. The coke oven observer certification is valid for 1 year. The observer shall recertify annually by reviewing the training material, viewing the training video and answering all of the questions on the recertification test correctly. Every 3 years, an observer shall be required to pass the proficiency test in Section 10.1.3 in order to be certified. The years between proficiency tests are referred to as interim years.

* * * * *

[FR Doc. 2016–03758 Filed 2–24–16; 8:45 am]

**BILLING CODE 6560–50–P**

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1630

### Cost Standards and Procedures; Property Acquisition and Management Manual

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of rulemaking workshops, request for expressions of interest in participating in the rulemaking workshops, initiation of open comment period.

**SUMMARY:** The Operations and Regulations Committee (Committee) of the Board of Directors for the Legal Services Corporation (LSC) is conducting three rulemaking workshops (Workshops) and is requesting public comments on revising LSC's Cost Standards and Procedures rule, 45 CFR part 1630, and LSC's Property Acquisition and Management Manual (PAMM). The discussions in the Workshops and the other comments received will be considered in connection with rulemaking by LSC. LSC is soliciting expressions of interest in participating as a panelist in the Workshops from LSC grantees and other interested stakeholders with relevant experience, such as other funders of civil legal aid programs.

**DATES:** Expressions of interest in participating in the Rulemaking Workshops for Part 1630 and the PAMM must be received by 5:30 p.m. EST on March 17, 2016. The dates of the Workshops are:

1. April 20, 2016, 1:30 p.m. to 4:30 p.m. EST, Washington, DC.

2. May 18, 2016, 1:30 p.m. to 4:30 p.m. EST, Washington, DC.

3. June 15, 2016, 1:30 p.m. to 4:30 p.m. EST, Washington, DC.

See the **SUPPLEMENTARY INFORMATION** section for additional relevant dates.

**ADDRESSES:** Expressions of interest may be submitted by any of the following methods:

*Email: lscrulemaking@lsc.gov*. Include ''1630/PAMM Workshops'' in the subject line of the message.

*Fax:* 202–337–6519.

*Mail:* Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007.

*Hand Delivery/Courier:* Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007.

*Instructions:* All submissions must include the subject ''1630/PAMM Workshops. For detailed instructions on submitting expressions of interest in participating as a panelist in the Workshops or on submitting comments about the topics to be discussed in the Workshops, please see Sections VI. and VII. of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007; (202) 295–1563 (phone); 202–337–6519 (fax); or *sdavis@lsc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On July 16, 2015, LSC management (Management) presented the Committee with a Justification Memorandum recommending publication of an advance notice of proposed rulemaking (ANPRM) to seek public comment on possible revisions to 45 CFR part 1630—Cost Standards and Procedures, and LSC's Property Acquisition and Management Manual (PAMM). Management stated that collecting input from LSC funding recipients through an ANPRM would aid LSC significantly in determining the scope of the rulemaking and in developing a more accurate understanding of the potential costs and benefits of certain revisions. The Committee voted to recommend that the Board approve Management's recommendation and authorize LSC to open rulemaking for Part 1630 and the PAMM. On July 18, 2015, the LSC Board authorized rulemaking and approved the preparation of an ANPRM to revise Part 1630 and the PAMM. On October 9, 2015, LSC published an ANPRM seeking public comment on the proposed changes to Part 1630 and the PAMM. 80 FR 61142, Oct. 9, 2015. The comment period closed on December 8, 2015.

LSC received comments from the National Legal Aid and Defender Association (NLADA), Colorado Legal Services (CLS), and the Northwest Justice Project (NJP). The comments generally expressed concerns about the following: The disparity and potential conflict between LSC's proposed changes and the requirements imposed by recipients' other funders; expanding the prior approval requirements of 45 CFR 1630.5 and Section 3 of the PAMM to include aggregate purchases exceeding a certain dollar threshold; and the proposal to regulate the awarding of service contracts and the disposition of real and personal property by organizations that receive LSC funds. Additionally, NLADA recommended that LSC engage its grantees in additional discussions about the impact that the proposed changes would have on the grantees' operations before drafting a proposed rule.

LSC's Rulemaking Protocol contemplates using rulemaking workshops or negotiated rulemaking when one of those vehicles is appropriate to help LSC gather additional information before drafting a proposed rule. LSC believes that rulemaking workshops will provide an opportunity for LSC funding recipients to more effectively share their views on LSC's proposed changes to part 1630 and the PAMM and to elaborate on the comments received in response to the ANPRM. On January 28, 2016, the Committee voted to approve rulemaking workshops for LSC's rulemaking on Part 1630 and the PAMM.

**IV. Topics for Discussion**

The following three topics will be addressed during the Workshops. Each Workshop will focus on one of the topics and may use any or all of the potential items for discussion to direct the discussion.

Topic 1: Requirements of Other Funders. How do LSC's proposed changes to its cost standards and procedures and property acquisition and disposition requirements interact with the requirements imposed by recipients' other funders, including the requirements governing intellectual property created using various sources of funding?

Potential Items for Discussion on Topic 1:

- Generally, do other funders require recipients to provide notice and/or seek prior approval for the acquisition and disposition of real property and personal property? If so, what processes and documentation do the funders require?
- Do LSC's proposed changes to Part 1630 and the PAMM directly conflict with the requirements of other funders? If so, how?
- Do other funders require recipients to seek prior approval for procurements of goods and services? If so, what procedures must recipients follow to seek approval?
- Do other funders require recipients to seek prior approval for purchases of single items above a certain threshold amount? If so, what is that threshold amount?
- Do other funders require recipients to seek prior approval for purchases of multiple items when the aggregate cost of the items exceeds a certain dollar threshold? If so, what is that threshold amount?
- How can LSC structure its prior approval process to more closely align with the requirements imposed by other funders?
- What are the requirements of other funders with respect to the use and ownership of products, data, or intellectual property developed with their funds? For example, do other funders reserve rights in intellectual property developed with their funds, or require recipients to display the funder's identity on products such as Web sites or brochures?
- How do LSC's cost standards compare and interact with cost standards imposed by recipients' other funders?

Topic 2: LSC's Proposals. In the ANPRM, LSC proposed to regulate services contracts. LSC also proposed to require recipients to seek prior approval of aggregate purchases of personal property, acquisitions of personal and real property purchased or leased using LSC funds, and disposal of real or personal property purchased or leased using LSC funds.

Potential Items for Discussion on Topic 2:

- What are the administrative costs (in terms of dollars, time, and resources) of obtaining prior approval from LSC with respect to property acquisition and disposition? How can LSC revise its prior approval process to lessen these administrative costs?
- How can LSC clarify when recipients must seek prior approval to acquire and dispose of real and personal property?
- If LSC raises the threshold amount at which single purchases of personal property require prior approval, what other changes, if any, should LSC make to part 1630 to accompany this increase?
- Should LSC adopt a separate and distinct prior approval threshold amount for aggregate purchases of personal property?
- If LSC proposes to require prior approval for purchases of multiple items whose aggregate value exceeds a certain dollar amount threshold, should LSC limit the types of purchases subject to this prior approval requirement? For example, should LSC require recipients to seek prior approval for purchases of multiple computers, printers, or pieces of furniture exceeding a certain dollar amount, but not require recipients to seek prior approval for multiple purchases of units of printer paper or similar office supplies?
- Should LSC require recipients to seek instructions for disposition of real or personal property if the fair market value of the property exceeds a certain dollar threshold? If so, what should the threshold be?
- Should LSC require recipients to seek disposition instructions from LSC before disposing of personal or real property acquired with LSC funds? If so, what factors should LSC consider when establishing such instructions?

Topic 3: Establishing Standards based on the Office of Management and Budget's (OMB) Uniform Guidance. LSC proposed to establish minimum standards for recipients' procurement policies based on the OMB Uniform Guidance. LSC also proposed to revise part 1630 for consistency with the Uniform Guidance, where appropriate.

Potential Items for Discussion on Topic 3:

- Generally, what are the existing procurement policies that recipients currently have in place to maintain internal controls regarding purchases and compliance with LSC's rules in part 1630 and the PAMM?
- Do recipients have different procurement policies for real property, personal property, and services?
- Should LSC establish minimum standards for procurement policies for recipients to use for acquisitions of personal property when the acquisition costs exceed a certain threshold amount?
- What changes would recipients have to make to their policies if LSC adopted minimum standards for recipients' procurement policies based on OMB's Uniform Guidance in 2 CFR part 200? If LSC were to model its revised procurement standards based on the standards in the OMB Uniform Guidance, would LSC's policy conflict with the requirements of other funders?

**V. Nature of the Workshops**

Rulemaking workshops enable LSC to meet with interested parties to discuss, but not negotiate, proposed LSC rules

and regulations. Workshops for part 1630 and the PAMM will consist of three publicly noticed meetings of the Committee with the participation of Management, invited stakeholder representatives, and other interested and well-informed parties to discuss the three topics outlined above. During the Workshops, the panelists and participants will hold open discussions, moderated by a member of the Committee (or other person designated by the Committee chair), to share ideas regarding how to revise Part 1630 and the PAMM.

LSC will host three Rulemaking Workshops at its headquarters, 3333 K Street NW., Washington, DC 20007. The first Workshop will be held on April 20, 2016, and will focus on the first topic for discussion. The second workshop will be held on May 18, 2016 and will focus on the second topic for discussion. The third Workshop will be held on June 15, 2016 and will focus on the third topic for discussion. LSC will consider accommodating panelists who are unable to attend in person electronically via telephone or webinar. LSC will publish additional details regarding the time, webinar and call-in information, and agenda for each Workshop at least one week prior to the scheduled date of the Workshop.

## VI. Composition of Workshops

The Workshops will be in the form of a panel discussion consisting of Committee members, LSC staff members, Office of Inspector General (OIG) staff members, and a select number of interested stakeholders selected by LSC. LSC will select participants for each workshop to participate as members of the Workshop panel. LSC will seek to select panelists to create diversity in terms of organizational size, service area and geographic location, funding sources, and percentage of funding received from LSC. Some participants may be selected to participate in more than one workshop. Interested persons should submit an expression of interest according to the instructions outlined below.

LSC is inviting expressions of interest in participating on Workshop panels from its grantees and other stakeholders with relevant experience. LSC is particularly interested receiving expressions of interest from Executive Directors and accounting and finance personnel of LSC funding recipients. Panelists should have experience in handling procurements for LSC funding recipients and applying LSC's cost standards and procedures. Additionally, LSC is interested in receiving expressions of interest from other funders of civil legal aid programs, including private foundations and federal, state, and local governments, to participate in the first workshop. Persons interested in participating as panelists should submit expressions of interest including, at a minimum: (1) A brief biographical statement, (2) a brief statement of relevant experience in applying and/or implementing the requirements of part 1630 and the PAMM, and (3) the specific workshop(s) in which the prospective panelist is interested in attending.

Expressions of interest in participating as a panelist should be submitted, in writing, to Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation; via email to *sdavis@lsc.gov*; via fax to 202–337–6519; or by mail or courier/hand delivery 3333 K Street NW., Washington, DC 20007. Expressions of interest must be received by LSC by 5:30 p.m. EST on the date provided in the **DATES** section. LSC will select panelists shortly after the deadline and will inform all those who expressed interest whether or not they have been selected.

Prior to each meeting, those selected as panelists will be asked to register with LSC to ensure that sufficient arrangements can be made for their participation. Panelists are expected to cover their own expenses (travel, lodging, etc.). LSC may consider providing financial assistance to a panelist for whom travel costs would represent a significant hardship and barrier to participation. Any such person should so note in his/her expression of interest for LSC's consideration. LSC will also consider allowing interested applicants who cannot attend the Workshops in person to participate on the panel remotely.

## VII. Public Participation: Panelists and Open Comment

In addition to the panel, LSC encourages observation and participation by all interested individuals and organizations. The Workshops will be open to public observation, and portions of the Workshop will be open for public comment from in-person, webinar, and telephone participants. The meeting agenda will include opportunities for individuals in attendance who are not members of the panel to participate in person, by webinar, or via telephone, as well as incorporating previously submitted written comments by those unable to attend. LSC will transcribe the meetings and make the webinar available on its Web site.

Through this notice, LSC is also opening a written comment period. LSC welcomes written comments during the comment period and will consider the comments received in the rulemaking process. Written comments received prior to the Workshops may be addressed in the Workshops. Written comments are requested by the following dates:

1. April 8, 2016 for LSC to consider including in the first Workshop discussion.

2. May 6, 2016 for LSC to consider including in the second Workshop discussion.

3. June 3, 2016 for LSC to consider including in the third Workshop discussion. All other written comments must be received by July 15, 2016. Written comments submitted to LSC must be in .pdf format (if submitted electronically) and sent to *sdavis@lsc.gov*. If delivered via facsimile, mail, or courier/hand delivery, please address the comments to: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007; (202) 337–6519 (fax). LSC will not consider comments sent by any method or received after the end of the comment period.

## VIII. Important Notes

Information received in response to this Notice of Rulemaking Workshops and Request for Expressions of Interest in Participation in the Rulemaking Workshops may be published or summarized by LSC without acknowledgement of or permission from you or your organization. Furthermore, your responses may be releasable to the public under the LSC's adoption of the Freedom of Information Act (FOIA), 42 U.S.C. 2996d, and the LSC FOIA regulation, 45 CFR part 1602. LSC, at its discretion, may request individual commenters to elaborate on information in their written comments.

Dated: February 19, 2016.

**Stefanie K. Davis,**

*Assistant General Counsel.*

[FR Doc. 2016–03954 Filed 2–24–16; 8:45 am]

**BILLING CODE 7050–01–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

**[Docket No. 151201999–6115–01]**

**RIN 0648–BF51**

## Standardized Bycatch Reporting Methodology

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The National Marine Fisheries Service proposes a rule to implement the requirement under the Magnuson-Stevens Fishery Conservation and Management Act that all fishery management plans (FMPs) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in a fishery. The proposed rule provides guidance to regional fishery management councils and the Secretary of Commerce regarding the development, documentation, and review of such methodologies, commonly referred to as Standardized Bycatch Reporting Methodologies (SBRMs).

**DATES:** Comments must be received by April 25, 2016.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2016–0002, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0002* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Karen Abrams, National Marine Fisheries Service, 1315 East West Highway, SSMC3–OSF–SF3, Silver Spring, MD 20910.

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

**FOR FURTHER INFORMATION CONTACT:** Karen Abrams 301–427–8508.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 303(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1853(a)) describes 15 required provisions of any fishery management plan (FMP) prepared by a regional fishery management council or the Secretary of Commerce with respect to any fishery (hereafter ''Council'' includes the regional fishery management councils and the Secretary of Commerce, as appropriate (*see* 16 U.S.C. 1854(c) and (g)). This proposed rule focuses on section 303(a)(11), which requires that all FMPs establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. The section 303(a)(11) standardized reporting methodology is commonly referred to as a ''Standardized Bycatch Reporting Methodology'' (SBRM), and this proposed rule defines, interprets, and provides guidance on the basic requirements for the SBRM.

Section 303(a)(11) was added to the MSA by the Sustainable Fisheries Act of 1996 (SFA). All FMPs have been amended to reflect the SBRM requirement. The SFA also added a definition for ''bycatch'' (section 3(2), 16 U.S.C. 1802(2)) and National Standard 9 (section 301(a)(9), 16 U.S.C. 1851(a)(9)). The MSA defines ''bycatch'' as fish which are harvested in a fishery, but which are not sold or kept for personal use, and as including economic discards and regulatory discards. The definition of bycatch does not include fish released alive under a recreational catch and release fishery management program. The MSA does not define ''standardized reporting methodology'' or any of the words contained within the phrase. Similar to section 303(a)(11), National Standard 9 (16 U.S.C. 1851(a)(9)) requires that conservation and management measures ''shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.'' However, National Standard 9 does not address SBRM. NMFS has never issued regulations that set forth the agency's interpretation of the SBRM provision.

To implement the 1996 SFA Amendments, NMFS developed advisory guidelines for National Standard 9 (guidelines) in 1998, and further amended the guidelines in 2008. The guidelines provide several clarifications about bycatch requirements under the MSA, but do not directly address SBRM. For example, the guidelines explain that ''bycatch'' includes the discard of whole fish at sea but does not include legally-retained fish kept for personal, tribal or cultural use (50 CFR 600.350(c)). In addition, to facilitate the evaluation of conservation and management measures consistent with National Standard 9, the guidelines call for the development of a database on bycatch and bycatch mortality in the fishery to the extent practicable. The guidelines note that, to comply with National Standard 9 and MSA sections 303(a)(11) (SBRM) and (12) (catch and release), a review and, where necessary, improvement of data collection methods, data sources and applications must be initiated for each fishery to assess bycatch and bycatch mortality. *See* 50 CFR 600.350(d)(1).

In 2004, NMFS published *Evaluating Bycatch: A National Approach to Standardized Bycatch Monitoring Programs* (NOAA Technical Memorandum NMFS–F/SPO–66, October 2004, hereafter referred to as *Evaluating Bycatch*), a report that was prepared by the agency's National Working Group on Bycatch (available at *http://www.nmfs.noaa.gov/by_catch/SPO_final_rev_12204.pdf*). The report discusses regional bycatch and fisheries issues, the advantages and disadvantages of different reporting/monitoring measures, and precision goals for bycatch estimates. *See Evaluating Bycatch* at Chapters 3, 4, and 5. However, *Evaluating Bycatch* addresses more than bycatch as defined under the MSA; it also addresses interactions with species protected under the Endangered Species Act and Marine Mammal Protection Act. The report also acknowledges that its goals ''may in some instances exceed minimum statutory requirements.'' *See Evaluating Bycatch* at Appendix 5. In summary, the report does not provide the agency's interpretation of the basic requirements of complying with MSA section 303(a)(11).

### Purpose and Scope

This proposed rule, which is promulgated pursuant to MSA section 305(d) (16 U.S.C. 1855(d)), is intended to establish national requirements and

guidance for establishing and reviewing SBRMs under section 303(a)(11) of the MSA. This rule solely addresses reporting methodology requirements pertaining to ''bycatch'' as defined under the MSA. (*See* the Background subheading for a definition.) The Endangered Species Act and the Marine Mammal Protection Act create additional, important bycatch-related responsibilities for NOAA Fisheries, but discussion of such responsibilities is beyond the scope of this proposed rule. As explained below, there are several reasons why NMFS is undertaking this rulemaking.

NMFS has never issued regulations that set forth the basic requirements of the SBRM provision of section 303(a)(11). Although the National Standard 9 guidelines and *Evaluating Bycatch* discuss the SBRM provision, neither provides an interpretation of, or purports to set forth the basic requirements for complying with, the provision. In the absence of a national SBRM regulation, some Councils appear to have adopted the recommendations in *Evaluating Bycatch* as though they set forth mandatory requirements for a bycatch reporting methodology. Others have not followed the recommendations in *Evaluating Bycatch,* or have adopted only some of them. NMFS believes that the apparent confusion regarding the applicability of the recommendations in *Evaluating Bycatch* necessitates clear guidance regarding what the SBRM provision requires, what is needed for fishery conservation and management, and what is feasible to implement.

In addition, since the 1996 SFA amendments, there have been legal challenges to the SBRMs established in some FMPs. Court decisions have focused largely on the specific allegations and records before the courts, and have addressed only certain aspects of the SBRM provision and the agency's implementation of that provision. Therefore, NMFS believes that a comprehensive analysis of the MSA requirements in section 303(a)(11) through a rulemaking action is necessary in order to prevent inconsistent implementation of the provision, on a region-by-region basis in response to fact-specific litigation.

Finally, public concern about bycatch and public expectations for accessing bycatch information and estimates continues to grow, while concerns from the regulated community about the costs for fishery monitoring and reporting requirements also continues to increase. NMFS intends to address some of these concerns in this action.

**Overview of the Proposed Rule**

As described in detail below, this proposed rule explains the purpose of a standardized bycatch reporting methodology (SBRM), and clarifies the activities associated with the phrase ''standardized reporting methodology'' and the meaning of the term ''standardized.'' This action would require that a standardized reporting methodology be appropriate for a particular fishery, and would provide required and discretionary factors for the Councils to consider when establishing or reviewing a methodology. Recognizing that there may be a future need to adjust how an SBRM is implemented, NMFS also proposes requirements for an adjustment process, if a Council is interested in exploring such a process. Finally, this proposed rule would provide for periodic review of existing SBRMs.

*Purpose of an SBRM*

Proposed section 600.1600 states that the purpose of a standardized reporting methodology is to inform the assessment of the amount and type of bycatch occurring in the fishery for use in developing conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. *See* 16 U.S.C. 1853(a)(11). The text refers to ''inform[ing]'' assessment of bycatch, as the data resulting from an SBRM are used along with other information for bycatch assessment and estimation purposes. (*See Activities Associated with an SBRM,* below, for further explanation.) Proposed section 600.1610(a)(2)(i) requires that the data resulting from the methodology be useful, in conjunction with other relevant sources of data, in meeting the purpose of the methodology as described in section 600.1600 and fishery-specific bycatch objectives. (*See Considerations for Establishing or Reviewing an SBRM,* below, for an explanation of other required and discretionary factors.)

*Activities Associated With an SBRM*

An SBRM could include one or a combination of data collection and reporting programs, such as observer programs, electronic monitoring and reporting technologies, and self-reported mechanisms (*e.g.,* recreational sampling, and industry-reported catch and discards). Proposed section 600.1605(a) defines ''standardized reporting methodology'' with reference to the collection, recording, and reporting of bycatch data in a fishery, which is connected to, but distinct from the methods used to assess bycatch and the development of measures to minimize bycatch or bycatch mortality. NMFS believes that it is important to distinguish between methods to collect and report bycatch data in a fishery with actions to assess and minimize bycatch. This distinction will help clarify the key policy choices and objectives associated with establishing a reporting methodology, so as not to confuse those choices with statistical and technical approaches for estimating bycatch that are inherently scientific and data dependent or the policy choices associated with developing measures to minimize bycatch.

The distinction between data collecting, reporting, etc., and developing management measures is reflected in part in the fact that section 303(a)(11) requires the establishment of SBRMs, and separately, section 303(a)(11) and National Standard 9 requires that FMPs include conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. As a practical matter, there are multiple steps leading to the development of conservation and management measures that address bycatch. First, bycatch data are collected, recorded, and reported pursuant to an SBRM. The *2011 U.S. National Bycatch Report* (NOAA Technical Memorandum NMFS–F/SPO–117E) describes how data from SBRMs are used in combination with other information, such as fishing effort, fishery independent data, and other data (pages 90, 155, 219, 319, 350, and 373), to develop total estimates of bycatch by fishery. Second, bycatch data from an SBRM, as well as other information about the fishery, are used to assess (*e.g.* evaluate or estimate) the amount and type of bycatch in a fishery. A variety of different models can be used to estimate bycatch. The models and combination of data used to estimate bycatch vary from region to region and across fisheries, depending on a variety of factors, including the characteristics of the fishery and the data available to manage the fishery. The resulting estimates are often provided in Stock Assessment and Fishery Evaluation (SAFE) reports. Finally, bycatch data and estimates are used to inform a Council in the development of conservation and management measures to minimize bycatch and bycatch mortality to the extent practicable. (This information may also be used by Councils for other purposes, such as for in-season or post-season management of a fishery, and for stock assessments.)

One source of confusion in *Evaluating Bycatch* is that the report conflates the collection and reporting of bycatch data with the assessment of such data when the report states that ''the combination of data collection and analyses that is used to estimate bycatch in a fishery constitutes the SBRM for the fishery'' (Appendix 5). NMFS does not believe that the estimation methods must be included in an FMP as part of the standardized reporting methodology. However, neither this rule nor the statute precludes discussion of those estimation methods in an FMP.

While defining ''standardized reporting methodology'' as something different than bycatch assessment and management measures, NMFS recognizes the interconnectedness of these steps. This proposed rule addresses the interrelation between these steps by explaining the purpose of SBRM (proposed section 600.1600) and requiring that data resulting from the methodology be useful, in conjunction with other relevant sources of data, in meeting the purpose of the SBRM and fishery-specific bycatch objectives (proposed section 600.1610((a)(2)(i)). (*See Purpose of an SBRM,* above.)

*Meaning of ''Standardized''*

The proposed rule also clarifies that ''standardized'' does not mean that reporting methodologies must be standardized at a regional or national level. Proposed section 600.1605(a) explains that a standardized reporting methodology may vary from one fishery to another (including among fisheries managed in the same FMP). However, the methodology must provide a consistent approach for collecting, recording, and reporting bycatch data within a fishery. For example, a reporting methodology that relies on self-reported logbook data may be appropriate for one fishery, while at-sea observer coverage may be more appropriate for other fisheries. As long as the reporting methodology for a fishery provides for a consistent approach for collecting, recording, and reporting bycatch data for all the participants in that fishery, then the methodology would be considered ''standardized'' under the proposed rule's definition.

*Considerations for Establishing or Reviewing an SBRM*

This proposed rule acknowledges that whether a methodology is appropriate for a fishery will depend on the specific circumstances of the fishery. This proposed rule frames policy choices associated with establishing an SBRM by providing ''required factors'' for establishing or reviewing an SBRM (proposed section 600.1610(a)(2)(i)), and by recommending additional factors that may be considered by the Councils (proposed section 600.1610(a)(2)(ii)).

Proposed section 600.1610(a)(2)(i) states that data resulting from the methodology must be useful, in conjunction with other relevant sources of data, in meeting the purpose of the methodology as described in section 600.1600 and fishery-specific bycatch objectives. This requies a Council, when establishing or reviewing a methodology, to consider the conservation and management objectives of the fishery with respect to bycatch, the data quality associated with the methodology, and information about the characteristics of bycatch in the fishery, when available (such as the amount of bycatch occurring in the fishery, the importance or bycatch in estimating the total mortality of fish stocks, and the importance of bycatch to related ecosystems). Because data resulting from an SBRM will be used, along with other relevant information, to inform the assessment of the amount and type of bycatch occurring in a fishery, a Council should consult with its scientific and statistical committee, advisory panels, and the NOAA science centers, as appropriate, on data elements, reporting frequency, and other design and methodology factors (proposed section 600.1610(b)). Another required consideration when establishing or reviewing a methodology is its feasibility, from cost, technical, and operational perspectives. In addition, the proposed rule requires that each SBRM be designed to be implemented within available funding.

The proposed rule also recognizes that other factors may be relevant to establishing an SBRM. Therefore, proposed section 600.1610(a)(2)(ii) provides that Councils may also consider the overall magnitude and/or economic impact of the fishery, and the scientific methods and techniques available to collect and report bycatch data that could improve the quality of the bycatch estimates.

NMFS recognizes that a court decision held that operational constraints (such as funding) are not an excuse for failing to ''establish'' an SBRM. (*See Oceana* v. *Locke,* 670 F.3d 1238 (D.C. Cir. 2011).) However, NMFS does not believe that this court decision stands for the proposition that costs cannot be taken into consideration at all when developing or revising an SBRM. The case did not discuss National Standard 7, which explicitly requires that conservation and management measures (which would include data collection, recording, and reporting requirements employed under an SBRM) ''where practicable, minimize costs and unnecessary duplication'' (section 301(a)(7), 16 U.S.C. 1851(a)(7)). If the Council proposes an FMP or FMP amendment with an SBRM that is not designed to be implemented within available funding or that is not feasible, NMFS may need to disapprove or partially disapprove that FMP amendment. Therefore, this proposed rule provides that Councils must consider feasibility when establishing or reviewing an SBRM.

Proposed section 600.1610(a)(2)(i) requires that data resulting from the methodology be useful, in conjunction with other relevant sources of data, in meeting the purpose of the methodology as described in section 600.1600 and fishery-specific bycatch objectives. However, proposed section 600.1610(a)(2)(i) does not include specific standards regarding the precision or accuracy of bycatch estimates, as NMFS does not believe that section 303(a)(11) requires that an SBRM produce data that will generate estimates to a particular standard of statistical accuracy or precision. (*See also* 50 CFR 600.350(d)(2), recognizing under National Standard 9 Guidelines that ''[d]ue to limitations on the information available, fishery managers may not be able to generate precise estimates of bycatch and bycatch mortality or other effects'' for measures under consideration.) As explained above, other sources of data—beyond data from an SBRM—are used in bycatch assessments. In addition, different fisheries have different bycatch issues and concerns. This proposed rule recognizes the diversity of fisheries across the country and provides for a fishery-specific evaluation of the factors outlined in proposed section 600.1610(a)(2), while still ensuring that SBRMs will produce data that will be useful in meeting the statutory purpose of SBRMs. Based on its evaluation of the factors, a Council may determine that different levels of uncertainty are acceptable for different fisheries. For example, although an increase in observer coverage levels in a fishery would reduce uncertainty of bycatch estimates, such an increase may not be feasible from a cost or safety standpoint, may not be necessary to assess bycatch in the fishery, or may not be useful in developing conservation and management measures for bycatch in that fishery. The proposed rule would allow a Council to evaluate whether an incremental improvement in data quality is justified in light of the

purpose of SBRM and other factors outlined in sections 600.1610(a)(2)(i) and (ii).

Some courts have addressed bycatch estimates or the quality of data in the context of particular FMPs or amendments. (*See, e.g., NRDC* v. *Evans,* 168 F.Supp.2d 1149, 1154 (N.D. Cal. 2001), asserting that NMFS failed to address the SBRM requirement and its ''duty to obtain accurate bycatch data''; and *Oceana* v. *Evans,* 384 F.Supp.2d 203, 234–235 (D.D.C. 2005), finding that NMFS failed to analyze what type of program would ''succeed in producing the statistically reliable estimates of bycatch needed to better manage the fishery'' and to address an accuracy concern in a scientific study.) However, these opinions were based on the specific records before the courts, and did not engage in comprehensive statutory construction of the SBRM provision. NMFS believes that the approach of this proposed rule is consistent with MSA section 303(a)(11) and will ensure that SBRMs are developed consistent with the statutory purpose for SBRMs (proposed section 600.1600), while allowing Councils to address the unique circumstances of particular fisheries.

NMFS clarifies that the *Evaluating Bycatch* report should not be treated as the agency's interpretation of the SRBM provision; that is the purpose of this proposed rule. A Council may continue to use the *Evaluating Bycatch* report, as explained below. NMFS notes that the *Evaluating Bycatch* report discusses accuracy and precision in the context of bycatch estimates from observer data. (*See Evaluating Bycatch* at 35–39.) The report describes the accuracy of an estimate as ''the difference between the mean of the sample and the true population value,'' and the precision of an estimate as ''essentially how repeatable an observation would be if a number of independent trials were to be conducted.'' (*Id.* at 38.) To address these issues, the *Evaluating Bycatch* report provided ''precision goals'' expressed as ''coefficient of variation'' (CV), which is the ratio of the square root of the variance of the bycatch estimate (*i.e.* the standard error) to the estimate itself. The lower the CV, the more precise (and less uncertain) is the bycatch estimate. (*Id.* at 35.) The report makes clear that there are a variety of situations in which precision goals for bycatch estimates may not be useful to consider when designing bycatch data collection and reporting methods, and in which achieving such goals may not be feasible. The report lists numerous caveats for using precision goals in the context of bycatch reporting/monitoring programs. (*Id.* at Executive Summary, 58.)

While observer programs may be included as part of an SBRM, the MSA does not require their inclusion in every SBRM. (*See* 16 U.S.C. 1853(a)(11), (b)(8).) Moreover, under this proposed rule, bycatch estimation is not included in the definition of standardized reporting methodology. If a Council finds that it would be helpful to consider CV goals for bycatch estimates when it designs an SBRM, this proposed rule would not preclude that. A Council may continue to use the *Evaluating Bycatch* report for information on CV goals, considerations for observer programs, etc., as appropriate, although NMFS advises Councils to take into consideration that *Evaluating Bycatch* is over a decade old, and that technologies and science have evolved considerably since its publication in 2004.

*Documenting the Establishment of an SBRM*

To document that an SBRM is ''established,'' proposed section 1600.1610(a)(1) requires that every FMP contain a description of the required bycatch data collection, recording, and reporting procedures that constitute the SBRM for each fishery managed under it. The description must also provide a statement explaining why the methodology is appropriate for the fishery as guided by mandatory and discretionary factors described in proposed section 1600.1610(a)(2). The explanation required by proposed section 1600.1610(a)(1) must be based on a thorough analysis of all the factors evaluated in establishing a standardized reporting methodology. The explanation must be contained in the FMP, but it may incorporate by reference analyses in FMPs, FMP amendments, Stock Assessment and Fishery Evaluation (SAFE) reports or other documents. The description and explanation of the SBRM will clarify for the public and interested stakeholders the policy choices that the Council considered in establishing the SBRM.

*Adaptable Implementation of an SBRM*

With this proposed rule, NMFS also seeks to ensure that the Councils have sufficient flexibility to adjust implementation of an established SBRM in a way that is clear to the public, but that does not necessarily require an FMP amendment. This proposed rule provides that, if a Council anticipates that adjustments will be necessary to implement the methodology, the Council may, consistent with the requirements of the MSA and other applicable law, consider adopting a process in an FMP to adjust implementation of the methodology. A Council may consider adopting such a process based on factors, which include, but are not limited to, available funding, management contingencies, or scientific priorities. If such a process is adopted, the FMP must describe the process by which the Councils or NMFS plan to implement the desired adjustments to an SBRM. (*See* proposed section 600.1610(c)). Such adjustments may include fine tuning the intensity, focus, or frequency of the required data collection procedures specified in the FMP. Such a process could reflect existing annual or multi-year processes already in use by a Council, such as framework adjustments or annual specifications. The process must clearly describe considerations that will drive those adjustments. The need for such a process may be particularly relevant to SBRMs that are heavily dependent on the use of observers to collect bycatch data. NMFS also believes that there may be instances in which changes to the underlying conservation and management objectives for the fishery, funding, available technology, or other factors may trigger a complete review and possible revision of the SBRM. It is important that the public understands, upfront, the limits of applying such adjustments under an established SBRM and how the Council will determine that a reevaluation of the established methodology is warranted. With this proposed rule, NMFS seeks to clarify how an SBRM can be ''established'' and ''standardized'' while still providing necessary flexibility to implement the SBRM.

*Review of SBRMs*

Proposed section 600.1610(d) provides that all FMPs must be consistent with this rule within 5 years of finalizing the rule. To verify consistency with this rule, Councils should conduct a review of their existing SBRMs. The review should provide information to determine whether or not an FMP needs to be amended. The analysis and conclusions from the review should be documented but do not need to be contained in an FMP.

There are several potential outcomes of the review. A review could find that there are FMPs with existing SBRMs that are consistent with this rule, in which case no FMP amendments are necessary. Other FMPs may define SBRMs more expansively than the definition in this proposed rule. For example, they may contain components that are consistent with this proposed rule, along with additional components

that are not precluded by this rule, but are not minimally required. Those FMPs may not require further amendments. Still other FMPs may describe procedures or activities that comprise an SBRM but do not explain them in a manner consistent with this rule. In such cases, an FMP amendment may be warranted.

After the initial review, Councils should periodically review standardized reporting methodologies to verify continued compliance with the MSA and this rule. Such a review should be conducted at least once every 5 years. Proposed section 600.1610(d) is consistent with the review and improvement of data collection methods, data sources, and applications described under the National Standard 9 guidelines at 50 CFR 600.350(d)(1).

**National Environmental Policy Act**

NMFS has made a preliminary determination to apply a Categorical Exclusion to this action under the National Environmental Policy Act due to the procedural nature of this action. If and when the provisions of this proposed rule are applied to specific FMPs, the Councils and/or the Secretary would prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA), as appropriate. NMFS solicits comments on this preliminary determination to use a categorical exclusion.

**Classification**

Pursuant to section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the other provisions of the Magnuson-Stevens Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The purpose of the action is to articulate an interpretation of the basic requirements of the SBRM provision of section 303(a)(11) of the MSA through a rulemaking to promote transparency and consistency. Key components of the proposed rule include:

(1) A definition of ''standardized reporting methodology'' as applicable only to the definition of ''bycatch'' in the MSA and pertaining only to data collection, reporting and recording activities (not bycatch assessment and estimation);

(2) clarified procedures for establishing, documenting, and reviewing SBRMs under the MSA; and

(3) an option for adaptable implementation to allow for operational flexibility.

The proposed rule defines a standardized reporting methodology as an established procedure or procedures used to collect, record, and report bycatch data in a fishery or subset of a fishery. It would clarify that the purpose of the methodology is to provide data that will inform the assessment of the amount and type of bycatch occurring in a fishery for use in developing conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. However, the phrase ''standardized reporting methodology'' in section 303(a)(11) refers only to bycatch data collection, recording, and reporting procedures.

The action proposes a set of factors to help frame policy choices in establishing or reviewing an SBRM. Data resulting from the methodology must be useful, in conjunction with other relevant sources of data, in meeting the purpose of the SBRM and fishery-specific bycatch objectives. This would require Councils to consider conservation and management objectives related to bycatch for a fishery, the quality of the data associated with the methodology, and information about the characteristics of bycatch in the fishery, when available (such as the amount of bycatch occurring in the fishery, the importance of bycatch in estimating the total mortality of fish stocks, and the importance of bycatch to related ecosystems). The proposed rule also would require that an SBRM be feasible and designed to be implemented with available funding, and addresses the need for an SBRM to be adaptable in response to changes in funding levels or other circumstances. Finally, the proposed rule provides that existing SBRMs should be reviewed at least once every five years. The proposed rule does not require that an SBRM be designed to achieve a particular performance standard or precision goal.

Small entities include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' The Small Business Administration (SBA) has established size standards for all major industry sectors in the United States, including commercial finfish harvesters (NAICS code 114111), commercial shellfish harvesters (NAICS code 114112), other commercial marine harvesters (NAICS code 114119), for-hire businesses (NAICS code 487210), marinas (NAICS code 713930), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $20.5 million for all its affiliated operations worldwide. For commercial shellfish harvesters, the other qualifiers apply, and the receipts threshold is $5.5 million. For other commercial marine harvesters, for-hire businesses, and marinas, the other qualifiers apply, and the receipts threshold is $7.5 million. A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment not in excess of 500 employees for all its affiliated operations worldwide. For seafood dealers/wholesalers, the other qualifiers apply, and the employment threshold is 100 employees. A small organization is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000.

All FMPs have established SBRMs according to the requirements in 303(a)(11). This proposed rule would provide national guidance and improved clarity about implementing the existing requirements. The proposed rule would provide the Councils and the Secretary a five-year period within which to review FMPs to make any necessary amendments.

Because the proposed rule would clarify existing requirements for FMPs and is procedural in nature, it would not directly regulate a particular fishery and will not directly alter the behavior of any entities operating in federally managed fisheries. Thus, no direct economic effects on commercial harvesting businesses, for-hire businesses, marinas, seafood dealers/wholesalers, or seafood processors are expected to result from this action. Therefore, no small entities would be directly affected by this rule.

As a result of the information above, a reduction in profits for a substantial

number of small entities is not expected. Because this action, if implemented, is not expected to have a significant adverse economic effect on the profits of a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

**List of Subjects in 50 CFR Part 600**

Administrative practice and procedure, Bycatch, Fisheries, Standardized Reporting Methodology.

Dated: February 19, 2016.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

## PART 600—MAGNUSON–STEVENS ACT PROVISIONS

■ 1. The authority citation for 50 CFR part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. Add a subpart R to read as follows:

## SUBPART R—STANDARDIZED BYCATCH REPORTING METHODOLOGY

Sec.

600.1600 Purpose and scope.
600.1605 Definitions and word usage.
600.1610 Establishing and reviewing standardized bycatch reporting methodologies in fishery management plans.

### § 600.1600 Purpose and scope.

Section 303(a)(11) of the Magnuson-Stevens Act requires any fishery management plan to establish a standardized bycatch reporting methodology. 16 U.S.C. 1853(a)(11). The purpose of a standardized reporting methodology is to inform the assessment of the amount and type of bycatch occurring in the fishery for use in developing conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. This subpart sets forth requirements for and guidance on establishing and reviewing a standardized reporting methodology.

### § 600.1605 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, *standardized reporting methodology* means an established procedure or procedures used to collect, record, and report bycatch data in a fishery or subset of a fishery (hereafter referred to as ''fishery''). ''Standardized'' procedures may vary from one fishery to another, but must provide a consistent approach for collecting, recording, and reporting bycatch data within a fishery.

(b) *Word usage.* The terms ''must'', ''should'', ''may'', ''will'', ''could'', and ''can'' are used in the same manner as in § 600.305(c). The term ''Council'' is used in the same manner as in § 600.305(c), and includes the regional fishery management Councils and the Secretary of Commerce, as appropriate (16 U.S.C. 1854(c)and (g)).

### § 600.1610 Establishing and reviewing standardized bycatch reporting methodologies in fishery management plans.

(a) *Establishing a standardized reporting methodology*—(1) *Fishery management plan contents.* All fishery management plans (FMPs) must clearly describe a standardized reporting methodology for each fishery managed under it. The description must state the required bycatch data collection, recording, and reporting procedures for each fishery, which may include, but are not limited to, one or more of the following: Observer programs, electronic monitoring and reporting technologies, and self-reported mechanisms (*e.g.,* recreational sampling, industry-reported catch and discard data). In addition, the description must provide an explanation of why the methodology is appropriate for the fishery. The explanation must be based on a thorough analysis of the factors specified in paragraph (a)(2)(i) and (ii) of this section. The explanation may incorporate by reference analyses in FMPs, FMP amendments, Stock Assessment and Fishery Evaluation (SAFE) reports, or other documents.

(2) *Factors in establishing or reviewing a standardized reporting methodology.* Whether a methodology is appropriate will depend on the specific circumstances of the fishery, as guided by the following factors:

(i) *Required factors.* Data resulting from the methodology must be useful, in conjunction with other relevant sources of data, in meeting the purpose described in § 600.1600 and fishery-specific bycatch objectives. This requires Councils, when establishing or reviewing a methodology, to consider the conservation and management objectives regarding bycatch in the fishery and the quality of the data associated with the methodology. Councils must also consider information about the characteristics of bycatch in the fishery, when available, such as the amount of bycatch occurring in the fishery, the importance of bycatch in estimating the total mortality of fish stocks, and the importance of bycatch to related ecosystems. In addition, the methodology must be feasible from cost, technical, and operational perspectives, and must be designed to be implemented with available funding.

(ii) *Additional factors.* When establishing or reviewing a standardized reporting methodology, a Council may also consider the overall magnitude and/or economic impact of the fishery, and the scientific methods and techniques available to collect and report bycatch data that could improve the quality of the bycatch estimates.

(b) *Consultation.* A Council should consult with its scientific and statistical committee, advisory panels, and the NOAA science centers as appropriate on data elements, reporting frequency, and other design and methodology factors.

(c) *Adaptable implementation.* If a Council anticipates that adjustments will be necessary to implement the methodology, the Council may, consistent with the requirements of the MSA and other applicable law, consider adopting a process in an FMP to adjust implementation of the methodology. The Council may consider adopting such a process based on factors, which include, but are not limited to, available funding, management contingencies, or scientific priorities. If such a process is adopted, the FMP must:

(1) Describe the process under which the implementation of a methodology will be adjusted;

(2) Specify what adjustments (*e.g.,* changes in the intensity, focus, or frequency of required bycatch data collection, recording, and reporting procedures) are authorized under the process;

(3) Explain why the adjustments may be needed;

(4) Describe how and when the adjustments will be made;

(5) Describe the limits to the adjustments; and

(6) Describe how the Council will determine that a reevaluation of the established methodology is warranted.

(d) *Review of FMPs.* All FMPs must be consistent with this rule within 5 years of the effective date of this rule. Thereafter, Councils should conduct a review of standardized reporting methodologies at least once every five years in order to verify continued compliance with the MSA and this rule.

[FR Doc. 2016–04030 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 81, No. 37
Thursday, February 25, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

**AGENCY:** Office of the Under Secretary, Research, Education, and Economics, Agricultural Research Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21). The committee is being convened to: Consider work of the three *ad hoc* subgroups on the progress of their analyses relevant to the new AC21 charge; listen to presentations from outside experts on topics relevant to the work of the AC21; and continue overall discussions on the committee charge and planning subsequent work.

**DATES:** The meeting will be held on Monday–Tuesday, March 14–15, 2016, 8:30 a.m. to 5:00 p.m. each day. This meeting is open to the public. On March 14, 2016, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration, starting at 3:30 p.m. Members of the public who wish to make oral statements should also inform Dr. Schechtman in writing or via Email at the indicated addresses below at least three business days before the meeting.

**ADDRESSES:** Room 107A, USDA Jamie L. Whitten Federal Building, 12th and Independence Avenue SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** General information about the committee can also be found at *http://www.usda.gov/wps/portal/usda/usdahome?navid=BIOTECH_AC21&navtype=RT&parentnav=BIOTECH.* However, Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; Email *AC21@ars.usda.gov* may be contacted for specific questions about the committee or this meeting.

**SUPPLEMENTARY INFORMATION:** The AC21 has been established to provide information and advice to the Secretary of Agriculture on the broad array of issues related to the expanding dimensions and importance of agricultural biotechnology. The committee is charged with examining the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA, and providing guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture. In recent years, the work of the AC21 has centered on the issue of coexistence among different types of agricultural production systems. The AC21 consists of members representing the biotechnology industry, the organic food industry, farming communities, the seed industry, food manufacturers, state government, consumer and community development groups, as well as academic researchers and a medical doctor. In addition, representatives from the Department of Commerce, the Department of Health and Human Services, the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as ''ex officio'' members.

In its last report, issued on November 17, 2012, entitled ''Enhancing Coexistence: A Report to the Secretary of Agriculture,'' and available on the Web site listed below, the AC21 offered a diverse package of recommendations, among which was a recommendation that ''. . . USDA should facilitate development of joint coexistence plans by neighboring farmers,'' and that in a pilot program, USDA should, among other things, offer incentives for the development of such plans.

At its last meeting, on December 14–15, 2015, USDA offered a specific new charge to the AC21 building on its previous work. Recognizing that USDA currently lacks the legal authority to offer any such incentives, the committee has been charged with considering the following two questions: Is there an approach by which farmers could be encouraged to work with their neighbors to develop joint coexistence plans at the State or local level? If so, how might the Federal government assist in that process?

In devising an approach to respond to this charge, the AC21 has established 3 *ad hoc* subgroups to gather and analyze information and options for the full committee's consideration. These address: Development of a guidance document which could be made available to farmers and other stakeholders; potential models for facilitating conversations around coexistence and potential available incentives; and potential venues and conveners of coexistence conversations.

The three objectives for the meeting are:

- To consider work of the three *ad hoc* subgroups on the progress of their analyses relevant to the new AC21 charge;
- to listen to presentations from outside experts on topics relevant to the work of the AC21; and
- to continue overall discussions on the committee charge and planning subsequent work.

Background information regarding the work and membership of the AC21 is available on the USDA Web site at *http://www.usda.gov/wps/portal/usda/usdahome?contentid=AC21Main.xml&contentidonly=true.*

*Register for the Meeting:* The public is asked to pre-register for the meeting at least 10 business days prior to the meeting. Your pre-registration must state: The names of each person in your group; organization or interest represented; the number of people planning to give oral comments, if any; and whether anyone in your group requires special accommodations. Submit registrations to Ms. Dianne Fowler at (202) 720–4074 or by Email at *Dianne.fowler@ars.usda.gov* by February 26, 2016. The Agricultural Research Service will also accept walk-in registrations. Members of the public who request to give oral comments to the Committee, must arrive by 8:45 a.m. on March 14, 2016 and will be given their allotted time limit and turn at the check-in table.

*Public Comments:* Written public comments may be mailed to Michael Schechtman, Designated Federal

Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue SW., Washington, DC 20250; via fax to (202) 690–4265 or email to *AC21@ars.usda.gov*. All written comments must arrive by March 9, 2016. Oral comments are also accepted. To request to give oral comments, see instructions under 'Register for the Meeting' above.

*Availability of Materials for the Meeting:* All written public comments will be compiled into a binder and available for review at the meeting. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. Please visit the Web site listed above to learn more about the agenda for or reports resulting from this meeting.

*Meeting Accommodations:* The meeting will be open to the public, but space is limited. USDA is committed to ensuring that all employees are included in our work environment, programs and events. If you are a person with a disability and request reasonable accommodations to participate in this meeting, please note the request in your registration. All reasonable accommodation requests are managed on a case by case basis.

Issued at Washington, DC, this 16th day of February 2016.

**Catherine E. Woteki,**

*Under Secretary, Research, Education and Economics.*

[FR Doc. 2016–04025 Filed 2–24–16; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Office of the Chief Financial Officer; Submission for OMB Review; Comment Request

February 19, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 28, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such person are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Office of the Chief Financial Officer**

*Title:* Information Collection Request; Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants and Awardees.

*OMB Control Number:* 0505–0025.

*Summary of Collection:* The appropriations restrictions contained in all of the respective appropriations acts since fiscal year (FY) 2012 regarding financial transactions with corporations that have tax delinquencies or felony convictions were continued in the Consolidated Appropriations Act, 2016, Public Law 114–113. The restrictions are located in Division E, Title VII, sections 745 and 746, respectively. The restrictions apply to transactions with corporations that (1) have any ''unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability and (2) were ''convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction. The restricted transactions include contracts, grants, loans, loan guarantees, cooperative agreements, and memoranda of understanding/agreement). The restrictions may not apply if a Federal agency considers suspension or debarment of the corporation and determines that such action is not necessary to protect the interests of the Government. The U.S. Department of Agriculture's (USDA) agencies and staff offices must comply with the restrictions.

During fiscal years 2012–2014, similar provisions were not uniform across the government. For USDA, one set of provisions applied to all agencies and staff offices except the Forest Service and a second set of slightly different provisions applied only to the Forest Service. To facilitate compliance with the appropriations restrictions, USDA created two sets of forms—one for use by all USDA agencies and staff offices (Forms AD–3030–Y and AD–3031–Y and one for use only by the Forest Service (Forms AD–3030 FS and AD–3031 FS). In FY 2015 Congress enacted slightly different government-wide provisions for all agencies and departments. In response, USDA created a new set of forms that adhered to the change for use by all of its agencies and staff offices including the Forest Service (Forms AD–3030 and AD–3031).

USDA must also comply with prior year provisions issued between FY 2012–2014 to the extent that carry over/no year funds provided by those years' appropriations were used in awards or award adjustments.

*Need and Use of the Information:* To comply with the appropriations restrictions, the information collection requires corporate applicants and awardees for USDA programs to represent accurately whether they have or do not have qualifying tax delinquencies or convictions which would prevent USDA from entering into a proposed business transaction with the corporate applicant. For non-procurement programs and transactions, these representations will be submitted on the proposed information collection Forms AD–3030, AD–3031, AD–3030–Y, AD–3031–Y, AD–3030–FS and AD–3031–FS. This information collection, deals only with USDA non-procurement transactions. The categories of non-procurement transactions covered by this information collection are: non-procurement contracts, grants, loans, loan guarantees, cooperative agreements, and some memoranda of understanding/agreement. Accordingly, this information collection is not intended for use with USDA procurement transactions. . For more specific information about whether a particular non-procurement program or transaction is included in this list please

contact the USDA agency or staff office responsible for the program or transaction in question.

Forms AD–3030, AD–3030–Y and AD–3030–FS will effectuate compliance with the appropriations restrictions by requiring all corporate applicants to represent, at the time of application for a non-procurement program, whether they have tax delinquencies or felony convictions that would prevent USDA from doing business with them. Corporations include, but are not limited to, any entity that has filed articles of incorporation in one of the 50 States, the District of Columbia, or the various territories of the United States. Corporations include both for profit and non-profit entities. Forms AD–3031, AD–3031–Y and AD–3031–FS require an affirmative representation, at the time of the award, that corporate awardees for non-procurement transactions do not have tax delinquencies or felony convictions that would prevent USDA from doing business with them. If the application and award process are a single step, the agency or staff office may require both forms to be filed simultaneously. Collection of this information is necessary to ensure that USDA agencies and staff offices comply with the appropriations restrictions prohibiting the Government from doing business with corporations with tax delinquencies or felony convictions.

The burden for each form will be accounted for within the individual USDA agency and staff office collection packages using the forms. The time required to complete this information collection is estimated to average 0.25 minutes per response, per form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

USDA's Office of the Chief Financial Officer (OCFO) is requesting approval for one respondent and a one hour place holder for the forms. The total estimated burden for the OCFO's use of the forms is thus one hour, which will allow it to distribute the approved forms to USDA agencies and staff offices. USDA agencies and staff offices using the forms will reflect the approved OMB control number of the package and account for the burden within their individual collection packages when they seek Office of Management and Budget approval or re-authorization.

*Respondents:* Corporate applicants and awardees for USDA non-procurement programs, including grants, cooperative agreements, loans, loan guarantees, some memoranda of understanding/agreement, and non-procurement contracts.

*Estimated Total Annual Responses:* 1.

*Frequency of Collection:* Other: Corporations—each time they apply to participate in a multitude of USDA non-procurement programs; Awardees each time they receive an award.

*Estimated Total Annual Burden Hours on Respondents:* 1.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2016–03975 Filed 2–24–16; 8:45 am]

**BILLING CODE 3410–KS–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Land Between The Lakes Advisory Board

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Land Between The Lakes Advisory Board (Board) will meet in Golden Pond, Kentucky. The Board is authorized under Section 450 of the Land Between The Lakes Protection Act of 1998 (Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the Board is to advise the Secretary of Agriculture on the means of promoting public participation for the land and resource management plan for the recreation area; and environmental education. Board information can be found at the following Web site: *http://www.landbetweenthelakes.us/.*

**DATES:** The meeting will be held at 9:00 a.m. on March 17, 2016.

All Board meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meeting will be held at the Land Between The Lakes Administration Building, 100 Van Morgan Drive, Golden Pond, Kentucky.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Land Between The Lakes Adminstrative Building. Please call ahead to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Christine Bombard, Board Coordinator, by phone at 270–924–2002 or via email at *cabombard@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Discuss Environmental Education; and

2. Effectively communicate future land management plan activities.

The meeting is open to the public. Board discussion is limited to Forest Service staff and Board members. Written comments are invited and should be sent to Tina Tilley, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211; and must be received by March 1, 2016, in order for copies to be provided to the members for this meeting. Board members will review written comments received, and at their request, oral clarification may be requested for a future meeting.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: February 18, 2016.

**Tina R. Tilley,**

*Area Supervisor, Land Between The Lakes.*

[FR Doc. 2016–03840 Filed 2–24–16; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ketchikan Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Ketchikan Resource Advisory Committee (RAC) will meet in Ketchikan, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of

the Act. RAC information can be found at the following Web site: *https://www.fs.usda.gov/main/pts*.

**DATES:** The meeting will be held on March 16, 2016, at 3:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under For Further Information Contact.

**ADDRESSES:** The meeting will be held at the Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. A conference line is set up for those who would like to listen in by telephone. For the conference call number, please contact the person listed under For Further Information Contact.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ketchikan Misty Fiords Ranger District. Please call ahead to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Olson, RAC Coordinator, by phone at 907–228–4105 or via email at *dianelolson@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Update members on past RAC projects, and

2. Propose new RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 4, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Diane L. Olson, RAC Coordinator, Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901; by email to *dianelolson@fs.fed.us,* or via facsimile to 907–225–8738.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 12, 2016.

**Jon Hyde,**

*Acting District Ranger.*

[FR Doc. 2016–03481 Filed 2–24–16; 8:45 am]

**BILLING CODE 3411–15–M**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Submission for OMB Review; Comment Request

February 19, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 28, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**National Agricultural Statistics Service**

*Title:* Generic Clearance of Survey Improvement Projects

*OMB Control Number:* 0535–0248

*Summary of Collection:* The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue State and national estimates of crop and livestock production, economic and environmental statistics related to agriculture and to conduct the Census of Agriculture under the general authority of Title 7 U.S.C. Sec. 2204. The purpose of this generic clearance is to allow NASS to respond quickly to emerging issues and data collection needs. NASS will continue to develop, test, evaluate, adopt, and use state-of-the-art techniques to cover a broad range of topics designed to improve NASS' data collection on agriculture.

*Need and Use of the Information:* NASS will use a number of survey improvement techniques, as appropriate to the individual project under investigation. These include focus groups, cognitive and usability laboratory and field techniques, exploratory interviews, behavior coding, respondent debriefing, pilot surveys and split-panel tests. The information gathered will be used mainly for questionnaire development and other research and evaluation. Additionally, NASS anticipates the benefit of increased response rates through improved survey design, a goal tied directly to addressing OMB requirements for higher response rates and measurement of non-response bias.

*Description of Respondents:* Farms.

*Number of Respondents:* 25,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 15,000.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2016–03981 Filed 2–24–16; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### Rural Business Cooperative Service

### Submission for OMB Review; Comment Request

February 19, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for

review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 28, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Rural Business Service**

*Title:* Intermediary Re-lending Program.

*OMB Control Number:* 0570–0021.

*Summary of Collection:* The objective of the Intermediary Relending Program (IRP) is to improve community facilities and employment opportunities and increase economic activity in rural areas by financing business facilities and community development. This purpose is achieved through loans made by the Rural Business-Cooperative Service (RBS) to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development. The Community Economic Development Act of 1981 (42 U.S.C. 9812(a), section 623(a)) provides for the Secretary the authority to make loans to nonprofit entities who will in turn provide financial assistance to rural businesses to improve business, industry and employment opportunities as well as provide a diversification of the economy in rural areas.

*Need and Use of the Information:* The information requested is necessary for RBS to process applications in a responsible manner, make prudent credit and program decisions, and effectively monitor the intermediaries' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. Various forms are used to include information to identify the intermediary, describe the intermediary's experience and expertise, describe how the intermediary will operate its revolving loan fund, provide for debt instruments, loan agreements, and security, and other material necessary for prudent credit decisions and reasonable program monitoring.

*Description of Respondents:* Not-for-profit institutions; Business or other for-profit.

*Number of Respondents:* 240.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 24,580.

**Rural Business-Cooperative Service**

*Title:* Agriculture Innovation Centers.

*OMB Control Number:* 0570–0045.

*Summary of Collection:* The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, signed May 13, 2002) authorized the Secretary of the U.S. Department of Agriculture (USDA) to award grant funds to Agriculture Innovation Centers (Centers). The Agricultural Act of 2014 reauthorized the program through 2018. The Centers provide a demonstration program under which agricultural producers are to be provided with technical and business development assistance enabling them to establish businesses producing and marketing value-added products. This program is administered by Cooperative Programs within USDA's Rural Development.

*Need and Use of the Information:* Information is collected by Rural Development State and Area office staff, as delegated, from applicants and grantees. Cooperative Programs uses the collected information to confirm that the applicant and use of funds meet the eligibility requirements for the program as well as to assess the quality of the proposed project. Grantees are required to submit financial status and performance reports to confirm that progress is being made toward achieving the stated goals of the project. A final report is submitted at the completion of the grant agreement. Centers may be non-profit corporations, for-profit corporations, institutions of higher learning, and consortia of the aforementioned entities.

*Description of Respondents:* Not-for-profit Institutions; Business or other for-profit.

*Number of Respondents:* 1.

*Frequency of Responses:* Reporting: Semi-annually.

*Total Burden Hours:* 30.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2016–03979 Filed 2–24–16; 8:45 am]

**BILLING CODE 3410–XY–P**

## DEPARTMENT OF AGRICULTURE

### Rural Utility Service

### Submission for OMB Review; Comment Request

February 19, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 28, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–

7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Rural Utilities Service**

*Title:* 7 CFR 1728, Electric Standards and Specifications for Materials and Construction.

*OMB Control Number:* 0572–0131.

*Summary of Collection:* The Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, (RE Act) in Sec. 4 (7 U.S.C. 904) authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. RUS' Administrator is authorized to provide financial assistance to borrowers for purposes provided in the RE Act by guaranteeing loans made by the National Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies. These loans are for a term of up to 35 years and are secured by a first mortgage on the borrower's electric system. Manufacturers, wishing to sell their products to RUS electric borrowers, request RUS consideration for acceptance of their products and submit letters of request with certifications as to the origin of manufacture of the products and include certified data demonstrating their products' compliance with RUS specifications.

*Need and Use of the Information:* Manufacturers submit certified data demonstrating product compliance with RUS specifications, usually in the form of laboratory test results, catalog pages, or drawings. RUS will evaluate the data to determine that the quality of the products are acceptable and that their use will not jeopardize loan security. The information is closely reviewed to be certain that test data; product dimensions and product material compositions fully comply with RUS technical standards and specifications that have been established for the particular product. Without this information, RUS has no means of determining the acceptability of products for use in the rural environment.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 38.

*Frequency of Responses:* Reporting: on occasion.

*Total Burden Hours:* 2,000.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2016–03974 Filed 2–24–16; 8:45 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF COMMERCE

## U.S. Census Bureau

## Proposed Information Collection; Comment Request; 2017 Economic Census, Industry Classification Report

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before April 25, 2016.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scott Handmaker, Chief, Classifications Processing Branch, U.S. Census Bureau, 8K149, Washington, DC 20233, Telephone: 301–763–7107; Email: *Scott.P.Handmaker@census.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

It is important to have a complete North American Industry Classification System (NAICS) based code for each establishment in the Census Bureau's business register prior to the economic census. The economic census, conducted under authority of Title 13 U.S.C., Section 131 is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public.

The Industry Classification Report collects data from establishments in all NAICS sectors that are covered by the economic census with the purpose of assigning an accurate 8-digit NAICS based code for use in the 2017 Economic Census. The Industry Classification Report collects data about businesses in such areas as: Primary business activity, class of customer (if the establishment is a wholesaler or retailer), and primary goods sold or services provided. This survey, conducted in fiscal years 2016 and 2017, samples approximately 120,000 businesses each year.

The Census Bureau will select establishments to receive this survey from the Census Bureau's business register. The Census Bureau will mail a letter to establishments that have been assigned a partial NAICS code by administrative records or are unclassified in the business register. Additionally, other categories of administrative records may be identified.

Collecting this classification information will ensure the mailing list for the targeted sectors is complete and accurate prior to the mailing of the 2017 Economic Census. The information gathered will also be used to determine whether an establishment will be included in the data collection for the 2017 Economic Census, and if so, what are the appropriate North American Product Classification System (NAPCS) product lines to be displayed for that establishment on their 2017 Economic Census questionnaire. Many businesses are small and will not be asked to participate in the 2017 Economic Census. This survey is the only way to obtain an accurate 8-digit NAICS-based code for these small businesses, represented in the census through the use of administrative data only. In other cases, the Census Bureau produces sample estimates. The results of this collection will be used to select a statistically reliable and efficient sample, minimizing the reporting burden on sampled sectors. Proper NAICS classification data ensures high quality economic statistics while reducing respondent burden and overall processing costs. Failure to collect this data will have an adverse effect on the quality and usefulness of economic information provided by the Census Bureau.

There are no new questions on this survey since it was last conducted in preparation for the 2012 Economic Census. However, there will no longer be a paper form on which to report. Respondents can report over the Internet or by telephone. We will work with individual respondents if reporting on the Internet or by telephone presents difficulties.

Minimal changes will be made to the wording and organization of existing questions and instructions.

**II. Method of Collection**

We will collect this information over the Internet and by telephone. Respondents will receive a letter directing them to the Internet to report their information. Follow up letters will be mailed for establishments that have not responded by a certain date. Throughout the survey, telephone assistance will be available for respondents with questions and for those that cannot report over the Internet.

**III. Data**

*OMB Number:* None.

*Form Number:* None. The information will be gathered electronically.

*Type of Review:* Regular submission.

*Affected Public:* Businesses and Organizations (both profit and non-profit); State and Local Governments; Small Businesses.

*Estimated Number of Respondents:* 125,000 business firms annually.

*Estimated Time per Response:* 7 minutes.

*Estimated Total Annual Burden Hours:* 14,583 hours.

*Estimated Total Annual Cost to Public:* $0.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C. Sections 131 and 193.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 19, 2016.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2016–03958 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet March 23, 2016, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

*Agenda:*

**Public Session**

1. Opening remarks by the Chairman
2. Opening remarks by the Bureau of Industry and Security
3. Presentation of papers or comments by the Public
4. Export Enforcement update
5. Regulations update
6. Working group reports
7. Automated Export System update

**Closed Session**

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than March 16, 2016.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482–2813.

Dated: February 19, 2016.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2016–03937 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Proposed Information Collection; Comment Request; BIS Program Evaluation

**AGENCY:** Bureau of Industry and Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before April 25, 2016.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093, *Mark.Crace@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This collection of information is necessary to obtain feedback from seminar participants. This information helps BIS determine the effectiveness of its programs and identifies areas for improvement. The gathering of performance measures on the BIS seminar program is also essential in meeting the agency's responsibilities under the Government Performance and Results Act (GPRA).

**II. Method of Collection**

*Paper questionnaires*

**III. Data**

*OMB Control Number:* 0694–0125.

*Form Number(s):* N/A.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,000.

*Estimated Time Per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 500 hours.

*Estimated Total Annual Cost to Public:* $0.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 19, 2016.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2016–03921 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### President's Export Council; Subcommittee on Export Administration; Notice of Open Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on March 16, 2016, 10:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

**Agenda**

1. Opening remarks by the Chairman and Vice Chairman.
2. Export Control Reform Update.
3. Presentation of papers or comments by the Public.
4. Data Transmission and Security Subcommittee Update.
5. Process Improvements and Trusted Trader Subcommittee Update.
6. Outreach Subcommittee Update.
7. Discussion of Topics for Presentation to the Secretary of Commerce.

The open session will be accessible via teleconference to 20 participants on a first come, first served basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*, no later than, March 9, 2016.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer.

For more information, contact Yvette Springer on 202–482–2813.

Dated: February 17, 2016.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2016–03935 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–870, C–570–035, C–542–801]**

### Certain New Pneumatic Off-The-Road Tires From India, the People's Republic of China, and Sri Lanka: Postponement of Preliminary Determinations of Countervailing Duty Investigations

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

**DATES:** *Effective:* February 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Spencer Toubia at (202) 482–0123 (India); Laurel LaCivita at (202) 482–4243 (the People's Republic of China (PRC)); and Elizabeth Eastwood at (202) 482–3874 (Sri Lanka), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 3, 2016, the Department of Commerce (Department) initiated countervailing duty investigations (CVD) on certain new pneumatic off-the-road tires from India, the PRC, and Sri Lanka.[1] Currently, the preliminary determinations of these investigations are due no later than April 8, 2016.

**Postponement of Preliminary Determination**

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a CVD investigation within 65 days after the date on which the Department initiated the investigation. However, if the petitioner makes a timely request for a postponement, section 703(c)(1)(A) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation.

On February 12, 2016, the petitioners[2] submitted timely requests pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determinations.[3] For the reasons stated above and because there are no compelling reasons to deny the requests, the Department, in accordance with section 703(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations to no later than 130 days after the day on which the investigations were initiated. Accordingly, the Department will issue the preliminary determinations no later than June 12, 2016. However, because June 12, 2016, falls on a Sunday, the

[1] *See Certain New Pneumatic Off-The-Road Tires from India, the People's Republic of China, and Sri Lanka: Initiation of Countervailing Duty Investigations,* 81 FR 7067 (February 10, 2016).

[2] Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (collectively, the petitioners).

[3] *See* letters from the petitioners entitled ''Certain New Pneumatic Off-The-Road Tires from India—Petitioners' Request to Extend the Deadline for the Preliminary Determinations,'' ''Certain New Pneumatic Off-the-Road Tires from People's Republic of China—Petitioners' Request to Extend the Deadline for the Preliminary Determination,'' and ''Certain New Pneumatic Off-The-Road Tires from Sri Lanka—Petitioners' Request to Extend the Deadline for the Preliminary Determinations,'' each dated February 12, 2016.

preliminary determinations are now due no later than June 13, 2016.[4] In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 18, 2016.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–04064 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–979]**

### Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of the Changed Circumstances Review

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

**SUMMARY:** On October 21, 2015, the Department of Commerce (the ''Department'') published a notice of preliminary results of a changed circumstance review (''CCR'') of the antidumping duty (''AD'') order on crystalline silicon photovoltaic cells, whether or not assembled into modules (''solar cells''), from the People's Republic of China (''PRC'').[1] Based on our analysis of the comments from interested parties, we continue to find that Neo Solar Power Corporation (''Neo Solar'') is not the successor-in-interest to DelSolar Co., Ltd. (''DelSolar Taiwan'') for purposes of determining AD liability in this proceeding for these final results and, as such, is subject to the PRC-wide entity cash deposit rate with respect to entries of subject merchandise.

**DATES:** *Effective:* February 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Erin Kearney, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0167.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department initiated this CCR on March 18, 2015, and published the *Preliminary Results* on October 21, 2015.[2] For a description of events that have occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results of this review is now February 18, 2016.[4]

#### Scope of the Order

The merchandise covered by this order is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials. Merchandise covered by this order is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this order is dispositive. A complete description of the scope of the order is contained in the Issues and Decision Memorandum.[5]

#### Analysis of Comments Received

All issues raised by interested parties in the case briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is appended to this notice.

#### Final Results of the Changed Circumstances Review

Upon review of the comments received, the Department continues to find based upon the totality of the circumstances that material changes occurred after DelSolar Taiwan merged with, and became part of, Neo Solar, including significant changes in management, the board of directors, and ownership and, further, that Neo Solar did not demonstrate that its operations, with respect to the subject merchandise, were materially similar to the operations of DelSolar Taiwan pertaining to supplier relationships and customer base, as discussed in the *Preliminary Results* and the Issues and Decision Memorandum. Therefore, in these final results, the Department continues to find that Neo Solar is not the successor-in-interest to DelSolar Taiwan for purposes of antidumping duty liability in this proceeding.

#### Instructions to U.S. Customs and Border Protection

As a result of this determination, the Department finds that Neo Solar is subject to the cash deposit rate currently assigned to the PRC-wide entity with respect to the subject merchandise (*i.e.,*

[4] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of the Changed Circumstances Review,* 80 FR 63743 (October 21, 2015) (''*Preliminary Results*''). We note that although the request was submitted on behalf of DelSolar Taiwan, the purported predecessor company, the request also states that DelSolar Taiwan no longer exists as a legal entity.

[2] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Initiation of Changed Circumstances Review,* 80 FR 15568 (March 24, 2015) (''*Initiation Notice*''); *see also Preliminary Results.*

[3] *See* ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Changed Circumstances Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Neo Solar Power Corporation and DelSolar Co., Ltd.,'' dated concurrently with and hereby adopted in this notice.

[4] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[5] *See* ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Changed Circumstances Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Neo Solar Power Corporation and DelSolar Co., Ltd.,'' dated concurrently with and hereby adopted in this notice.

238.95 percent).[6] Consequently, the Department will instruct U.S. Customs and Border Protection to continue suspension of liquidation and to collect estimated antidumping duties for all shipments of subject merchandise produced by DelSolar Wujiang and exported by Neo Solar at the current cash deposit rate currently applicable to such entries, *i.e.,* the cash deposit rate of 238.95 percent assigned to the PRC-wide entity.[7] This cash deposit requirement shall remain in effect until further notice.

### Notification to Parties

This notice is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

The Department is issuing and publishing these results in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 19 CFR 351.221(c)(3)(i).

Dated: February 17, 2016.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

### Appendix

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of Issues
V. Summary of Findings
VI. Recommendation

[FR Doc. 2016–04061 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–DS–P**

[6] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012–2013,* 80 FR 40998 (July 14, 2015).

[7] *Id.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–041]**

### Truck and Bus Tires From the People's Republic of China: Initiation of Countervailing Duty Investigation

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

**DATES:** *Effective:* February 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Shore or Mark Kennedy, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2778, or (202) 482–1293, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On January 29, 2016, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of certain truck and bus tires from the People's Republic of China (the PRC), filed in proper form by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (USW) (USW or the petitioner).[1] The CVD petition was accompanied by an antidumping duty (AD) petition concerning imports of truck and bus tires from the PRC. The petitioner is a recognized union, which represents the domestic industry engaged in the manufacture of truck and bus tires in the United States. On February 3 and February 5, 2016, the Department requested additional information and clarification of certain areas of the Petition [2] and on February 5 and February 9, 2016, the petitioner filed supplements to the Petition.[3]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that producers/exporters of truck and bus tires in the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 702(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner in support of its allegations.

The Department finds that the petitioner filed the petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(D) of the Act, and has demonstrated sufficient industry support with respect to the initiation of the CVD investigation that it is requesting.[4]

### Period of Investigation

The period of investigation (POI) is calendar year 2015, in accordance with 19 CFR 351.204(b)(2).

### Scope of the Investigation

The product covered by this investigation is truck and bus tires from the PRC. For a full description of the scope of the investigation, *see* the ''Scope of the Investigation'' at the Appendix of this notice.

### Comments on the Scope of the Investigation

During our review of the petition, we issued questions to, and received responses from, the petitioner pertaining to the proposed scope in order to ensure that the language of the scope is an accurate reflection of the products for which the domestic industry is seeking relief.[5] As discussed in the Preamble to our regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[6] The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination. If scope

[1] *See* ''Petition for the Imposition of Countervailing Duties on Imports of Truck and Bus Tires from the People's Republic of China'' dated January 29, 2016 (the Petition).

[2] *See* Letters to the petitioner, ''Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Truck and Bus Tires from the People's Republic of China: Supplemental Questions'' dated February 3, 2016 (General Issues Supplemental Questions) and ''Petition for the Imposition of Countervailing Duties on Imports of Certain Truck and Bus Tires from the People's Republic of China: Supplemental Questions'' dated February 5, 2016 (CVD Supplemental Questions).

[3] *See* ''Petitioner's Response to the Department's February 3, 2016 Supplemental Questions Regarding General Issues'' dated February 5, 2016 (General Issues Supplement); *see also* ''Petitioner's Response to the Department's February 5 Supplemental Questions Regarding the Countervailing Duty Petition,'' dated February 9, 2016.

[4] *See* ''Determination of Industry Support for the Petition'' section, below.

[5] *See* General Issues Supplemental Questionnaire; *see also* General Issues Supplement at 2 and Exhibit I–SQ–1, and the memorandum to the File entitled ''Phone Call with Counsel to the Petitioner'' dated February 12, 2016.

[6] *See Antidumping Duties; Countervailing Duties (Final Rule);* 62 FR 27296, 27323 (May 19, 1997).

comments include factual information,[7] all such factual information should be limited to public information. All such comments must be filed no later than 5:00 p.m. Eastern Time (ET) on Wednesday, March 9, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed no later than 5:00 p.m. ET on Monday, March 21, 2016, because 10 calendar days after the initial comments falls on Saturday, March 19, 2016.[8] The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the records of the CVD investigation, as well as the concurrent AD investigation.

**Filing Requirements**

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). An electronically filed document must be received successfully in its entirety no later than 5:00 p.m. ET on the date specified by the Department. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadline.[9]

**Consultations**

Pursuant to section 702(b)(4)(A)(i) of the Act, the Department notified representatives of the Government of the People's Republic of China (GOC) of the receipt of the Petition. Also, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department provided representatives of the GOC the opportunity for consultations with respect to the CVD petition. The GOC provided a document titled ''Consultations Points of the GOC,'' in lieu of holding consultations.[10]

**Determination of Industry Support for the Petition**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that truck and bus tires constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.[13]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in Appendix I of this notice. To establish industry support, the petitioner estimated the 2015 production for each U.S. producer of truck and bus tires, by plant. The petitioner based its estimates of 2015 truck and bus tire production by plant on daily plant-specific production capacity data published in *Modern Tire Dealer.* The petitioner multiplied the daily production capacity data by 360 (to estimate annual capacity). The petitioner estimated 2015 truck and bus tire production in the United States using data on U.S. shipments, imports, and exports of truck and bus tires in 2015. To calculate a capacity utilization rate for the U.S. truck and bus tire industry in 2015, the petitioner compared estimated U.S. production of

[7] *See* 19 CFR 351.102(b)(21).

[8] *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'')

[9] *See* 19 CFR 351.303(b); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[10] *See* Memorandum to the File, ''Petition for the Imposition of Countervailing Duties on Certain Truck and Bus Tires from The People's Republic of China: Consultations Comments from the Government of China,'' (February 16, 2016).

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[13] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Truck and Bus Tires from the People's Republic of China (CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Truck and Bus Tires from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

truck and bus tires in 2015 to the 2015 U.S. capacity to produce truck and bus tires. To calculate total 2015 production of the domestic like product by the petitioning plants, the petitioner applied the estimated capacity utilization rate to the total annualized capacity of those plants represented by the USW. In order to provide a conservative calculation of total 2015 production of the domestic like product by the U.S. truck and bus tire industry, the petitioner assumed that all non-petitioning truck and bus tire plants (*i.e.,* those not represented by the USW) operated at full capacity in 2015 and added the full production capacity of the non-petitioning plants to the estimated 2015 production of the plants represented by the USW. To calculate industry support, the petitioner divided the estimated 2015 production of the domestic like product for those plants represented by the USW by the estimated production of the domestic like product in 2015 for the entire U.S. truck and bus tires industry based on the conservative utilization assumption.[14] We relied on data the petitioner provided for purposes of measuring industry support.[15]

Our review of the data provided in the Petition, General Issues Supplement, and other information readily available to the Department indicates that the petitioner has established industry support.[16] First, the Petition established support from workers accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[17] Second, the workers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the workers who support the Petition account for at least 25 percent of the total production of the domestic like product.[18] Finally, the workers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the workers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[19] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(D) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate.[20]

## Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

## Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[21]

The petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; decline in shipments; shift in the domestic industry's sales from the U.S. market to lower priced export markets; potential declines in capacity utilization, employment, and profitability; lost sales and revenues; and adverse impact on union contract negotiations.[22] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[23]

## Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

The petitioner alleges that producers/exporters of truck and bus tires in the PRC benefit from countervailable subsidies bestowed by the GOC. The Department examined the Petition on truck and bus tires from the PRC and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether producers/exporters of truck and bus tires in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* the CVD Initiation Checklist which accompanies this notice.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[24] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[25] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[26]

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 38 of the 39 alleged programs. For a full discussion of the basis of our decision to initiate or not initiate on each program, *see* the CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

[14] *See* Volume I of the Petition, at I–6—I–8 and Exhibits I–1 and I–11; *see also* General Issues Supplement, at 2–9 and Exhibits I–SQ–2—I–SQ–18.

[15] *Id.* For further discussion, *see* CVD Initiation Checklist, at Attachment II.

[16] *See* CVD Initiation Checklist, at Attachment II.

[17] *See* section 702(c)(4)(D) of the Act; *see also* CVD Initiation Checklist, at Attachment II.

[18] *See* CVD Initiation Checklist, at Attachment II.

[19] *Id.*

[20] *Id.*

[21] *See* Volume I of the Petition, at I–15 and Exhibit I–17.

[22] *Id.,* at I–12, I–15 through I–32 and Exhibits I–2, I–10, I–17 through I–30.

[23] *See* CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Truck and Bus Tires from the People's Republic of China.

[24] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[25] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015).

[26] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

**Respondent Selection**

Following standard practice in CVD investigations, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of truck and bus tires during the period of investigation under the appropriate Harmonized Tariff Schedule of the U.S. numbers listed in the scope of Appendix I, below. We intend to release CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of publication of this **Federal Register** notice.

Interested parties wishing to comment regarding the CBP data and/or respondent selection must do so within seven calendar days after the placement of the CBP data on the record of this investigation. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for the initial comments. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. ET by the date noted above. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

**Distribution of Copies of the Petition**

In accordance with section 702(b)(4)(A)(i) of the Act, and 19 CFR 351.202(f), a copy of the petition, which is publicly available in its entirety, has been provided to the Government of the PRC via ACCESS. To the extent practicable, we will attempt to provide a copy of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of truck and bus tires from the PRC are materially injuring, or threatening material injury to, a U.S. industry.[27] A negative ITC determination will result in the investigation being terminated.[28] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [29] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[30] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

**Extension of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits.[31]

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[32] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[33] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: February 18, 2016.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix

**Scope of the Investigation**

The scope of the investigation covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by this investigation may be tube-type, tubeless, radial, or non-radial.

Subject tires have, at the time of importation, the symbol ''DOT'' on the

[27] *See* section 703(a) of the Act.

[28] *Id.*

[29] *See* 19 CFR 351.301(b).

[30] *See* 19 CFR 351.301(b)(2).

[31] *See* 19 FR 351.302(c). *See also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

[32] *See* section 782(b) of the Act.

[33] *See* 19 CFR 351.303(g). *See also Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at the following: *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

TR—Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires;

MH—Identifies tires for mobile homes; and

HC—Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a ''TR,'' ''MH,'' or ''HC'' suffix in their size designations are covered by this investigation regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the ''Truck-Bus'' section of the *Tire and Rim Association Year Book,* as updated annually, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, *e.g.,* a wheel, rim, axle parts, bolts, nuts, etc. Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope of this investigation are the following types of tires: (1) Pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; and (2) non-pneumatic tires, such as solid rubber tires.

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4520, 4011.99.4590, 4011.99.8520, 4011.99.8590, 8708.70.4530, 8708.70.6030, and 8708.70.6060.

While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2016–04063 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Proposed Information Collection; Comment Request; Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Panama Trade Promotion Agreement (U.S.-Panama TPA)

**AGENCY:** International Trade Administration.

**ACTION:** Notice.

**SUMMARY:** On behalf of the Committee for the Implementation of Textile Agreements (CITA), the Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before April 25, 2016.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Laurie Mease, Office of Textiles and Apparel, Telephone: 202–482–2043, Email: *Laurie.Mease@trade.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

Title II, Section 203(o) of the United States-Panama Trade Promotion Agreement Implementation Act (the ''Act'') [Pub. L. 112–43] implements the commercial availability provision provided for in Article 3.25 of the United States-Panama Trade Promotion Agreement (the ''Agreement''). The Agreement entered into force on October 31, 2012. Subject to the rules of origin in Annex 4.1 of the Agreement, pursuant to the textile provisions of the Agreement, fabric, yarn, and fiber produced in Panama or the United States and traded between the two countries are entitled to duty-free tariff treatment. Annex 3.25 of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Panama or the United States. The items listed in Annex 3.25 are commercially unavailable fabrics, yarns, and fibers. Articles containing these items are entitled to duty-free or preferential treatment despite containing inputs not produced in Panama or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.25, Paragraphs 4–6 of the Agreement. Under this provision, interested entities from Panama or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3.25 of the Agreement.

Pursuant to Chapter 3, Article 3.25, paragraph 6 of the Agreement, which requires that the President publish procedures for parties to exercise the right to make these requests, Section 203(o)(4) of the Act authorizes the President to establish procedures to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in either the United States or Panama as set out in Annex 3.25 of the Agreement. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (''CITA''), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (''OTEXA'') (See Proclamation No. 8894, 77 FR 66507, November 5, 2012).

The intent of the U.S.-Panama TPA Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical

specifications and the production capabilities of Panamanian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Panama, subject to Section 203(o) of the Act.

**II. Method of Collection**

Participants in a commercial availability proceeding must submit public versions of their Requests, Responses or Rebuttals electronically (via email) for posting on OTEXA's Web site. Confidential versions of those submissions which contain business confidential information must be delivered in hard copy to the Office of Textiles and Apparel (OTEXA) at the U.S. Department of Commerce.

**III. Data**

*OMB Control Number:* 0625–0273.
*Form Number(s):* N/A.
*Type of Review:* Regular submission.
*Affected Public:* Business or for-profit organizations.
*Estimated Number of Respondents:* 16.
*Estimated Time per Response:* 8 hours per Request, 2 hours per Response, and 1 hour per Rebuttal.
*Estimated Total Annual Burden Hours:* 89.
*Estimated Total Annual Cost to Public:* $5,340.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 19, 2016.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2016–03971 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Proposed Information Collection; Comment Request; Interim Procedures for Considering Requests From the Public for Textile and Apparel Safeguard Actions on Imports From Panama

**AGENCY:** International Trade Administration (ITA).

**ACTION:** Notice.

**SUMMARY:** On behalf of the Committee for the Implementation for Textile Agreements (CITA), the Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before April 25, 2016.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, Telephone: 202–482–2043, Email: *Laurie.Mease@trade.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Title III, Subtitle B, Section 321 through Section 328 of the United States-Panama Trade Promotion Agreement Implementation Act (the ''Act'') [Pub. L. 112–43] implements the textile and apparel safeguard provisions, provided for in Article 3.24 of the United States-Panama Trade Promotion Agreement (the ''Agreement''). This safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, a Panamanian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.24 permits the United States to increase duties on the imported article from Panama to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (NTR)/most-favored-nation (MFN) duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day the Agreement entered into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under Section 322(a) of the Act, and for providing relief under section 322(b) of the Act.

In Proclamation No. 8894 (77 FR 66507, November 5, 2012), the President delegated to CITA his authority under Subtitle B of Title III of the Act with respect to textile and apparel safeguard measures.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Panama, thereby allowing CITA to take corrective action to protect the viability of the domestic textile industry, subject to section 322(b) of the Act.

Pursuant to Section 321(a) of the Act and Paragraph (7) of Presidential Proclamation 8894, an interested party in the U.S. domestic textile and apparel industry may file a request for a textile and apparel safeguard action with CITA. Consistent with longstanding CITA practice in considering textile safeguard actions, CITA will consider an interested party to be an entity (which may be a trade association, firm, certified or recognized union, or group of workers) that is representative of either: (A) A domestic producer or producers of an article that is like or directly competitive with the subject Panamanian textile or apparel article; or (B) a domestic producer or producers of a component used in the production of an article that is like or directly competitive with the subject Panamanian textile or apparel article.

In order for a request to be considered, the requestor must provide the following information in support of a claim that a textile or apparel article from Panama is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof, to a U.S. industry producing an article that is like or directly competitive with the imported article: (1) Name and description of the imported article concerned; (2) import data

demonstrating that imports of a Panamanian origin textile or apparel article that are like or directly competitive with the articles produced by the domestic industry concerned are increasing in absolute terms or relative to the domestic market for that article; (3) U.S. domestic production of the like or directly competitive articles of U.S. origin indicating the nature and extent of the serious damage or actual threat thereof, along with an affirmation that to the best of the requestor's knowledge, the data represent substantially all of the domestic production of the like or directly competitive article(s) of U.S. origin; (4) imports from Panama as a percentage of the domestic market of the like or directly competitive article; and (5) all data available to the requestor showing changes in productivity, utilization of capacity, inventories, exports, wages, employment, domestic prices, profits, and investment, and any other information, relating to the existence of serious damage or actual threat thereof caused by imports from Panama to the industry producing the like or directly competitive article that is the subject of the request. To the extent that such information is not available, the requestor should provide best estimates and the basis therefore.

If CITA determines that the request provides the information necessary for it to be considered, CITA will publish a notice in the **Federal Register** seeking public comments regarding the request. The comment period shall be 30 calendar days. The notice will include a summary of the request. Any interested party may submit information to rebut, clarify, or correct public comments submitted by any interested party.

CITA will make a determination on any request it considers within 60 calendar days of the close of the comment period. If CITA is unable to make a determination within 60 calendar days, it will publish a notice in the **Federal Register**, including the date it will make a determination.

If a determination under Section 322(a) of the Act is affirmative, CITA may provide tariff relief to a U.S. industry to the extent necessary to remedy or prevent serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition. The import tariff relief is effective beginning on the date that CITA's affirmative determination is published in the **Federal Register**.

Entities submitting requests, responses or rebuttals to CITA may submit both a public and confidential version of their submissions. If the request is accepted, the public version will be posted on the dedicated U.S.-Panama Trade Promotion Agreement textile safeguards section of the Office of Textile and Apparel (OTEXA) Web site. The confidential version of the request, responses or rebuttals will not be shared with the public as it may contain business confidential information. Entities submitting responses or rebuttals may use the public version of the request as a basis for responses.

## II. Method of Collection

When an interested party files a request for a textile and apparel safeguard action with CITA, ten copies of any such request must be provided in a paper format. If business confidential information is provided, two copies of a non-confidential version must also be provided. If CITA determines that the request provides the necessary information to be considered, it will publish a **Federal Register** notice seeking public comments on the request.

To the extent business confidential information is provided, a non-confidential version must also be provided. Any interested party may submit information to rebut, clarify, or correct public comments submitted by any interested party.

## III. Data

*OMB Control Number:* 0625–0274.

*Form Number(s):* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households; business or other for-profit organizations.

*Estimated Number of Respondents:* 6 (1 for Request; 5 for Comments).

*Estimated Time per Response:* 4 hours for a Request; and 4 hours for each Comment.

*Estimated Total Annual Burden Hours:* 24.

*Estimated Total Annual Cost to Public:* $960.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 19, 2016.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2016–03972 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–040]**

### Truck and Bus Tires From the People's Republic of China: Initiation of Antidumping Duty Investigation

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

**DATES:** *Effective:* February 18, 2016.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun or Andre Gziryan, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–2201, respectively.

**SUPPLEMENTARY INFORMATION:**

## The Petition

On January 29, 2016, the Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of truck and bus tires from the People's Republic of China (the PRC) officially filed in proper form on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (USW or the petitioner).[1] The AD petition was accompanied by a countervailing duty (CVD) petition concerning imports of truck and bus tires from the PRC. The petitioner is a recognized union, which represents the domestic industry engaged in the manufacture of truck and bus tires in the United States. On February 3, 2016, the Department requested additional information and clarification of certain areas of the Petition[2] and on February

[1] *See* ''Petition for the Imposition of Antidumping Duties on Imports of Truck and Bus Tires from the People's Republic of China'' dated January 29, 2016 (the Petition).

[2] *See* Letters to the petitioner, ''Petition for the Imposition of Antidumping and Countervailing

5, 2016, the petitioner filed supplements to the Petition.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of truck and bus tires from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner in support of its allegations.

The Department finds that the petitioner filed the petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(D) of the Act, and has demonstrated sufficient industry support with respect to the initiation of the AD investigation that it is requesting.[4]

**Period of Investigation**

Because the petition was filed on January 29, 2016, the period of investigation (POI) is July 1, 2015, through December 31, 2015.[5]

**Scope of the Investigation**

The product covered by this investigation is truck and bus tires from the PRC. For a full description of the scope of the investigation, *see* the ''Scope of the Investigation'' at the Appendix of this notice.

**Comments on the Scope of the Investigation**

During our review of the petition, we issued questions to, and received responses from, the petitioner pertaining to the proposed scope in order to ensure that the language of the scope is an accurate reflection of the products for which the domestic industry is seeking relief.[6] As discussed in the Preamble to our regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[7] The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information,[8] all such factual information should be limited to public information. All such comments must be filed no later than 5:00 p.m. Eastern Time (ET) on Wednesday, March 9, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed no later than 5:00 p.m. ET on Monday, March 21, 2016, because 10 calendar days after the initial comments falls on Saturday, March 19, 2016.[9] The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the records of the AD investigation, as well as the concurrent CVD investigation.

**Filing Requirements**

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). An electronically filed document must be received successfully in its entirety no later than 5:00 p.m. ET on the date specified by the Department. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadline.[10]

**Comments on the Product Characteristics for the AD Questionnaire**

The Department requests comments from interested parties regarding the appropriate physical characteristics of truck and bus tires to be reported in response to the Department's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they believe are relevant to the development of an accurate list of physical characteristics. Specifically, interested parties may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. It is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics manufacturers used to describe truck and bus tires, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, we must receive comments on product characteristics no later than March 9, 2016. Rebuttal comments must be received no later than March 16, 2016. All comments and submissions to the

Duties on Imports of Truck and Bus Tires from the People's Republic of China: Supplemental Questions'' dated February 3, 2016 (General Issues Supplemental Questions) and ''Petition for the Imposition of Antidumping Duties on Imports of Truck and Bus Tires from the People's Republic of China: Supplemental Questions'' dated February 3, 2016 (AD Supplemental Questions).

[3] *See* Letter from the petitioner ''Petitioner's Response to the Department's February 3, 2016 Supplemental Questions Regarding the Antidumping Petition on China (A–570–040)'' dated February 5, 2016 (AD Supplement); *see also* ''Petitioner's Response to the Department's February 3, 2016 Supplemental Questions Regarding General Issues'' dated February 5, 2016 (General Issues Supplement).

[4] *See* ''Determination of Industry Support for the Petition'' section, below.

[5] *See* 19 CFR 351.204(b)(1).

[6] *See* General Issues Supplemental Questionnaire; *see also* General Issues Supplement at 2 and Exhibit I–SQ–1, and the memorandum to the File entitled ''Phone Call with Counsel to the Petitioner'' dated February 12, 2016.

[7] *See Antidumping Duties; Countervailing Duties (Final Rule);* 62 FR 27296, 27323 (May 19, 1997).

[8] *See* 19 CFR 351.102(b)(21).

[9] *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'')

[10] *See* 19 CFR 351.303(b); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

Department must be filed electronically using ACCESS, as explained above.

**Determination of Industry Support for the Petition**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that truck and bus tires constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.[13]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix of this notice. To establish industry support, the petitioner estimated the 2015 production for each U.S. producer of truck and bus tires, by plant. The petitioner based its estimates of 2015 off truck and bus tire production by plant on daily plant-specific production capacity data published in *Modern Tire Dealer.* The petitioner multiplied the daily production capacity data by 360 (to estimate annual capacity). The petitioner estimated 2015 truck and bus tire production in the United States using data on U.S. shipments, imports, and exports of truck and bus tires in 2015. To calculate a capacity utilization rate for the U.S. truck and bus tire industry in 2015, the petitioner compared estimated U.S. production of truck and bus tires in 2015 to the 2015 U.S. capacity to produce truck and bus tires. To calculate total 2015 production of the domestic like product by the petitioning plants, the petitioner applied the estimated capacity utilization rate to the total annualized capacity of those plants represented by the USW. In order to provide a conservative calculation of total 2015 production of the domestic like product by the U.S. truck and bus tire industry, the petitioner assumed that all non-petitioning truck and bus tire plants (*i.e.,* those not represented by the USW) operated at full capacity in 2015 and added the full production capacity of the non-petitioning plants to the estimated 2015 production of the plants represented by the USW. To calculate industry support, the petitioner divided the estimated 2015 production of the domestic like product for those plants represented by the USW by the estimated production of the domestic like product in 2015 for the entire U.S. truck and bus tires industry.[14] We relied on data the petitioner provided for purposes of measuring industry support.[15]

Our review of the data provided in the Petition, General Issues Supplement, and other information readily available to the Department indicates that the petitioner has established industry support.[16] First, the Petition established support from workers accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[17] Second, the workers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the workers who support the Petition account for at least 25 percent of the total production of the domestic like product.[18] Finally, the workers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the workers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[19] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(D) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting the Department initiate.[20]

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[13] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Truck and Bus Tires from the People's Republic of China (AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Truck and Bus Tires from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[14] *See* Volume I of the Petition, at I–6—I–8 and Exhibits I–1 and I–11; *see also* General Issues Supplement, at 2–9 and Exhibits I–SQ–2—I–SQ–18.

[15] *Id.* For further discussion, *see* AD Initiation Checklist, at Attachment II.

[16] *See* AD Initiation Checklist, at Attachment II.

[17] *See* section 732(c)(4)(D) of the Act; *see also* AD Initiation Checklist, at Attachment II.

[18] *See* AD Initiation Checklist, at Attachment II.

[19] *Id.*

[20] *Id.*

**Allegations and Evidence of Material Injury and Causation**

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[21]

The petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; decline in shipments; shift in the domestic industry's sales from the U.S. market to lower priced export markets; potential declines in capacity utilization, employment, and profitability; lost sales and revenues; and adverse impact on union contract negotiations.[22] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[23]

**Allegation of Sales at Less Than Fair Value**

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate an investigation of imports of truck and bus tires from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the AD Initiation Checklist.

**Export Price**

The petitioner based export price (EP) on import data obtained from the U.S. Department of Commerce's Foreign Trade Division Merchandise Imports database and the ITC Dataweb (collectively import database) for truck and bus tires. The petitioner calculated the average unit values (AUVs) per tire for U.S. imports of truck and bus tires from the PRC entered during the POI under two Harmonized Tariff Schedule of the United States (HTSUS) subheadings that cover truck and bus tires.[24] As the values of imports in the import database reflect customs values and therefore exclude U.S. import duties, freight, and insurance, the petitioner made adjustments to deduct unrebated value-added tax, foreign inland freight expenses, and brokerage and handling expenses at port of exportation to derive a U.S. net price.[25]

**Normal Value**

The petitioner states that the Department has treated the PRC as a non-market economy (NME) country in every proceeding in which the PRC has been involved.[26] The presumption of NME status for the PRC has not been revoked by the Department and, therefore, in accordance with section 771(18)(C)(i) of the Act, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the investigation is appropriately based on factors of production (FOPs) valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and granting of separate rates to individual exporters.

The petitioner contends that Thailand is the appropriate surrogate country for the PRC because: (1) It is at a level of economic development comparable to that of the PRC; (2) it is a significant producer of comparable merchandise; and (3) the data for Thailand for valuing factors of production are available and reliable.[27] Based on the information the petitioner provided, we conclude that it is appropriate to use Thailand as a surrogate country for initiation purposes.[28] After initiation of this investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.[29]

The petitioner calculated NV using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. As the petitioner is a union representing workers in the domestic industry producing truck and bus tires and is not a domestic producer, the petitioner contends it does not have access to the proprietary information on the FOPs necessary to make truck and bus tires. Therefore, the petitioner based NV on publicly available information regarding the standard direct materials used to manufacture truck and bus tires from a number of publications.[30] The petitioner asserts that the publicly available raw material models it provided are representative, to the best of its knowledge, of the average makeup of truck and bus tires.[31] Using this information, the petitioner calculated the average percentage of total tire weight represented by direct materials for truck and bus tires. The information regarding the percentages of direct materials used to make a subject tire were applied to the average tire weight for each of the two HTSUS categories of truck and bus tires obtained from the imports database to calculate the average amount of each direct material used in the manufacture of the subject merchandise.[32]

The petitioner valued the FOPs for direct materials (except natural rubber) using reasonably available, public surrogate country data, specifically, Thai import data from the Global Trade Atlas (GTA) for the period July through December 2015.[33] The petitioner excluded from these GTA import statistics imports from countries previously determined by the Department to be NME countries, countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies, and, in accordance with the Department's practice, any imports that were labeled as originating from an ''unspecified'' country.[34] The petitioner valued natural rubber using information from the Rubber Research Institute of Thailand.[35] The Department determines that the surrogate values used by the petitioner are reasonably available and,

[21] *See* Volume I of the Petition, at I–15 and Exhibit I–17.

[22] *See* Volume I of the Petition, at I–12, I–15 through I–32 and Exhibits I–2, I–10, I–17 through I–30.

[23] *See* AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Truck and Bus Tires from the People's Republic of China.

[24] *See* the AD Supplement at Exhibit II–SQ–2 for the two HTSUS subheadings, 4011.20.1015: New Radial Tires, On-The-Highway, Of A Kind Used On Buses Or Trucks, Excluding Light Trucks, and 4011.20.5020: New Tires, Excluding Radials, On-The-Highway, Of A Kind Used On Buses Or Trucks, Excluding Light Trucks.

[25] *See* Volume II of the Petition at II–6 through II–9 and Exhibits II–13 and II–14; AD Supplement at Exhibit II–SQ–8; and AD Initiation Checklist.

[26] *See* Volume II of the Petition at II–2.

[27] *Id.* at II–2 through II–6 and Exhibits II–1 through II–4; AD Supplement at Exhibit II–SQ–1.

[28] *See* AD Initiation Checklist.

[29] *See* 19 CFR 351.301(c)(3)(i).

[30] *See* Volume II of the Petition at II–9 through II–15 and Exhibits II–5, II–9, II–10, II–16, II–19 through II–24, II–28; *see also* AD Supplement at Exhibits II–SQ–3 and II–SQ–8.

[31] *Id.*

[32] *Id.*

[33] *See* Volume II of the Petition at II–10 through II–16; *see also* AD Supplement at 3 and Exhibits II–SQ–3 and II–SQ–8.

[34] *See* Volume II of the Petition at II–13; *see also* AD Supplement at Exhibit II–SQ–3.

[35] *See* Volume II of the Petition at II–14 and Exhibit II–29; *see also* AD Supplement at Exhibit II–SQ–8.

thus, are acceptable for purposes of initiation.

The petitioner calculated the average labor hours required to make one tire using the employment and production information from the financial statements of three PRC tire manufacturers (GITI Tire, Doublestar Tyre, and Guizhou Tyre Co., Ltd.).[36] The petitioner then used the weight-averaged amount of the three labor rates to determine an overall average of labor hours required to make one subject tire. The petitioner calculated the average hourly labor rate for an employee producing tires using the wage rate for manufacturers in Thai National Statistics Office's Labor Force Survey for the third quarter of 2015.[37]

The petitioner calculated financial ratios (*i.e.,* factory overhead expenses, selling, general, and administrative expenses, and profit) based on the 2014 year-end financial statements of Goodyear (Thailand) Public Company Limited and the 2013 year-end financial statements of Hihero Co., Ltd.[38] The petitioner included the energy costs in the factory overhead expenses because it was unable to obtain publicly available information on the energy costs.[39] Information the petitioner provided indicate that both Thai companies are producers of truck and bus tires.[40]

**Fair Value Comparisons**

Based on the data the petitioner provided, there is reason to believe that imports of truck and bus tires from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on the comparison of net U.S. price to NV for the same or similar truck and bus tires in accordance with section 773(c) of the Act, the petitioner's estimated margins for truck and bus tires are 19.91 percent and 22.57 percent.[41]

**Initiation of Less Than Fair Value Investigation**

Based on our examination of the petition on truck and bus tires from the PRC, the Department finds that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of truck and bus tires from the PRC are being, or likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation. For a discussion of evidence supporting our initiation determination, *see* the AD Initiation Checklist dated concurrently with this notice.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[42] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[43] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation.[44]

**Respondent Selection**

In accordance with our standard practice for respondent selection in AD investigations involving NME countries, we intend to issue quantity and value questionnaires to producers/exporters of merchandise subject to this investigation [45] and base respondent selection on the responses received. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Enforcement and Compliance Web site at *http://trade.gov/enforcement/news.asp*.

Exporters and producers of truck and bus tires from the PRC that do not receive quantity and value questionnaires via mail may still submit a response to the quantity and value questionnaire available at the Enforcement and Compliance Web site. The Department will establish an exact deadline by which quantity and value responses must be submitted in the questionnaire itself, as subsequently released to potential respondents and posted to the Enforcement and Compliance Web site. All quantity and value responses must be filed electronically using ACCESS.

**Separate Rates**

In order to obtain separate rate status in an NME AD investigation, exporters and producers must submit a separate rate application.[46] The specific requirements for submitting the separate rate application in this PRC investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://trade.gov/enforcement/news.asp* on the date of publication of this initiation notice in the **Federal Register**. The separate rate application will be due 30 days after the publication of this initiation notice. Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of the Department's AD questionnaires as mandatory respondents. The Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by their respective deadlines in order to receive consideration for separate rate status.

**Use of Combination Rates**

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific

[36] *See* Volume II of the Petition at II–16 through II–18 and Exhibits II–30 through II–33; *see also* AD Supplement at 3–6 and Exhibit II–SQ–5 and II–SQ–6.

[37] *See* Volume II of the Petition at II–16 through II–18 and Exhibits II–30 through II–33; *see also* AD Supplement at 3–6 and Exhibits II–SQ–5 and II–SQ–6.

[38] *See* Volume II of the Petition at II–19 and II—20 and Exhibits II–34 and II–36; *see also* AD Supplement at 6.

[39] *See* Volume II of the Petition at II–19.

[40] *Id.* at II–15 and II–16 and Exhibit II–16.

[41] *See* AD Supplement at Exhibit II–SQ–8.

[42] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[43] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015).

[44] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl*.

[45] *See* Volume I of the Petition at Exhibit I–15, as amended in General Supplement Response at Exhibit I–SQ–19.

[46] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's Web site at *http://enforcement.trade.gov/policy/*).

combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[47]

**Distribution of Copies of the Petition**

In accordance with section 732(b)(3)(A) of the Act, and 19 CFR 351.202(f), a copy of the petition, which is publicly available in its entirety, has been provided to the Government of the PRC *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of truck and bus tires from the PRC are materially injuring, or threatening material injury to, a U.S. industry.[48] A negative ITC determination will result in the investigation being terminated.[49] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [50] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[51] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

**Extension of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR part 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR part 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits.[52]

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[53] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[54] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: February 18, 2016.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix

**Scope of the Investigation**

The scope of the investigation covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by this investigation may be tube-type, tubeless, radial, or non-radial.

Subject tires have, at the time of importation, the symbol ''DOT'' on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

TR—Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires;

MH—Identifies tires for mobile homes; and

HC—Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a ''TR,'' ''MH,'' or ''HC'' suffix in their size designations are covered by this investigation regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the ''Truck-Bus'' section of the *Tire and Rim Association Year Book,* as updated annually, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are

[47] *See* Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

[48] *See* section 733(a) of the Act.

[49] *Id.*

[50] *See* 19 CFR 351.301(b).

[51] *See* 19 CFR 351.301(b)(2).

[52] *See* 19 FR 351.302(c). *See also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

[53] *See* section 782(b) of the Act.

[54] *See* 19 CFR 351.303(g). *See also Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at the following: *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

accompanied by other parts, *e.g.,* a wheel, rim, axle parts, bolts, nuts, etc. Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope of this investigation are the following types of tires: (1) Pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; and (2) non-pneumatic tires, such as solid rubber tires.

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4520, 4011.99.4590, 4011.99.8520, 4011.99.8590, 8708.70.4530, 8708.70.6030, and 8708.70.6060. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2016–04060 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE465**

### Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

**DATES:** The meeting will be held on Tuesday and Wednesday, March 15–16, 2016, beginning at 10 a.m. on March 15 and conclude by 3 p.m. on March 16. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will at the Royal Sonesta Harbor Court, 550 Light Street, Baltimore, MD 21202; telephone: 410–234–0550.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

Agenda items to be discussed at the SSC meeting include: Review fishery performance reports and multi-year ABC specifications for *Golden Tilefish;* discuss MAFMC risk policy and assignment of CVs for Mid-Atlantic assessments; discuss SSC membership needs; receive a report from the *Black Sea Bass* Review Subgroup on specification of spatial structure within the BSB assessment; review *Blueline Tilefish* fishery information and discuss ABC specifications.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: February 22, 2016.

**Tracey L. Thompson,**

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

[FR Doc. 2016–04007 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE233**

### Takes of Marine Mammals Incidental to Specified Activities; St. George Reef Light Station Restoration and Maintenance at Northwest Seal Rock, Del Norte County, California

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) implementing regulations, NMFS, we, hereby give notice that we have issued an Incidental Harassment Authorization (Authorization) to the St. George Reef Lighthouse Preservation Society (Society) to take four species of marine mammals, by harassment incidental to conducting aircraft operations, lighthouse renovation, and light maintenance activities on the St. George Reef Light Station on Northwest Seal Rock in the northeast Pacific Ocean from February 19, 2016 through February 18, 2017.

**DATES:** Effective February 19, 2016, through February 18, 2017.

**ADDRESSES:** An electronic copy of the final Authorization, the Society's application, and NMFS' environmental assessment are available by writing to Jolie Harrison, Division Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; by telephoning the contacts listed here, or by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization for incidental takings for marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

**Summary of Request**

On October 1, 2015, the Society requested that we issue an Authorization for the take of marine mammals, incidental to conducting restoration activities on the St. George Reef Light Station (Station) located on Northwest Seal Rock offshore of Crescent City, California in the northeast Pacific Ocean. NMFS determined the application complete and adequate on October 7, 2015 and published a notice of proposed Authorization on October 26, 2015 (80 FR 65201). The notice afforded the public a 30-day comment period on the proposed MMPA Authorization.

The Society proposes to conduct aircraft operations, lighthouse renovation, and periodic maintenance on the Station's optical light system on a monthly basis. The proposed activity would occur on a monthly basis over one weekend, February 2016 through February 2017. The Society would not conduct the proposed activities between May 1 and October 31, 2016. The following specific aspects of the proposed activities would likely to result in the take of marine mammals: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.,* painting, plastering, welding, and glazing); (3) maintenance activities (*e.g.,* bulb replacement and automation of the light system); and (4) human presence. Thus, NMFS anticipates that take, by Level B harassment only, of California sea lions (*Zalophus californianus*); Pacific harbor seals (*Phoca vitulina*); Steller sea lions (*Eumetopias jubatus*) of the eastern U.S. Stock; and northern fur seals (*Callorhinus ursinus*) could result from the specified activity.

**Description of the Specified Activity**

*Overview*

To date, NMFS has issued four Authorizations to the Society for the conduct of the same activities from 2010 to 2015 (75 FR 4774, January 29, 2010; 76 FR 10564, February 25, 2011; 77 FR 8811, February 15, 2012; and 79 FR 6179, February 3, 2014). This is the Society's fifth request for an annual Authorization as their last Authorization expired on April 10, 2015.

The Station, listed in the National Park Service's National Register of Historic Places, is located on Northwest Seal Rock offshore of Crescent City, California in the northeast Pacific Ocean. The Station, built in 1892, rises 45.7 meters (m) (150 feet (ft)) above sea level. The structure consists of hundreds of granite blocks topped with a cast iron lantern room and covers much of the surface of the islet. The purpose of the project is to restore the lighthouse and to conduct annual and emergency maintenance on the Station's optical light system.

**Dates and Duration**

The Society proposes to conduct the activities (aircraft operations, lighthouse restoration, and maintenance activities) at a maximum frequency of one session per month. The proposed duration for each session would last no more than three days (*e.g.,* Friday, Saturday, and Sunday). The Authorization would be effective from February 19, 2016 through February 17, 2017 with restrictions on the Society conducting activities from May 1, 2016 to October 31, 2016.

**Specified Geographic Region**

The Station is located on Northwest Seal Rock, a small rocky islet (41°50′24″ N., 124°22′06″ W.) approximately nine kilometers (km) (6.0 miles (mi)) in the northeast Pacific Ocean, offshore of Crescent City, California (Latitude: 41°46′48″ N.; Longitude: 124°14′11″ W.). Northwest Seal Rock is approximately 91.4 m (300 ft) in diameter that peaks at 5.18 m (17 ft) above mean sea level.

**Description of Activities**

We outlined the purpose of the Society's activities in a previous notice for the proposed Authorization (80 FR 65201, October 26, 2015). The proposed activities have not changed between the notice for the proposed Authorization and this notice announcing the issuance of the Authorization. For a more detailed description of the authorized action, we refer the reader to the Detailed Description of Activities section in the notice for the proposed Authorization (80 FR 65201, October 26, 2015).

**Comments and Responses**

A notice of receipt of the Society's application and NMFS' proposal to issue an Authorization to the Society published in the **Federal Register** on October 26, 2015 (80 FR 65201). During the 30-day public comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that the Society carries out the required monitoring and mitigation measures as described in the notice for the proposed Authorization (80 FR 65201, October 26, 2015) and the application. We have included all measures described in the notice for the proposed Authorization (80 FR 65201, October 26, 2015) in the issued Authorization.

**Description of Marine Mammals in the Area of the Specified Activity**

The marine mammals most likely to be harassed incidental to the Society's helicopter operations, lighthouse restoration, and lighthouse maintenance on Northwest Seal Rock are primarily Steller and California sea lions and to a lesser extent the Pacific harbor seal and the eastern Pacific stock of northern fur seal.

Table 1 provides the following information: All marine mammal species with possible or confirmed occurrence in the proposed activity area; information on those species' regulatory status under the MMPA and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); abundance; occurrence and seasonality in the activity area.

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY HAUL OUT ON NORTHWEST SEAL ROCK

| Species | Stock | Regulatory status [1 2] | Stock abundance [3] | Occurrence and seasonality |
|---|---|---|---|---|
| California sea lion (*Zalophus californianus*) | U.S. | MMPA—NC, ESA—NL | 296,750 | Year-round presence. |
| Northern fur seal (*Callorhinus ursinus*) | California Breeding | MMPA—D, ESA—NL | 14,050 | Rare. |
| Pacific harbor seal (*Phoca vitulina*) | California | MMPA—NC, ESA—NL | 30,968 | Occasional, spring. |

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY HAUL OUT ON NORTHWEST SEAL ROCK—Continued

| Species | Stock | Regulatory status [1] [2] | Stock abundance [3] | Occurrence and seasonality |
|---|---|---|---|---|
| Steller sea lion (*Eumetopias jubatus*) ..... | Eastern Distinct Population Segment. | MMPA—D, ESA—DL | 60,131–74,448 | Year-round presence. |

[1] MMPA: D = Depleted, S = Strategic, NC = Not Classified.
[2] ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[3] 2015 draft NMFS Stock Assessment Reports: Carretta *et al.* (2015) and Muto and Angliss (2015).

NMFS refers the public to the 2015 draft NMFS Marine Mammal Stock Assessment Report available online at: *http://www.nmfs.noaa.gov/pr/sars/* for general information on the biology and distribution of these species which we presented in the notice of the proposed Authorization (80 FR 65201, October 26, 2015).

**Other Marine Mammals in the Proposed Action Area**

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within two km (1.2 mi) of the mainland shoreline. Neither CCR nor the Society has encountered California sea otters on Northwest Seal Rock during the course of the four-year wildlife study (CCR, 2001; SGRLPS, 2010; 2011; 2012)) nor has the Society encountered this species during the course of the previously issued Authorizations for the same activities. The U.S. Fish and Wildlife Service manages the sea otter and NMFS will not consider this species further in this notice.

**Potential Effects of the Specified Activities on Marine Mammals and Their Habitat**

This section of the notice for the proposed Authorization (80 FR 65201, October 26, 2015) included a summary and discussion of the ways that components of the specified activity (*e.g.,* visual and acoustic disturbance) may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that NMFS expects the Society to take during this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity would impact marine mammals. NMFS will consider the content of the following sections: ''Estimated Take by Incidental Harassment,'' ''Mitigation,'' and ''Anticipated Effects on Marine Mammal Habitat,'' to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals—and from that consideration—the likely impacts of this activity on the affected marine mammal populations or stocks.

Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.,* painting, plastering, welding, and glazing); and (3) maintenance activities (*e.g.,* bulb replacement and automation of the light system) may have the potential to cause the following: Temporary or permanent hearing impairment and/or behavioral disturbance.

We provided detailed information on these potential effects notice for the proposed Authorization (80 FR 65201, October 26, 2015). The information presented in that notice has not changed.

**Anticipated Effects on Marine Mammal Habitat**

The only habitat modification associated with the proposed activity is the restoration of a light station which would occur on the upper levels of Northwest Seal Rock which are not used by marine mammals. Thus, NMFS does not expect that the authorized activity would have any effect on marine mammal habitat and NMFS expects that there will be no long- or short-term physical impacts to pinniped habitat on Northwest Seal Rock.

The Society would remove all waste, discarded materials and equipment from the island after each visit. The proposed activities will not result in any permanent impact on habitats used by marine mammals, including prey species and foraging habitat. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals (*i.e.,* the potential for temporary abandonment of the site), previously discussed in this notice. Based on the preceding discussion, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

**Mitigation**

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

*Time and Frequency:* The Society would conduct restoration activities at maximum of once per month between February 19, 2016, through February 18, 2017. Each restoration session would last no more than three days. Maintenance of the light beacon would occur only in conjunction with restoration activities. The Society would not conduct restoration activities between the period of May 1, 2016, and October 31, 2016.

*Helicopter Approach and Timing Techniques:* The Society would ensure that its helicopter approach patterns to the Station and timing techniques do not disturb marine mammals as most practicable. To the extent possible, the helicopter should approach Northwest Seal Rock when the tide is too high for the marine mammals to haul-out on Northwest Seal Rock.

Since the most severe impacts (stampede) precede rapid and direct helicopter approaches, the Society's initial approach to the Station must be offshore from the island at a relatively high altitude (*e.g.,* 800–1,000 ft, or 244–305 m). Before the final approach, the helicopter shall circle lower, and approach from area with the lowest pinniped density. If for any safety reasons (*e.g.,* wind condition) the Society cannot conduct these types of helicopter approach and timing techniques, they must postpone the restoration and maintenance activities for that day.

*Avoidance of Visual and Acoustic Contact with People on Island:* The Society would instruct its members and restoration crews to avoid making unnecessary noise and not expose themselves visually to pinnipeds around the base of the Station. The door to the lower platform (which pinnipeds occasionally use at times) shall remain closed and barricaded to all tourists and other personnel.

**Mitigation Conclusions**

NMFS has carefully evaluated the Society's proposed mitigation measures in the context of ensuring that we prescribe the means of affecting the least practicable impact on the affected marine mammal species and stocks and their habitat. The evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to vessel or visual presence that NMFS expects to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals exposed to vessel or visual presence that NMFS expects to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to vessel or visual presence that NMFS expects to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of the Society's proposed measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring**

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for Authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that NMFS expects to be present in the proposed action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals within the mitigation zone (thus allowing for more effective implementation of the mitigation) in order to generate more data to contribute to the analyses mentioned later;

2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.,* sound or visual stimuli) and the likelihood of associating those exposures with specific adverse effects, such as behavioral harassment, temporary or permanent threshold shift;

3. An increase in our understanding of how marine mammals respond to stimuli that we expect to result in take and how those anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

a. Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli;

b. Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli;

c. Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

The Society proposes to sponsor marine mammal monitoring in order to implement the mitigation measures that require real-time monitoring and to satisfy the monitoring requirements of the Authorization. These include:

At least once during the period between February 19, 2016, and February 18, 2017, a qualified biologist shall be present during all three workdays at the Station. The qualified biologist hired will be subject to approval by us and they shall document use of the island by the pinnipeds, frequency, (*i.e.,* dates, time, tidal height, species, numbers present, and any disturbances), and note any responses to potential disturbances.

Aerial photographic surveys may provide the most accurate means of documenting species composition, age and sex class of pinnipeds using the project site during human activity periods. The Society should complete aerial photo coverage of Northwest Seal Rock from the same helicopter used to transport the Society's personnel during restoration trips. The Society would take photographs of all hauled out marine mammals at an altitude greater than 300 m (984 ft) by a skilled photographer, prior to the first landing on each visit included in the monitoring program. Photographic documentation of marine mammals present at the end of each three-day work session shall also be made for a before and after comparison. These photographs will be forwarded to a biologist capable of discerning marine mammal species. Data shall be provided to us in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see Reporting). The original photographs can be made available to us or other marine mammal experts for inspection and further analysis.

The monitoring requirements in relation to the Society's proposed

activities would include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the restoration activities, including location, date, and time of the event. In addition, the Society would record observations regarding the number and species of any marine mammals either observed in the water or hauled out.

The Society can add to the knowledge of pinnipeds in the proposed action area by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

*Summary of Previous Monitoring*

The Society complied with the mitigation and monitoring required under the previous authorizations (2010–2014). They did not conduct any operations for the 2013 or 2014 season. However, in compliance with the 2012 Authorization, the Society submitted a final report on the activities at the Station, covering the period of February 15, 2012 through April 30, 2012. During the effective dates of the 2012 Authorization, the Society conducted one work session in March, 2012. The Society's aircraft operations and restoration activities on Northwest Seal Rock did not exceed the activity levels analyzed under the 2012 Authorization. During the March 2012 work session, the Society observed two harbor seals hauled out on Northwest Seal Rock. Both animals (a juvenile and an adult) departed the rock, entered the water, and did not return to the Station during the duration of the activities.

**Reporting**

The Society would submit a draft report to NMFS' Office of Protected Resources no later than 90 days after the expiration of the Authorization. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the Authorization. The Society will submit a final report to the NMFS Director, Office of Protected Resources within 30 days after receiving comments from NMFS on the draft report. If the Society receives no comments from NMFS on the report, NMFS will consider the draft report to be the final report.

The report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities.
2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities.
3. An estimate of the number (by species) of marine mammals exposed to human presence associated with the Society's activities.
4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.,* stampede), Society personnel shall immediately cease the specified activities and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Assistant Western Regional Stranding Coordinator at (562) 980–3264. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

The Society shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. We will work with the Society to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Society may not resume their activities until notified by us via letter, email, or telephone.

In the event that the Society discovers an injured or dead marine mammal, and the marine mammal observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as we describe in the next paragraph), the Society will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Assistant Western Regional Stranding Coordinator at (562) 980–3264. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with the Society to determine whether modifications in the activities are appropriate.

In the event that the Society discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Society will report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Assistant Western Regional Stranding Coordinator at (562) 980–3264 within 24 hours of the discovery. Society personnel will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. The Society can continue their survey activities while NMFS reviews the circumstances of the incident.

**Estimated Take by Incidental Harassment**

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. NMFS expects that the mitigation and monitoring measures would minimize the possibility of injurious or lethal takes. NMFS considers the potential for take by injury, serious injury, or mortality as remote. NMFS expects that the presence of Society personnel could disturb of animals hauled out on Northwest Seal Rock and that the animals may alter their behavior or

attempt to move away from the Society's personnel.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the Society's presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. NMFS does not consider animals that became alert without such movements as harassed.

Based on the Society's previous monitoring reports, NMFS estimates that approximately 1,120 California sea lions (calculated by multiplying the maximum number of California sea lions observed on Northwest Seal Rock [160] by 7 months: February–April, November–February) of the restoration and maintenance activities), 1,085 Steller sea lions (calculated by multiplying the maximum number of Steller sea lions observed on Northwest Seal Rock [155] by 7 months, 42 Pacific harbor seals (calculated by multiplying the maximum number of harbor seals observed on Northwest Seal Rock [6] by 7 months), and 7 northern fur seals (calculated by multiplying the maximum number of northern fur seals observed on Northwest Seal Rock [1] by 7 months) could be potentially affected by Level B behavioral harassment over the course of the Authorization. NMFS bases these estimates of the numbers of marine mammals that might be affected on consideration of the number of marine mammals that could be disturbed appreciably by approximately 51 hours of aircraft operations during the course of the activity. These incidental harassment take numbers represent approximately 0.38 percent of the U.S. stock of California sea lion, 1.80 percent of the eastern U.S. stock of Steller sea lion, 0.14 percent of the California stock of Pacific harbor seals, and 0.05 percent of the San Miguel Island stock of northern fur seal. However, actual take may be slightly less if animals decide to haul out at a different location for the day or if animals are foraging at locations away from Northwest Seal Rock at the time of the Societies proposed activities.

Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area, NMFS does not expect any injury or mortality to pinnipeds to occur and NMFS has not authorized take by Level A harassment for this proposed activity.

**Encouraging and Coordinating Research**

The Society would share observations and counts of marine mammals and all observed disturbances to the appropriate state and federal agencies at the conclusion of the activities.

**Analysis and Preliminary Determinations**

*Negligible Impact*

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). The lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population level effects) forms the basis of a negligible impact finding. Thus, an estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

In making a negligible impact determination, NMFS considers:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of harassment;
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental takes

To avoid repetition, our analysis applies to all the species listed in Table 1, given that NMFS expects the anticipated effects of the Society's activities to be similar in nature.

Although the Society's survey activities may disturb a small number of marine mammals hauled out on Northwest Seal Rock, NMFS expects those impacts to occur to a small, localized group of animals for a limited duration (*e.g.,* six hours in one day). Marine mammals would likely become alert or, at most, flush into the water in reaction to the presence of the Society's personnel during the proposed activities. Disturbance will be limited to a short duration, allowing marine mammals to reoccupy Northwest Seal Rock within a short amount of time. Thus, the proposed action is unlikely to result in long-term impacts such as permanent abandonment of the area because of the availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the restoration activities and helicopter operations. Results from previous monitoring reports also show that the pinnipeds returned Northwest Seal Rock and did not permanently abandon haul-out sites after the Society conducted their activities.

The Society's activities would occur during the least sensitive time (*e.g.,* November through April, outside of the pupping season) for hauled out pinnipeds on Northwest Seal Rock. Thus, pups or breeding adults would not be present during the proposed activity periods.

Moreover, the Society's mitigation measures regarding helicopter approaches and restoration site ingress and egress would minimize the potential for stampedes and large-scale movements. Thus, the potential for large-scale movements and stampede leading to injury, serious injury, or mortality is low.

Any noise attributed to the Society's proposed helicopter operations on Northwest Seal Rock would be short-term (approximately 5 minutes per trip). We would expect the ambient noise levels to return to a baseline state when helicopter operations have ceased for the day. As the helicopter landings take place 15 m (48 ft) above the surface of the rocks on Northwest Seal Rock, NMFS presumes that the received sound levels would increase above 81–81.9 dB re: 20 μPa (A-weighted) at the landing pad. However, we do not expect that the increased received levels of sound from the helicopter would cause threshold shifts in hearing because the pinnipeds would flush before the helicopter approached Northwest Seal Rock; thus increasing the distance between the pinnipeds and the received sound levels on Northwest Seal Rock during the proposed action.

If pinnipeds are present on Northwest Seal Rock, Level B behavioral harassment of pinnipeds may occur during helicopter landing and takeoff from Northwest Seal Rock due to the pinnipeds temporarily moving from the rocks and lower structure of the Station

into the sea due to the noise and appearance of helicopter during approaches and departures. It is expected that all or a portion of the marine mammals hauled out on the island will depart the rock and slowly move into the water upon initial helicopter approaches. The movement to the water would be gradual due to the required controlled helicopter approaches (see ''Mitigation'' for more details), the small size of the aircraft, the use of noise-attenuating blade tip caps on the rotors, and behavioral habituation on the part of the animals as helicopter trips continue throughout the day. During the sessions of helicopter activity, if present on Northwest Seal Rock, some animals may be temporarily displaced from the island and either raft in the water or relocate to other haul-outs.

Sea lions have shown habituation to helicopter flights within a day at the project site and most animals are expected to return soon after helicopter activities cease for that day. By clustering helicopter arrival/departures within a short time period, we expect animals present to show less response to subsequent landings. NMFS anticipates no impact on the population size or breeding stock of Steller sea lions, California sea lions, Pacific harbor seals, or northern fur seals.

In summary, NMFS anticipates that impacts to hauled-out pinnipeds during the Society's proposed helicopter operations and restoration/maintenance activities would be behavioral harassment of limited duration (*i.e.,* less than three days a month) and limited intensity (*i.e.,* temporary flushing at most). NMFS does not expect stampeding, and therefore injury or mortality to occur (see ''Mitigation'' for more details). Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the Society's proposed survey activities will have a negligible impact on the affected marine mammal species or stocks.

**Small Numbers**

As mentioned previously, NMFS estimates that the Society's proposed activities could potentially affect, by Level B harassment only, four species of marine mammal under our jurisdiction. For each species, these estimates are small numbers (each, less than or equal to one percent) relative to the population size. These incidental harassment take numbers represent approximately 0.32 percent of the U.S. stock of California sea lion, 0.42 percent of the eastern U.S. stock of Steller sea lion, 0.11 percent of the California stock of Pacific harbor seals, and 0.05 percent of the San Miguel Island stock of northern fur seal.

Based on the analysis contained in this notice of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that the Society's proposed activities would be limited to small numbers of marine mammals relative to the populations of the affected species or stocks.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act (ESA)**

NMFS does not expect that the Society's proposed helicopter operations and restoration/maintenance activities would affect any species listed under the ESA. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

**National Environmental Policy Act (NEPA)**

To meet our NEPA requirements for the issuance of an Authorization to the Society, NMFS has prepared an Environmental Assessment (EA) in 2010 that was specific to conducting aircraft operations and restoration and maintenance work on the St. George Reef Light Station. The EA, titled ''Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting Aircraft Operations, Lighthouse Restoration and Maintenance Activities on St. George Reef Lighthouse Station in Del Norte County, California,'' evaluated the impacts on the human environment of our authorization of incidental Level B harassment resulting from the specified activity in the specified geographic region. At that time, NMFS concluded that issuance of an annual Authorization would not significantly affect the quality of the human environment and issued a Finding of No Significant Impact (FONSI) for the 2010 EA regarding the Society's activities. In conjunction with the Society's 2015 application, NMFS has again reviewed the 2010 EA and determined that there are no new direct, indirect, or cumulative impacts to the human and natural environment associated with the Authorization requiring evaluation in a supplemental EA and NMFS, therefore, reaffirms the 2010 FONSI. An electronic copy of the EA and the FONSI for this activity is available upon request (see **ADDRESSES**).

**Authorization**

NMFS has issued an Incidental Harassment Authorization to the St. George Reef Lighthouse Preservation Society for conducting helicopter operations and restoration activities on the St. George Light Station in the northeast Pacific Ocean, February 19, 2016, through February 18, 2017, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: February 19, 2016.

**Perry F. Gayaldo,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2016–03999 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Sea Grant Advisory Board

**AGENCY:** National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice of solicitation for nominations for the National Sea Grant Advisory Board (NSGAB) and notice of public meeting.

**SUMMARY:** This notice also sets forth the schedule and proposed agenda of a forthcoming meeting of the NSGAB. NSGAB members will discuss and provide advice on the National Sea Grant College Program (NSGCP)in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the NSGCP Web site at *http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard/UpcomingAdvisoryBoardMeetings.aspx.*

**DATES:** The announced meeting is scheduled for Monday, March 7, 2016 from 8:30 a.m. to 5:00 p.m. EDT and Tuesday, March 8, 2016, from 8:30 a.m. to 12:00 p.m. EDT.

**ADDRESSES:** The meeting will be held at the Washington Plaza Hotel, 10 Thomas

Circle, Northwest, Washington, DC 20005.

*Status:* The meeting will be open to public participation with a 15-minute public comment period on Tuesday, March 8, 2016 at 8:45 a.m. EDT. (Check agenda using link in the Summary section to confirm time.)

The NSGAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Mrs. Jennifer Hinden by Friday, February 24, 2016 to provide sufficient time for NSGAB review. Written comments received after the deadline will be distributed to the NSGAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-serve basis.

*Contact Information:* For any questions concerning the meeting, please contact Mrs. Jennifer Hinden, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11717, Silver Spring, Maryland 20910, 301–734–1088, *Jennifer.Hinden@noaa.gov.*

*Special Accomodations:* These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mrs. Jennifer Hinden by Friday, February 19, 2016.

**SUPPLEMENTARY INFORMATION:** The NSGAB, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128).

The NSGAB advises the Secretary of Commerce and the Director of the NSGCP with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Dated: February 10, 2016.

**Jason Donaldson,**

*Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2016–03514 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–KA–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE340**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Dock Replacement Project

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to UniSea, Inc. (UniSea) to incidentally harass, by Level B harassment only, small numbers of marine mammals during construction activities associated with a dock replacement project in Iliuliuk Harbor, Unalaska, AK.

**DATES:** This authorization is effective from March 1, 2016, through February 28, 2017.

**FOR FURTHER INFORMATION CONTACT:** Jordan Carduner, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

#### Availability

An electronic copy of UniSea's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/*. In case of problems accessing these documents, please call the contact listed under **FOR FURTHER INFORMATION CONTACT**.

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of these prescriptions requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

#### Summary of Request

On June 10, 2015, we received a request from UniSea for authorization to take marine mammals incidental to pile driving and pile removal associated with construction of a commercial fishing dock in Iliuliuk Harbor, a small harbor in the Aleutian Islands. UniSea submitted revised versions of the request on September 28, 2015, and December 2, 2015. The latter of these was deemed adequate and complete. UniSea proposed to replace the existing dock with an 80 foot by 400 foot open cell sheet pile dock, between March 1, 2016 and February 28, 2017.

The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Species with the expected potential to be present during all or a portion of the in-water work window include the Steller sea lion (*Eumetopias jubatus*) and harbor seal (*Phoca vitulina*). These species may occur year-round in Iliuliuk Harbor.

**Description of the Specified Activity**

A detailed description of the proposed G1 dock construction project is provided in the **Federal Register** notice for the proposed IHA (80 FR 79822; December 23, 2015). Since that time, no changes have been made to the proposed dock construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

**Comments and Responses**

A notice of NMFS' proposal to issue an IHA to UniSea was published in the **Federal Register** on December 23, 2015 (80 FR 79822). That notice described, in detail, UniSea's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission. The Marine Mammal Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

**Description of Marine Mammals in the Area of the Specified Activity**

Marine waters near Unalaska Island support many species of marine mammals, including pinnipeds and cetaceans; however, the number of species regularly occurring near the project location is limited. There are three marine mammal species under NMFS' jurisdiction with recorded occurrence in Iliuliuk Harbor during the past 15 years, including one cetacean and two pinnipeds. Steller sea lions are the most common marine mammals in the project area and are part of the western Distinct Population Segment (DPS) that is listed as Endangered under the Endangered Species Act (ESA). Harbor seals (*Phoca vitulina*) may also occur in the project area, though less frequently and in lower abundance than Steller sea lions. The humpback whale (*Megaptera novaeangliae*), although seasonally abundant in Unalaska Bay, is not typically present in Iliuliuk Harbor. A single humpback whale was observed beneath the bridge that connects Amaknak Island and Unalaska Island, moving in the direction of Iliuliuk Harbor, in September 2015 (pers. comm., L. Baughman, PND Engineers, to J. Carduner, NMFS, Oct. 12, 2015); no other sightings of humpback whales in Iliuliuk Harbor have been recorded and no records are found in the literature. In the summer months, the majority of humpback whales from the central North Pacific stock are found in the feeding grounds of the Aleutian Islands, Bering Sea, Gulf of Alaska, and Southeast Alaska/northern British Columbia, with high densities of whales found in the eastern Aleutian Islands, including along the north side of Unalaska Island (Allen and Angliss 2014). Despite their relatively high abundance in Unalaska Bay during summer months, their presence within Iliuliuk Harbor is sufficiently rare that we do not believe there is a reasonable likelihood of their occurrence in the project area during the period of validity for the IHA. Thus the incidental harassment of humpback whales as a result of the G1 dock construction project is not authorized in the IHA; as such, the humpback whale is not carried forward for further analysis beyond this section.

We have reviewed UniSea's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of UniSea's application, rather than reprinting the information here. In addition, a detailed description of the species likely to be affected by the UniSea G1 dock construction project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (80 FR 79822; December 23, 2015); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals/*) for generalized species accounts.

Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of the project during the project timeframe and summarizes key information regarding stock status and abundance. Taxonomically, we follow Committee on Taxonomy (2015). Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of these stocks' status and abundance. The harbor seal and Steller sea lion are addressed in the Alaska SARs (*e.g.,* Allen and Angliss, 2012, 2014).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE PROJECT LOCATION

| Species | Stock | ESA/MMPA status; strategic (Y/N) [1] | Stock abundance (CV; $N_{min}$; most recent abundance survey) [2] | PBR [3] | Annual M/SI [4] | Relative occurrence in Iliuliuk Harbor; season of occurrence |
|---|---|---|---|---|---|---|
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| **Family Otariidae (eared seals and sea lions)** | | | | | | |
| Steller sea lion ..... | Western U.S. ..... | E/D; N | 55,422 (n/a; 48,676; 2008–11). | 292 | 234.7 | common; year-round (greater abundance in summer). |

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE PROJECT LOCATION—Continued

| Species | Stock | ESA/MMPA status; strategic (Y/N) [1] | Stock abundance (CV; $N_{min}$; most recent abundance survey) [2] | PBR [3] | Annual M/SI [4] | Relative occurrence in Iliuliuk Harbor; season of occurrence |
|---|---|---|---|---|---|---|
| **Family Phocidae (earless seals)** | | | | | | |
| Harbor seal ..... | Aleutian Islands ..... | -; N | [5] 3,579 (0.092; 3,313; 2004). | 99 | 93.1 | occasional; year-round. |

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable. For killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species (or similar species) life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value.

[5] Abundance estimate for this stock is greater than ten years old and is therefore not considered current. We nevertheless present the most recent abundance estimate, as this represents the best available information for use in this document.

**Potential Effects of the Specified Activity on Marine Mammals**

The effects of underwater noise from in-water construction activities for the UniSea G1 dock construction project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (80 FR 79822; December 23, 2015) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to that **Federal Register** notice for that information. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of the in-water construction activities.

**Anticipated Effects on Habitat**

The main impact associated with the UniSea G1 dock construction project would be temporarily elevated sound levels and the associated direct effects on marine mammals. The project would not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids, and minor impacts to the immediate substrate during installation and removal of piles during the dock construction project. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (80 FR 79822; December 23, 2015), therefore that information is not repeated here; please refer to that **Federal Register** notice for that information.

**Mitigation Measures**

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the G1 dock construction project, NMFS is requiring UniSea to implement the following mitigation measures to minimize potential impacts to marine mammals in the project vicinity as a result of in-water construction activities.

*Monitoring and Shutdown for Pile Driving*

Measurements from similar pile driving events were coupled with practical spreading loss to estimate Level A and Level B harassment zones (see ''Estimated Take by Incidental Harassment''). These values were then used to develop mitigation measures for pile driving activities. The Level A zone effectively represents the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while the Level B zone provides estimates of the areas within which Level B harassment might occur as a result of noise associated with in-water construction. While the Level A and Level B harassment zones vary between different types of construction methods, UniSea will establish mitigation zones for the maximum possible Level A and Level B zones for all construction activities conducted in support of the project. Note that in the **Federal Register** notice for the proposed IHA (80 FR 79822; December 23, 2015), the mitigation and monitoring zones were referred to as the ''exclusion zone'' and ''zone of influence''; we have since changed the names of the zones for clarity.

The following measures would apply to UniSea's mitigation through the Level A and Level B harassment zones:

*Level A Zone*—For all pile driving activities, UniSea will establish a Level A zone intended to contain the area in which SPLs equal or exceed the 190 dB rms acoustic injury criteria for pinnipeds. The purpose of the Level A zone is to define an area within which shutdown of construction activity would occur upon sighting of a marine mammal within that area (or in anticipation of an animal entering that area), thus preventing potential injury of marine mammals. Modeled distances to the Level A threshold are shown in Table 3. UniSea would implement a minimum 10 m radius Level A zone for all pile driving and down-the-hole drilling activities. See Appendix B in the IHA application for figures showing the Level A zones overlaid on satellite images of the project area.

*Level B Zones*—The Level B zones refer to the areas in which SPLs equal or exceed 160 and 120 dB rms (for pulsed and non-pulsed continuous sound, respectively). Level B zones provide utility for monitoring that is conducted for mitigation purposes (*i.e.,* shutdown monitoring) by establishing monitoring protocols for areas adjacent to the Level A zone. Monitoring of the Level B zones enable observers to be aware of, and communicate about, the presence of marine mammals within the

project area but outside the Level A zone, and thus prepare for potential shutdowns of activity should those marine mammals approach the Level A zone. However, the primary purpose of monitoring in the Level B zones is to allow documentation of incidents of Level B harassment; monitoring of Level B zones is discussed in greater detail in the Marine Mammal Monitoring Plan which, available at: *www.nmfs.noaa.gov/pr/permits/incidental/*. The modeled radial distances for Level B zones for impact and vibratory pile driving and removal (not taking into account landmasses which are expected to limit the actual Level B zone radii) are shown in Table 3.

In order to document observed incidents of harassment, monitors will record all marine mammals observed within the modeled Level B zones. Modeling was performed to estimate the Level B zone for impact pile driving (the areas in which SPLs are expected to equal or exceed 160 dB rms during impact driving) and for vibratory pile driving (the areas in which SPLs are expected to equal or exceed 120 dB rms during vibratory driving and removal). Results of this modeling showed the Level B zone for impact driving would extend to a radius of 900 m from the pile being driven, the Level B zone for vibratory pile driving and down-the-hole drilling (if it occurs) would extend to a radius of 10,000 m from the pile being driven, and the Level B zone for vibratory pile removal would extend to a radius of 7,400 m from the pile being removed. However, due to the geography of the project area, landmasses surrounding Iliuliuk Harbor are expected to limit the propagation of sound from construction activities such that the actual distances to the extents of the Level B zones for all construction activities will be substantially smaller than those described above. Modeling results of the ensonified areas, taking into account the attenuation provided by landmasses, suggest the actual Level B zones will extend to a maximum distance of 1,300 m from the G1 dock, at the furthest point (for vibratory driving). Due to this relatively small modeled Level B zones, and due to the monitoring locations chosen by UniSea, we expect that monitors will be able to observe the entire modeled Level B zones for both impact and vibratory pile driving, and thus we expect data collected on incidents of Level B harassment to be relatively accurate. The modeled areas of the Level B zones for impact and vibratory driving, taking into account the attenuation provided by landmasses in attenuating sound from the construction project, and the monitoring locations, are shown in Marine Mammal Monitoring Plan, available at: *www.nmfs.noaa.gov/pr/permits/incidental/*.

*Shutdown Measures*

UniSea will implement shutdown measures if a Steller sea lion or harbor seal is sighted in, or approaching, the Level A zone. In-water construction activities would be suspended until the Steller sea lion or harbor seal is observed leaving the Level A zone voluntarily and has been visually confirmed beyond the Level A zone, or 15 minutes has elapsed without re-detection of the animal in the Level A zone. Shutdown of construction operations will also occur if a species for which authorization has not been granted (including humpback whales) approaches or is observed within the Level B harassment zone; in-water construction activities would be suspended until the animal is observed leaving the Level B zone voluntarily and has been visually confirmed beyond the Level B harassment zone, or 15 minutes (in the case of pinnipeds) or 30 minutes (in the case of cetaceans) has elapsed without re-detection of the animal in the Level B harassment zone. In addition, shutdown of construction operations will also occur if the number of takes authorized for Steller sea lions or harbor seals have been met, and a Steller sea lion or harbor seal approaches, or is observed within, the Level B harassment zone; in-water construction activities would be suspended until the Steller sea lion or harbor seal is observed leaving the Level B zone voluntarily and has been visually confirmed beyond the Level B harassment zone, or 15 minutes has elapsed without re-detection of the animal in the Level B harassment zone.

Observations of Steller sea lions and harbor seals outside the Level A zone will not result in shutdown of construction operations, unless the Steller sea lion or harbor seal approaches or enters the Level A zone, or unless authorized take numbers for Steller sea lions or harbor seals has already been exceeded as described above, at which point all pile driving activities will be halted.

*Monitoring Protocols*—Monitoring will be conducted before, during, and after pile driving activities. Monitoring will take place from 30 minutes prior to initiation of pile driving or pile removal through 30 minutes post-completion of pile driving or removal activities. Pile driving and removal activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Marine Mammal Monitoring Plan (available at *www.nmfs.noaa.gov/pr/permits/incidental/*), for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are will have the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance;
- Experience and ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors, with ability to accurately identify marine mammals in Alaskan waters to species;
- Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the Level A and Level B zone will be monitored for thirty minutes to ensure that the Level A zone is clear of all marine mammals and the Level B zone is clear of marine mammals other than Steller sea lions and harbor seals. Pile driving will only commence once observers have declared the Level A zone is clear of all marine mammals and the Level B zone is clear of all marine mammals under NMFS jurisdiction with the exception of Steller sea lions and harbor seals; animals will be allowed to remain in the respective exclusion zones (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The respective exclusion zones may only be declared clear, and pile driving started, when the entire Level B zone is visible (*i.e.,* when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity will be halted.

(3) If a Steller sea lion or harbor seal enters or approaches the Level A zone, or, if a marine mammal other than Steller sea lion or harbor seal enters or approaches the Level B zone, during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left the respective zone and been visually confirmed beyond the respective zone, or fifteen minutes have passed without re-detection of the animal in the case of pinnipeds, or thirty minutes have passed without re-detection of the animal in the case of cetaceans. Monitoring will be conducted throughout the time required to drive a pile.

*Sound Attenuation Devices*

UniSea will use bubble curtains, which create a column of air bubbles rising around a pile from the substrate to the water's surface, as a sound attenuation device. The air bubbles absorb and scatter sound waves emanating from the pile, thereby reducing the sound energy. Unconfined bubble curtains will be used during all impact pile driving associated with the G1 dock construction project. A discussion of bubble curtains and their anticipated effectiveness is included in the **Federal Register** notice for the proposed IHA (80 FR 79822; December 23, 2015), therefore that information is not repeated here; please refer to that **Federal Register** notice for that information.

*Soft Start*

The use of a ''soft-start'' procedure is believed to provide additional protection to marine mammals by providing a warning and an opportunity to leave the area prior to the hammer operating at full capacity. For vibratory hammers, the soft start technique will initiate noise from the hammer for 15 seconds at a reduced energy level, followed by 1-minute waiting period and repeat the procedure two additional times. For impact hammers, the soft start technique will initiate three strikes at a reduced energy level, followed by a 30-second waiting period. This procedure would also be repeated two additional times. The actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' Soft start for impact driving will be required at the beginning of each day's pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

We have carefully evaluated UniSea's proposed mitigation measures and considered their likely effectiveness relative to implementation of similar mitigation measures in previously issued IHAs to determine whether they are likely to affect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of UniSea's proposed measures, we have determined that the mitigation measures provide the means of affecting the least practicable impact on marine mammal species or stocks and their habitat.

**Monitoring and Reporting**

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the project area.

Any monitoring requirement we prescribe should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within defined zones of effect (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to stimuli that we associate with specific adverse effects, such as behavioral harassment or hearing threshold shifts;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in incidental take and how anticipated adverse effects on individuals may impact the population, stock, or species (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source); and
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli.

4. An increased knowledge of the affected species; or

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

UniSea submitted a marine mammal monitoring plan as part of their IHA application (the monitoring plan can be viewed online at: *www.nmfs.noaa.gov/pr/permits/incidental/*). UniSea's marine mammal monitoring plan was created with input from NMFS and was based on similar plans that have been successfully implemented by other action proponents under previous IHAs for pile driving projects.

*Visual Marine Mammal Observations*

UniSea will collect sighting data and will record behavioral responses to construction activities for marine mammal species observed in the project location during the period of activity. All marine mammal observers (MMOs) will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. UniSea will monitor the Level A and Level B harassment zones before, during, and after pile driving, with observers located at the best practicable vantage points. See Figure 2 in the Marine Mammal Monitoring Plan for the observer locations planned for use during construction. Based on our requirements, the Marine Mammal Monitoring Plan would implement the following procedures for pile driving:

- Observers will report directly to the monitoring coordinator if/when a shutdown is deemed necessary due to marine mammals approaching the Level A or Level B harassment zones. An employee of the construction contractor will be identified as the monitoring coordinator at the start of each construction day. Shutdowns will be implemented immediately upon an observer reporting a marine mammal in, or approaching, the Level A zone; or, upon an observer reporting a marine mammal under NMFS's jurisdiction other than a Steller sea lion or harbor seal in, or approaching, the Level B zone.
- MMOs will be located at the best vantage point(s) in order to properly observe the entire Level A and Level B zones. A minimum of two MMOs will be on duty during all pile driving activity, with one of these MMOs having full time responsibility for monitoring the Level A zone.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the Level A or Level B zones are obscured by fog or poor lighting conditions, pile driving will not be initiated until the Level A and Level B zones are clearly visible. Should such conditions arise while impact driving is underway, the activity would be halted.
- The Level A or Level B zones will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. MMOs will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and UniSea.

*Data Collection*

We require that observers use approved data forms. Among other pieces of information, UniSea will record detailed information about any implementation of shutdowns, including the distance of animals to the pile being driven, a description of specific actions that ensued, and resulting behavior of the animal, if any. In addition, UniSea will attempt to distinguish between the number of individual animals taken and the number of incidents of take, when possible. We require that, at a minimum, the following information be collected on sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and (if possible) sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from marine mammal(s) to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

*Reporting*

A draft report will be submitted within 90 calendar days of the completion of the activity, or within 45 calendar days prior to the effective date of a subsequent IHA (if applicable). The report will include information on marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of any mitigation shutdowns and results of those actions, as well as an estimate of total take based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments from NMFS on the draft report.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not authorized by the IHA, such as a Level A harassment, or a take of a marine mammal species other than those authorized, UniSea will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with UniSea to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. UniSea would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that UniSea discovers an injured or dead marine mammal, and the lead MMO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition), UniSea would immediately report the incident to mail to: The Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Stranding Coordinator.

The report would include the same information identified in the paragraph above. Construction related activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with UniSea to determine whether

modifications in the activities are appropriate.

In the event that UniSea discovers an injured or dead marine mammal, and the lead MMO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), UniSea would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Stranding Coordinator, within 24 hours of the discovery. UniSea would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

**Estimated Take by Incidental Harassment**

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

All anticipated takes would be by Level B harassment, resulting from vibratory and impact pile driving and involving temporary changes in behavior. Based on the best available information, the activities—vibratory and impact pile driving—would not result in serious injuries or mortalities to marine mammals even in the absence of the mitigation and monitoring measures. However, the mitigation and monitoring measures are expected to minimize the potential for injury, such that take by Level A harassment is considered discountable.

If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound.

This practice potentially overestimates the numbers of marine mammals taken, as it is often difficult to distinguish between the individual animals harassed and incidences of harassment. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity. The Steller sea lions and harbor seals expected to occur in the project area are not branded, thus we expect that the identification of individual animals, even by experienced MMOs, would be extremely difficult. This would further increase the likelihood that repeated exposures of an individual, even within the same day, could be recorded as multiple takes.

UniSea requested authorization for the incidental taking of small numbers of Steller sea lions and harbor seals that may result from pile driving activities associated with the dock construction project described previously in this document. In order to estimate the incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then incorporate information about marine mammal density or abundance in the project area. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating incidences of take.

*Sound Thresholds*

We use generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a ''take'' by harassment might occur. To date, no studies have been conducted that explicitly examine impacts to marine mammals from pile driving sounds or from which empirical sound thresholds have been established. These thresholds should be considered guidelines for estimating when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. NMFS is currently revising these acoustic guidelines; for more information on that process, please see: *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 2—CURRENT NMFS ACOUSTIC EXPOSURE CRITERIA

| Criterion | Definition | Threshold |
|---|---|---|
| Level A harassment (underwater) ... | Injury (PTS—any level above that which is known to cause TTS). | 180 dB (cetaceans)/190 dB (pinnipeds) (rms). |
| Level B harassment (underwater) ... | Behavioral disruption ..... | 160 dB (impulsive source *)/120 dB (continuous source *) (rms). |
| Level B harassment (airborne) ** .... | Behavioral disruption ..... | 90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted). |

* Impact pile driving produces impulsive noise; vibratory pile driving produces non-pulsed (continuous) noise.

** NMFS has not established any formal criteria for harassment resulting from exposure to airborne sound. However, these thresholds represent the best available information regarding the effects of pinniped exposure to such sound and NMFS' practice is to associate exposure at these levels with Level B harassment.

*Distance to Sound Thresholds*

*Underwater Sound Propagation Formula*—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions,

current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10}(R_1/R_2)$,

Where

$R_1$ = the distance of the modeled SPL from the driven pile, and

$R_2$ = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, such as Iliuliuk Harbor, where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

*Underwater Sound*—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity occurs. A large quantity of literature regarding SPLs recorded from pile driving projects is available for consideration. In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from pile driving at the UniSea dock, studies with similar properties to the specified activity were evaluated. See Section 5 of UniSea's IHA application for a detailed description of the information considered in determining reasonable proxy source level values. UniSea used representative source levels of 165 dB rms for installation of steel sheet piles using a vibratory hammer (CalTrans 2012), 163 dB rms for vibratory removal and installation of a 24-inch steel pile (Rodkin 2013), 189 dB rms for impact pile driving of a 24-inch steel pile (CalTrans 2012), and 165 dB (re: 1 µPa at 1m) at 200 Hz for down-the-hole drilling (URS 2011). The representative source level of 189 dB rms for impact pile driving of a 24-inch steel pile represents a change from the proposed IHA published in the **Federal Register** on December 23, 2015 (80 FR 79822), in which a representative source level of 184 dB rms was proposed as a proxy source level; during the 30 day public comment period, NMFS determined that the best available information suggested 189 dB represented a more accurate source level for impact pile driving (CalTrans 2012).

TABLE 3—MODELED DISTANCES FROM G1 DOCK TO NMFS LEVEL A AND LEVEL B HARASSMENT THRESHOLDS (ISOPLETHS) DURING PILE INSTALLATION AND REMOVAL

| Threshold | Distance (meters) * |
|---|---|
| Impact driving, pinniped injury (190 dB) | ** 8.6 |
| Impact driving, pinniped disturbance (160 dB) | 900 |
| Vibratory driving, pinniped injury (190 dB) | ** 0.215 |
| Vibratory driving or down-the-hole drilling, pinniped disturbance (120 dB) | 10,000 |
| Vibratory removal, pinniped injury (160 dB) | ** 0.158 |
| Vibratory removal, pinniped disturbance (120 dB) | 7,400 |

* Distances shown are modeled maximum distances and do not account for landmasses which are expected to reduce the actual distances to sound thresholds.

** These are modeled distances to the Level A harassment threshold, however the Level A zone will conservatively extend to 10 m radius, thus any marine mammal within, or approaching, a 10 m radius of the pile being driven would trigger a shutdown of construction.

Iliuliuk Harbor does not represent open water, or free field, conditions. Therefore, sounds would attenuate as they encounter land masses. As a result, and as described above, pile driving noise in the project area is not expected to propagate to the calculated distances for the 160 dB or 120 dB thresholds as shown in Table 3. See Appendix B of UniSea's IHA application for figures depicting the actual extents of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving, taking into account the attenuation provided by landmasses.

*Airborne Sound*—Pile driving can generate airborne sound that could potentially result in disturbance to pinnipeds that are hauled out or at the water's surface. As a result, UniSea analyzed the potential for pinnipeds hauled out or swimming at the surface near the G1 dock to be exposed to airborne SPLs that could result in Level B behavioral harassment. A spherical spreading loss model (*i.e.,* 6 dB reduction in sound level for each doubling of distance from the source), in which there is a perfectly unobstructed (free-field) environment not limited by depth or water surface, is appropriate for use with airborne sound and was used to estimate the distance to the airborne thresholds.

As discussed above regarding underwater sound from pile driving, the intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity occurs. In order to determine reasonable airborne SPLs and their associated effects on marine mammals that are likely to result from pile driving at Iliuliuk Harbor, studies with similar properties to the UniSea G1 dock construction project, as described previously, were evaluated. UniSea used representative source levels of 100 dB Leq/rms at 22 m for vibratory removal and installation of a 24-inch steel pile and 100 dB Leq/rms at 26 m for impact driven 24-inch steel piles. Please see Section 5 of UniSea's IHA application for details of the information considered. These values result in a disturbance zone (radial distance) of 3.16 m for harbor seals and 1.0 m for Steller sea lions. No data was found for the airborne sound levels expected from the installation of steel sheet piles or 18-inch steel piles, but sound levels from the installation of steel sheet piles and 18-inch steel piles are likely to be within a similar range as sound levels mentioned above.

Despite the modeled distances described above, no incidents of incidental take resulting solely from airborne sound are likely, as distances to the harassment thresholds would not reach areas where pinnipeds are known to haul out in the area of the project. Harbor seal haulout locations may change slightly depending on weather patterns, human disturbance, or prey availability, but the closest known harbor seal haulout to the project location is on the north side of Hog island, located west of Amaknak Island in Unalaska Bay, approximately 3 km from the G1 dock (pers. comm., L. Fritz, NMML, to J. Carduner, NMFS, Oct 30, 2015). Steller sea lions have greater site fidelity than harbor seals; the closest known Steller sea lion haulout is at Priest Rock, a point that juts into the Bering Sea on the northeastern corner of Unalaska Bay, approximately 20 km from the project site (pers. comm., L.

Fritz, NMML, to J. Carduner, NMFS, Oct 30, 2015).

We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when their heads are above the water's surface. However, these animals would previously have been ''taken'' as a result of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple incidents of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further.

*Marine Mammal Occurrence*

The most appropriate information available was used to estimate the number of potential incidences of take. Density estimates for Steller sea lions and harbor seals in Iliuliuk Harbor, and more broadly in the waters surrounding Unalaska Island, are not readily available. Likewise, we were not able to find any published literature or reports describing densities or estimating abundance of either species in the project area. As such, data collected from marine mammal surveys represent the best available information on the occurrence of both species in the project area.

Beginning in April 2015, UniSea personnel began conducting marine mammal surveys of Iliuliuk Harbor under the direction of an ecological consultant. Observers recorded data on all marine mammals that were observed, including Steller sea lions, whales, and harbor seals. Both stationary and roving observations occurred within a 1,000 m radius of the project site (see Figure 9 in the IHA application for a depiction of survey points and marine mammal observations). A combination of two of the stationary observation points were surveyed each day, for a total of 15 minutes at each point, and the roving route was checked once per day over a time span of 15 minutes, covering areas between the docks that were too difficult to see from the stationary points. The survey recorded the number of animals observed, the species, their primary activity, and any additional notes. From January through October 2015, a total of 323 Steller sea lions and 33 harbor seals were observed during 1,432 separate observations over the course of 358 hours of surveys. These surveys represent the most recent data on marine mammal occurrence in the harbor, and represent the only targeted marine mammal surveys of the project area that we are aware of.

Data from bird surveys of Iliuliuk Harbor conducted by the U.S. Army Corps of Engineers (USACE) from 2001–2007, which included observations of marine mammals in the harbor, were also available; however, we determined that these data were unreliable as a basis for prediction of marine mammal abundance in the project location as the goal of the USACE surveys was to develop a snapshot of waterfowl and seabird location and abundance in the harbor, thus the surveys would have been designed and carried out differently if the goal had been to document marine mammal use of the harbor (pers. comm., C. Hoffman, USACE, to J. Carduner, NMFS, October 26, 2015). Additionally, USACE surveys occurred only in winter; as Steller sea lion abundance is expected to vary significantly between the breeding and the non-breeding season in the project location, data that were collected only during the non-breeding season have limited utility in predicting year-round abundance. As such, we determined that the data from the surveys commissioned by UniSea in 2015 represents the best available information on marine mammals in the project location.

*Description of Take Calculation*

The take calculations presented here rely on the best data currently available for marine mammal populations in the project location. Density data for marine mammal species in the project location is not available. Therefore the data collected from marine mammal surveys of Iliuliuk Harbor in 2015 represent the best available information on marine mammal populations in the project location, and this data was used to estimate take. As such, the zones that have been calculated to contain the areas ensonified to the Level A and Level B thresholds for pinnipeds have been calculated for mitigation and monitoring purposes and were not used in the calculation of take. See Table 4 for total estimated incidents of take. Estimates were based on the following assumptions:

- All marine mammals estimated to be in areas ensonified by noise exceeding the Level B harassment threshold for impact and vibratory driving (as shown in Appendix B of the IHA application) are assumed to be in the water 100% of the time. This assumption is based on the fact that there are no haulouts or rookeries within the area predicted to be ensonified to the Level B harassment threshold based on modeling.
- Predicted exposures were based on total estimated total duration of pile driving/removal hours, which are estimated at 1,080 hours over the entire project. This estimate is based on a 180 day project time frame, an average work day of 12 hours (work days may be longer than 12 hours in summer and shorter than 12 hours in winter), and an estimate that approximately 50% of time during those work days will include pile driving and removal activities (with the other 50% of work days spent on non-pile driving activities which will not result in marine mammal take, such as installing templating and bracing, moving equipment, etc.).
- Vibratory or impact driving could occur at any time during the ''duration'' and our approach to take calculation assumes a rate of occurrence that is the same for any of the calculated zones.
- The hourly marine mammal observation rate recorded during marine mammal surveys of Iliuliuk Harbor in 2015 is reflective of the hourly rate that will be observed during the construction project.
- Takes were calculated based on estimated rates of occurrence for each species in the project area and this rate was assumed to be the same regardless of the size of the zone (for impact or vibratory driving/removal).
- Activities that may be accomplished by either impact driving or down-the-hole drilling (*i.e.* fender support/pin piles, miscellaneous support piles, and temporary support piles) were assumed to be accomplished via impact driving. If any of these activities are ultimately accomplished via down-the-hole drilling instead of impact driving, this would not result in a change in the amount of overall effort (as they will be accomplished via down-the-hole drilling instead of, and not in addition to, impact driving). As take estimates are calculated based on effort and not marine mammal densities, this would not change the take estimate.

Take estimates for Steller sea lions and harbor seals were calculated using the following series of steps:

1. The average hourly rate of animals observed during 2015 marine mammal surveys of Iliuliuk Harbor was calculated separately for both species (''Observation Rate''). Thus ''Observation Rate'' (OR) = No. of individuals observed/hours of observation;

2. The 95% confidence interval was calculated for the data set, and the

upper bound of the 95% confidence interval was added to the Observation Rate to account for variability of the small data set (''Exposure Rate''). Thus ''Exposure Rate'' (XR) = $\mu_{OR}$ + $CI_{95}$ (where $\mu_{OR}$ = average of monthly observation rates and $CI_{95}$ = 95% confidence interval (normal distribution);

3. The total estimated hours of pile driving work over the entire project was calculated, as described above (''Duration''); Thus ''Duration'' = total number of work days (180) * average work hours per day (12) * percentage of pile driving time during work days (0.5) = total work hours for the project (1,080); and

4. The estimated number of exposures was calculated by multiplying the ''Duration'' by the estimated ''Exposure Rate'' for each species. Thus, estimated takes = Duration * XR.

Please refer to Appendix G of the IHA application for a more thorough description of the statistical analysis of the observation data from marine mammal surveys.

*Steller Sea Lion*—Steller sea lion density data for the project area is not available. Steller sea lions occur year-round in the Aleutian Islands and within Unalaska Bay and Iliuliuk Harbor. As described above, local abundance in the non-breeding season (winter months) is generally lower overall; data from surveys conducted by UniSea in 2015 revealed Steller sea lions were present in Iliuliuk Harbor in all months that surveys occurred. We assume, based on marine mammal surveys of Iliuliuk Harbor, and based on the best available information on seasonal abundance patterns of the species including over 20 years of NMML survey data collected in Unalaska, that Steller sea lions will be regularly observed in the project area during all months of construction. As described above, all Steller sea lions in the project area at a given time are assumed to be in the water, thus any sea lion within the modeled area of ensonification exceeding the Level B harassment threshold would be recorded as taken by Level B harassment.

Estimated take of Steller sea lions was calculated using the equations described above, as follows:

$\mu_{OR}$ = 1.219 individuals/hr
$CI_{95}$ = 0.798
XR = 2.016
Estimated exposures (Level B harassment) = 2.016 * 1,080 = 2,177

Thus we estimate that a total of 2,177 Steller sea lion takes will occur as a result of the UniSea G1 dock construction project (Table 4).

*Harbor Seal*—Harbor seal density data for the project location is not available. We assume, based on the best on the best available information, that harbor seals will be encountered in low numbers throughout the duration of the project. We relied on the best available information to estimate take of harbor seals, which in this case was survey data collected from the 2015 marine mammal surveys of Iliuliuk Harbor as described above. That survey data showed harbor seals are present in the harbor only occasionally, with only 33 seals observed over the entire survey. NMML surveys have not been performed in Iliuliuk Harbor, but the most recent NMML surveys of Unalaska Bay confirm that harbor seals are present in the area in relatively small numbers, with the most recent haulout counts in Unalaska Bay (2008–11) recording no more than 19 individuals at the three known haulouts there. NMML surveys have been limited to the months of July and August, so it is not known whether harbor seal abundance in the project area varies seasonally. The 2015 marine mammal surveys of Iliuliuk Harbor showed numbers of harbor seals in the harbor increasing from July through October, but the sample size for those months was extremely small (n=30). As described above, all harbor seals in the project area at a given time are assumed to be in the water, thus any harbor seals within the modeled area of ensonification exceeding the Level B harassment threshold would be recorded as taken by Level B harassment.

Estimated take of harbor seals was calculated using the equations described above, as follows:

$\mu_{OR}$ = 0.171 individuals/hr
$CI_{95}$ = 0.185
XR = 0.356
Estimated exposures (Level B harassment) = 0.356 * 1,080 hours = 385

Thus we estimate that a total of 385 harbor seal takes will occur as a result of the UniSea G1 dock construction project (Table 4).

We therefore authorize the take, by Level B harassment only, of a total of 2,177 Steller sea lions (western DPS) and 385 harbor seals (Aleutian Islands stock) as a result of the UniSea G1 dock construction project. These take estimates are considered reasonable estimates of the number of marine mammal exposures to sound above the Level B harassment threshold that are likely to occur over the course of the project, and not the number of individual animals exposed. For instance, for pinnipeds that associate fishing boats in Iliuliuk Harbor with reliable sources of food, there will almost certainly be some overlap in individuals present day-to-day depending on the number of vessels entering the harbor, however each instance of exposure for these individuals will be recorded as a separate, additional take. Moreover, because we anticipate that marine mammal observers will typically be unable to determine from field observations whether the same or different individuals are being exposed over the course of a workday, each observation of a marine mammal will be recorded as a new take, although an individual theoretically would only be considered as taken once in a given day.

TABLE 4—NUMBER OF AUTHORIZED INCIDENTAL TAKES OF MARINE MAMMALS, AND PERCENTAGE OF STOCK ABUNDANCE, AS A RESULT OF THE G1 DOCK CONSTRUCTION PROJECT

| Species | Underwater* | | Percentage of stock abundance |
|---|---|---|---|
| | Level A | Level B (120 dB) | |
| Steller sea lion | 0 | 2,177 | 4 |
| Harbor seal | 0 | 385 | 11 |

*We assume, for reasons described earlier, that no takes would occur as a result of airborne noise.

**Analyses and Determinations**

*Negligible Impact Analysis*

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Pile driving activities associated with the UniSea G1 dock construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Takes could occur if marine mammals are present in the Level B harassment zone when pile driving is happening, which is likely to occur because: (1) Steller sea lions have established haulouts near Iliuliuk Harbor and are frequently observed in Iliuliuk Harbor, in varying numbers depending on season and prey availability, and probably associate fishing boats entering the harbor with reliable food sources; and (2) harbor seals are observed in Iliuliuk Harbor occasionally and are known to haulout at sites outside the harbor, including one site approximately 3 km from the project location.

No serious injury or mortality of marine mammals would be anticipated as a result of vibratory and impact pile driving, regardless of mitigation and monitoring measures. Vibratory hammers do not have significant potential to cause injury to marine mammals due to the relatively low source levels produced (less than 180 dB rms) and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels than vibratory driving and much sharper rise time to reach those peaks. The potential for injury that may otherwise result from exposure to noise associated with impact pile driving will effectively be minimized through the implementation of the planned mitigation measures. These measures include: The implementation of a Level A ''exclusion zone'', which is expected to eliminate the likelihood of marine mammal exposure to noise at received levels that could result in injury; the use of ''soft start'' before pile driving, which is expected to provide marine mammals near or within the zone of potential injury with sufficient time to vacate the area; and the use of a sound attenuation system which is expected to dampen the sharp, potentially injurious peaks associated with impact driving and to reduce the overall source level to some extent (it is difficult to predict the extent of attenuation provided as underwater recordings have not been performed for the type of bubble curtain proposed for use). We believe the required mitigation measures, which have been successfully implemented in similar pile driving projects, will minimize the possibility of injury that may otherwise exist as a result of impact pile driving.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from similar pile driving projects that have received incidental take authorizations from NMFS, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging. Most likely, individuals will simply move away from the sound source and be temporarily displaced from the area of pile driving (though even this reaction has been observed primarily in association with impact pile driving). In response to vibratory driving, harbor seals have been observed to orient towards and sometimes move towards the sound. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

No pinniped rookeries or haul-outs are present within the project area, and the project area is not known to provide foraging habitat of any special importance to either Steller sea lions or harbor seals (other than is afforded by the migration of salmonids to and from Iliuliuk Stream and the occasional availability of discarded fish from commercial fishing boats and fish processing facilities in the project area). No cetaceans are expected within the project area. While we are not aware of comparable construction projects in the project location, the pile driving activities analyzed here are similar to other in-water construction activities that have received incidental harassment authorizations previously, including projects at Naval Base Kitsap Bangor in Hood Canal, Washington, and at the Port of Friday Harbor in the San Juan Islands, which have occurred with no reported injuries or mortalities to marine mammals, and no known long-term adverse consequences to marine mammals from behavioral harassment.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any major rookeries and only a few isolated haulout areas near the project site; (4) the absence of any other known areas or features of special significance for foraging or reproduction within the project area; and (5) the presumed efficacy of planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individual animals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, we find that the total marine mammal take from UniSea's dock construction activities in Iliuliuk Harbor will have a negligible impact on the affected marine mammal species or stocks.

*Small Numbers Analysis*

The numbers of animals authorized to be taken would be considered small relative to the relevant stocks or populations (4 percent and 11 percent for Steller sea lions and harbor seals, respectively) even if each estimated taking occurred to a new individual. However, the likelihood that each take would occur to a new individual is extremely low. As described above, for those sea lions that associate fishing boats with reliable sources of food, there will almost certainly be some overlap in individuals present day-to-day depending on the number of vessels entering the harbor. It is expected that operations at a separate, nearby UniSea dock and the associated UniSea processing facilities, as well as at seafood processing facilities owned by other companies based in Iliuliuk Harbor, will continue as usual during construction on the G1 dock, so it is likely that sea lions accustomed to seeking food at these facilities will continue to be attracted to the area during portions of the construction activities.

Further, these takes are likely to occur only within some small portion of the overall regional stock. For example, of the estimated 55,422 western DPS Steller sea lions throughout Alaska, there are probably no more than 300 individuals with site fidelity to the three haulouts located nearest to the project location, based on over twenty years of NMML survey data (see ''Description of Marine Mammals in the Area of the Specified Activity'' above). For harbor seals, NMML survey data suggest there are likely no more than 60 individuals that use the three haulouts nearest to the project location (the only haulouts in Unalaska Bay). Thus the estimate of take is an estimate of the number of anticipated exposures, rather than an estimate of the number of individuals that will be taken, as we expect the majority of exposures would be repeat exposures that would accrue to the same individuals. As such, the authorized takes represent a much smaller number of individuals of both Steller sea lions and harbor seals, in relation to total stock sizes.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

**Impact on Availability of Affected Species for Taking for Subsistence Uses**

Subsistence hunting and fishing is an important part of the history and culture of Unalaska Island. However, the number of Steller sea lions and harbor seals harvested in Unalaska decreased from 1994 through 2008; in 2008, the last year for which data is available, there were no Steller sea lions or harbor seals reported as harvested for subsistence use. Data on pinnipeds hunted for subsistence use in Unalaska has not been collected since 2008. For a summary of data on pinniped harvests in Unalaska from 1994–2008, see Section 8 of the IHA application.

Aside from the apparently decreasing rate of subsistence hunting in Unalaska, Iliuliuk Harbor is not likely to be used for subsistence hunting or fishing due to its industrial nature, with several fish processing facilities located along the shoreline of the harbor. In addition, the UniSea G1 dock construction project is likely to result only in short-term, temporary impacts to pinnipeds in the form of possible behavior changes, and is not expected to result in the injury or death of any marine mammal. As such, the project is not likely to adversely impact the availability of any marine mammal species or stocks that may otherwise be used for subsistence purposes.

**National Environmental Policy Act (NEPA)**

NMFS prepared an Environmental Assessment (EA) in February, 2016, titled ''*Issuance of an Incidental Harassment Authorization to UniSea, Inc., to Take Marine Mammals by Harassment Incidental to Construction Activities on Unalaska Island, Alaska, March 2016–February 2017.*'' A Finding of No Significant Impact (FONSI) was signed on February 12, 2016. In the FONSI, NMFS determined that the issuance of the IHA for the take, by harassment, of small numbers of marine mammals incidental to the UniSea's dock construction project in Unalaska, AK, will not significantly impact the quality of the human environment, as described in this document and in the UniSea EA. The EA and FONSI can be found at: *http://www.nmfs.noaa.gov/pr/permits/incidental/.*

**Endangered Species Act (ESA)**

There is one marine mammal species (western DPS Steller sea lion) with confirmed occurrence in the project area that is listed as endangered under the ESA. The NMFS Alaska Regional Office Protected Resources Division issued a Biological Opinion on February 16, 2016, under section 7 of the ESA, on the issuance of an IHA to UniSea under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of western DPS Steller sea lions, and is not likely to destroy or adversely modify western DPS Steller sea lion critical habitat.

**Authorization**

NMFS has issued an IHA to UniSea for the potential harassment of small numbers of two marine mammal species incidental to the G1 dock construction project in Unalaska, Alaska, provided the previously mentioned mitigation.

Dated: February 19, 2016.

**Perry Gayaldo,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2016–03998 Filed 2–24–16; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID: USA–2016–HQ–0005]**

### Proposed Collection; Comment Request

**AGENCY:** United States Army Medical Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Surgeon General, United States Army Medical Command (MEDCOM) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 25, 2016.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Jason Etchegaray and Heather Krull, RAND Corporation, 1776 Main Street, Santa Monica, CA 90401, or call (310) 393–0411 ext. 7648 for Jason Etchegaray and ext. 6445 for Heather Krull.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Core Competencies for Amputation Rehabilitation; OMB Control Number 0702–XXXX.

*Needs and Uses:* The information collection requirement is necessary to obtain, document, and assess the core competencies of health practitioners and teams caring for amputees who are undergoing rehabilitation.

*Affected Public:* Business or other for profit; Not-for-profit institutions.

*Annual Burden Hours:* 400.

*Number of Respondents:* 400.

*Responses per Respondent:* 1.

*Annual Responses:* 400.

*Average Burden per Response:* 1 hour.

*Frequency:* On occasion.

Respondents are healthcare providers and patients/family members. Healthcare providers consist of active duty providers, DoD civilian and contractor providers, VA providers, and civilian rehabilitation center providers. Individual interviews and focus groups with healthcare providers will be conducted either in-person or telephonically. Patients/family members consist of currently serving amputees, veteran amputees, and family members of amputees. Interviews with amputees and/or family members of amputees will be conducted either in-person or telephonically. Compiling, analyzing, and understanding responses of all the various perspectives of patient care is necessary to set a baseline of care, identify core competencies, services and support required for providers, patients and family members providing, accepting, or supporting amputation rehabilitation.

Dated: February 22, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016–04008 Filed 2–24–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID: USA–2015–0010]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Army, Network Enterprise Technology, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army, Network Enterprise Technology Command announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 25, 2016.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Headquarters, Network Enterprise Technology Command, Military Auxiliary Radio System, Salado, TX 76571, ATTN: Paul English, or call 254–947–3141.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Application to Operate a Military Auxiliary Radio System (MARS) Station, Army MARS Form AM–1, OMB Control Number 0702–TBD.

*Needs and Uses:* The information collection requirement is necessary to operate a Military Auxiliary Radio System (MARS) Station. The MARS program is a civilian auxiliary consisting primarily of licensed amateur radio operators who are interested in assisting the military with communications on a local, national, and international basis as an adjunct to normal communications and providing worldwide auxiliary emergency communications during times of need. The information collection requirement is necessary not only an application to join ARMY MARS, but to maintain an accurate roster of civilians enrolled in the program for the purpose of providing contingency communications support to the Department of Defense. Additionally, the collected information is used by the MARS program manager to determine an individual's eligibility for the program, as well as to initiate a background investigation should a security clearance be required; used to show the geographic dispersion of the

members who participate in the global High Frequency radio network in support of the Department of Defense; and to ensure our radio spectrum authorizations cover the geographic areas from which our members will operate. The information is also used periodically to email informational updates about the MARS program.

*Affected Public:* Individual members of the general public, business or other for profit; Not-for-profit institutions.

*Annual Burden Hours:* 138.

*Number of Respondents:* 550.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion, individuals and FCC licensed Amateur Radio operators will indicate a desire to join the Army MARS program. These interested individuals are required to submit the ''Application to Operate a MARS Station'' for verification of individual requirements/certification and acceptance before acceptance into the program. Once accepted into the MARS program, the information provided on the application is entered into the MARS membership database so the Program Manager has an accurate and current roster of all individuals who are members of Army MARS. The member information specifically the email address, is used by the Program Manager to send out general information about the MARS program, upcoming training events and other related activities. The member phone number is also used on occasion contact members to discuss the MARS program and gain their insight and observations. The postal address is used to create a general overview of where MARS members are located throughout the world and map radio network coverage the postal address is also used to mail certificates of achievement and appreciation to those members who excel in participation supporting the MARS program. The date of birth is used to verify applicants meet the minimum age requirement for MARS program inclusion and to initiate a security clearance background check (if required).

Dated: February 22, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016–04034 Filed 2–24–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2016–OS–0017]**

### Proposed Collection; Comment Request

**AGENCY:** National Geospatial-Intelligence Agency, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the National Geospatial-Intelligence Agency (NGA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 25, 2016.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of Business Intelligence, Xperience Directorate, National Geospatial-Intelligence Agency, ATTN: Deborah A. Gaut, Program Manager, 3200 S. 2nd Street, St. Louis, MO 63118, or call Deborah Gaut at 314–676–1847.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* NGA Customer Satisfaction Survey; OMB Control Number 0704–XXXX.

*Needs and Uses:* The information collection requirement is necessary to gather information from NGA's external customers regarding their overall satisfaction with NGA products and content. These data are used to improve NGA's support to members of the military, intelligence, and public sectors. Results are reported annually to the Office of the Director of National Intelligence in fulfillment of a Congressional mandate for annual reporting.

*Affected Public:* Individuals or households; State, local, or tribal government.

*Annual Burden Hours:* 3,788.

*Number of Respondents:* 22,728.

*Responses per Respondent:* 1.

*Annual Responses:* 22,728.

*Average Burden per Response:* 10 minutes.

*Frequency:* Annually.

Respondents to this survey are individuals and Federal government, who use Geospatial information or intelligence (GEOINT) to support their respective missions. Analysis is used for purposes of formal reporting to ODNI and Congress; for purposes of leadership decision-making and problem solving, and for improving NGA products and content. This survey serves as an important way of securing direct customer feedback via quantifiable data in pursuit of continuous process and product improvement.

Dated: February 22, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2016–04062 Filed 2–24–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2016–OS–0014]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to alter a System of Records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter a system of records, DWHS P04, entitled ''Reduction-In-Force Case Files'' to maintain records used to affect a RIF, document retention standing, personnel actions, and all communications between the employees, managers, and the Human Resources Office.

**DATES:** Comments will be accepted on or before March 28, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard, Chief, OSD/JS Privacy Office, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/*.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 18, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 22, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DWHS P04**

**SYSTEM NAME:**

Reduction-In-Force Case Files (October 27, 2011, 76 FR 66695).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with ''Human Resources Directorate, Personnel Services Division, 4800 Mark Center Drive, Alexandria, VA 22350–3200.''

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''5 U.S.C. 7103, Definitions, application; 10 U.S.C. 1597, Civilian positions: Guidelines for reductions; 5 CFR 351, Reduction in Force; and DoD Instruction 1400.25, Volume 1700, DoD Civilian Personnel Management System: Civilian Assistance and Re-Employment (CARE) Program.''

**PURPOSE(S):**

Delete entry and replace with ''To maintain records used to affect a RIF, document retention standing, personnel actions, and all communications between the employees, managers, and the Human Resources Office.''

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Office of Personnel Management in instances where an affected employee appeals the decision.

Disclosure When Requesting Information Routine Use. A record from a system of records maintained by a DoD Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

Disclosure of Requested Information Routine Use. A record from a system of records maintained by a DoD Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Disclosure to the Office of Personnel Management Routine Use. A record from a system of records subject to the Privacy Act and maintained by a DoD Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

Disclosure to the Department of Justice for Litigation Routine Use. A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use. A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure to the Merit Systems Protection Board Routine Use. A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative

proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

Data Breach Remediation Purposes Routine Use. A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system. The complete list of DoD Blanket Routine Uses can be found Online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.''*

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Delete entry and replace with ''Paper file folders and electronic storage media.''

**RETRIEVABILITY:**

Delete entry and replace with ''Retrieved by fiscal year, effective date, organization name, then affected employees alphabetically by last name.''

**SAFEGUARDS:**

Delete entry and replace with ''Paper records are maintained in locked file cabinets in a secure area in a building with 24-hour security. Access to records is only by authorized Reduction in Force (RIF) team personnel. Access to computerized data is restricted by Common Access Card.

Records are maintained in a secure, password protected electronic system that utilizes security hardware and software. All personnel requiring access to the information are trained in the proper safeguarding and use of the information.''

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Records are destroyed two years after the RIF effective date, unless litigation, grievance, or equal employment opportunity case is pending.''

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''Assistant Director, Personnel Services Division, Human Resources Directorate, 4800 Mark Center Drive, Alexandria, VA 20350–3200.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Director, Personnel Services Division, Human Resources Directorate, Washington Headquarters Service, 4800 Mark Center Drive, Alexandria, VA 20350–3200.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests must include the name and number of this System of Records Notice along with the name of the individual and approximate date of RIF.''

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[FR Doc. 2016–04038 Filed 2–24–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2016–OS–0016]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to alter a System of Records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter a system of records notice DWHS D01, entitled ''DoD National Capital Region Mass Transportation Benefit Program'' to manage the DoD National Capital Region Mass Transportation Benefit Program for DoD military and civilian personnel applying for and in receipt of fare subsidies. Used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, and conducting research.

**DATES:** Comments will be accepted on or before March 28, 2016. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in the **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/*.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on February 16, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and

Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: February 22, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DWHS D01**

**SYSTEM NAME:**

DoD National Capital Region Mass Transportation Benefit Program (October 27, 2015, 80 FR 65724).

**CHANGES:**

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Name, last four of Social Security Number (SSN), DoD Identification Number (DoD ID Number), point-to-point commuting expenses, type of mass transit used, city, state, and ZIP+4 of residence, organizational affiliation of the individual, office work number, DoD email address, duty/work address, Smartrip card number, and monthly amount spent from Washington Metropolitan Area Transit Authority (WMATA).''

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with ''Individual's name and last four of SSN.''

* * * * *

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Facilities Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests for information should contain the full name of the individual and last four of SSN.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests for information should contain the full name of the individual, last four of SSN, and include the name and number of this system of record notice.''

* * * * *

[FR Doc. 2016–04058 Filed 2–24–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'' or ''the Panel''). The meeting is open to the public.

**DATES:** A meeting of the Judicial Proceedings Panel will be held on Friday, March 11, 2016. The Public Session will begin at 9:30 a.m. and end at 4:45 p.m.

**ADDRESSES:** The Holiday Inn Arlington at Ballston, 4610 N. Fairfax Drive, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil.* Phone: (703) 693–3849. Web site: *http://jpp.whs.mil.*

**SUPPLEMENTARY INFORMATION:** This public meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

*Purpose of the Meeting:* In Section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), as amended, Congress tasked the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel will deliberate on military justice case data for sexual assault offenses for fiscal years 2012–2014. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to these issues or any of the Panel's tasks.

**Agenda:**

8:30–9:30 Administrative Work *(41 CFR 102–3.160, not subject to notice & open meeting requirements)*
9:30–12:00 Deliberations on Military Justice Case Data for Sexual Assault Offenses *(Public meeting begins)*
12:00–1:00 Lunch
1:00–4:00 Deliberations on Military Justice Case Data for Sexual Assault Offenses
4:00–4:15 Public Comment *(Public meeting ends)*

*Availability of Materials for the Meeting:* A copy of the March 11, 2016 public meeting agenda or any updates or changes to the agenda, to include individual speakers not identified at the time of this notice, as well as other materials provided to Panel members for use at the public meeting, may be obtained at the meeting or from the Panel's Web site at *http://jpp.whs.mil.* In the event the Office of Personnel Management closed the government due to inclement weather or any other reason, please consult the Web site for any changes in the public meeting date or time.

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis.

*Special Accommodations:* Individuals requiring special accommodations to access the public meeting should contact the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

*Procedures for Providing Public Comments:* Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by the JPP at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to the Judicial Proceedings

Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted along with a request to provide an oral statement. Oral presentations by members of the public will be permitted from 4:00 p.m. to 4:15 p.m. on March 11, 2016 in front of the Panel members. The number of oral presentations to be made will depend on the number of requests received from members of the public on a first-come basis. After reviewing the requests for oral presentation, the Chairperson and the Designated Federal Officer will, if they determine the statement to be relevant to the Panel's mission, allot five minutes to persons desiring to make an oral presentation.

*Committee's Designated Federal Officer:* The Panel's Designated Federal Officer is Ms. Maria Fried, Department of Defense, Office of the General Counsel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: February 19, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016–03926 Filed 2–24–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2016–OS–0015]**

### Proposed Collection; Comment Request

**AGENCY:** United States Transportation Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Commander, United States Transportation Command announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 25, 2016.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the United States Transportation Command, 508 Scott Drive, Bldg. 1900 E., Room 112 (Attn: Richard Swezey, TCJ4–PT), Scott Air Force Base, IL 62225–5357, or call TCJ4–PT at 618–220–7433.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Signature and Tally Record, DD Form 1907; OMB Control Number 0704–XXXX.

*Needs and Uses:* The information collection requirement is necessary to obtain and record the names and signatures of each person responsible for the proper handling of cargo shipments requiring additional transportation protective service due to the sensitive or classified nature of the cargo.

**AFFECTED PUBLIC:** Business or other for profit.

*Annual Burden Hours:* 3,750.

*Number of Respondents:* 130.

*Responses per Respondent:* 577.

*Annual Responses:* 75,000.

*Average Burden per Response:* 3 minutes.

*Frequency:* On occasion.

Respondents are transportation service providers/commercial carriers who provide cargo movement for DoD cargo that requires transportation protective services due to the sensitive and/or classified nature of the cargo. DD form 1907 is used to record the name and signature of the person responsible for safeguarding the cargo at all times while in-transit. A single failure to complete the form could result in loss of accountability on a sensitive shipment, such as arms, ammunition and explosives or classified cargo. In addition, the DD Form 1907 supports the payment process by verifying the services requested by the origin transportation office were provided.

Dated: February 22, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2016–04057 Filed 2–24–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Nevada

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, March 16, 2016, 5:00 p.m.

**ADDRESSES:** National Atomic Testing Museum, 755 East Flamingo, Las Vegas, Nevada 89119.

**FOR FURTHER INFORMATION CONTACT:** Barbara Ulmer, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–5300 or Email: *NSSAB@nnsa.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

1. Briefing and Recommendation Development for Fiscal Year 2018 Baseline Prioritization—Work Plan Item #8
2. Briefing for Radioactive Waste Acceptance Program Assessment Process—Work Plan Item #7

*Public Participation:* The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Barbara Ulmer at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so during the 15 minutes allotted for public comments.

*Minutes:* Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC on February 19, 2016.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2016–04042 Filed 2–24–16; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9942–92–Region 5]**

### Notification of a Public Meeting of the Science and Information Subcommittee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) announces a public meeting of the Science and Information Subcommittee (SIS) of the Great Lakes Advisory Board. The purpose of this meeting is to discuss the Great Lakes Restoration Initiative (GLRI) covering FY16–19 and other relevant matters.

**DATES:** The meeting will be held Wednesday, March 9, 2016 from 10 a.m. to 3 p.m. Central Time, 11 a.m. to 4 p.m. Eastern Time. An opportunity will be provided to the public to comment.

**ADDRESSES:** The meeting will be held at 77 W. Jackson, 19th Floor, Chicago, Illinois. For those unable to attend in person, this meeting will also be available telephonically. The teleconference number is 877–226–9607 and the conference ID number is 4218582837.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this meeting may contact Rita Cestaric, Designated Federal Officer (DFO), by email at *cestaric.rita@epa.gov.* General information on the GLRI and the SIS can be found at *http://glri.us/public.html.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The SIS was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463. The SIS is composed of members from governmental, private sector, non-profit and academic organizations, appointed by the EPA Administrator in her capacity as Chair of the Interagency Task Force (IATF), who were selected based on their established records of distinguished service in their professional community and their knowledge of ecological protection and restoration issues. The SIS will assist the Board in providing ongoing advice on Great Lakes adaptive management and may provide other recommendations, as requested by the IATF.

*Availability of Meeting Materials:* The agenda and other materials in support of the meeting will be available at *http://glri.us/advisory/index.html.*

*Procedures for Providing Public Input:* Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the SIS. Input from the public to the SIS will have the most impact if it provides specific information for consideration. Members of the public wishing to provide comments should contact the DFO directly.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at this public meeting will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the DFO in writing (preferably via email) at the contact information noted above by March 4, 2016 to be placed on the list of public speakers for the meeting.

*Written Statements:* Written statements must be received by March 4, 2016 so that the information may be made available to the SIS for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters are requested to provide two versions of each document submitted: One each with and without signatures because only documents without signatures may be published on the GLRI Web page.

*Accessibility:* For information on access or services for individuals with disabilities, please contact the DFO at the phone number or email address noted above, preferably at least seven days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 10, 2016.

**Cameron Davis,**

*Senior Advisor to the Administrator.*

[FR Doc. 2016–04086 Filed 2–24–16; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Issuance of Statement of Federal Financial Accounting Standards 48

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice.

*Board Action:* Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards 48, *Opening Balances for Inventory, Operating Materials and Supplies, and Stockpile Materials.*

The Statement is available on the FASAB Web site at *http://fasab.gov/accounting-standards/authoritative-source-of-gaap/accounting-standards/fasab-handbook/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wendy M. Payne, Executive Director, 441 G Street NW., Mail Stop 6H19, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act, Pub. L. 92–463.

Dated: February 19, 2016.

**Wendy M. Payne,**

*Executive Director.*

[FR Doc. 2016–03965 Filed 2–24–16; 8:45 am]

**BILLING CODE 1610–02–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 16–105]**

## Order Declares Ocean Technology Limited's International Section 214 Authorization Terminated

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the International Bureau declares the international section 214 authorization granted to Ocean Technology Limited (Ocean) terminated given Ocean's inability to comply with the express condition for holding the authorization. We also conclude that Ocean failed to comply with those requirements of the Communications Act of 1934, as amended (the Act) and the Commission's rules that ensure that the Commission can contact and communicate with the authorization holder and verify Ocean is still providing service, which failures have prevented any way of addressing Ocean's inability to comply with the condition of its authorization.

**FOR FURTHER INFORMATION CONTACT:** Cara Grayer, Telecommunications and Analysis Division, International Bureau, at (202) 418–2960 or *Cara.Grayer@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, DA 16–105, adopted and released January 29, 2016.

### Background

On July 17, 2013, the International Bureau granted Ocean an international section 214 authorization to provide global or limited global facility-based service and global or limited global resale service in accordance with section 63.18(e)(1) and 63.18(e)(2) of the Commission's rules. The International Bureau granted the application on the express condition that Ocean abide by the commitments and undertakings contained in its Letter of Assurance (LOA) to the Department of Justice (DOJ), the Federal Bureau of Investigation, the Drug Enforcement Agency, and the U.S. Marshals Service (collectively, the Executive Branch Agencies) dated July 16, 2013. On July 1, 2015, the Executive Branch Agencies notified the Commission of Ocean's non-compliance with the conditions of its authorization and requested that the Commission terminate, and declare null and void and no longer in effect, the international section 214 authorization issued to Ocean. The Executive Branch Agencies indicated that open-source searches suggest that Ocean was still in operation and providing services, however, ''every attempt by the DOJ to communicate with Ocean regarding its LOA compliance has resulted in failure.'' The Executive Branch Agencies added that Ocean's former legal counsel has not been in contact with Ocean since July 2014 and was also unable to contact Ocean. Based on this, the Executive Branch Agencies stated that they are ''wholly unable to evaluate Ocean's compliance with the LOA, and must consider Ocean to be non-compliant.''

The Commission has made significant efforts to communicate with Ocean, but has also been unable to do so. On August 25, 2015, the International Bureau sent Ocean a letter to the last addresses of record requesting that Ocean respond to the July 1, 2015 Executive Branch Letter within 30 days of the letter, by September 24, 2015. Ocean did not respond. Since that time, the International Bureau has provided Ocean with additional opportunities to respond to these allegations. The International Bureau stated that failure to respond would result in termination of Ocean's international section 214 authorization for failure to comply with conditions of its authorization. In Ocean's 2012 application, Ocean stated it was incorporated in Delaware, and according to the Delaware Secretary of State, the service of process received for Ocean cannot be forwarded because ''the party served is not qualified to do business in the jurisdiction served.'' To date, Ocean has not responded to any of the International Bureau or the Executive Branch Agencies' multiple requests to resolve this matter.

### Discussion

We determine that Ocean's international section 214 authorization to provide international services issued under File No. ITC–214–20121210–00323 has terminated for inability to comply with an express condition for holding the section 214 international authorization. The International Bureau has provided Ocean with notice and opportunity to respond to the allegations in the July 1, 2015 Executive Branch Letter concerning Ocean's non-compliance with the condition of the grant. Ocean has not responded to any of our multiple requests or requests from the Executive Branch Agencies. We find that Ocean's failure to respond to our multiple requests demonstrates that it is unable to satisfy the LOA conditions, upon which the Executive Branch Agencies gave their non-objection to the grant of the authorization to Ocean, and which is a condition of the grant of its section 214 authorization.

Furthermore, after having received an international 214 authorization, a carrier ''is responsible for the continuing accuracy of the certifications made in its application'' and must promptly correct information no longer accurate, ''and, in any event, within thirty (30) days.'' Ocean has failed to inform the Commission of any changes in its business status of providing international telecommunications services, as required by the rules. Nor is there any record of Ocean having complied with section 413 of the Act and the Commission's rules requiring it to designate an agent for service after receiving its authorization on July 17, 2013. Finally, as part of its authorization, Ocean ''must file annual international telecommunications traffic and revenue as required by section 43.62.'' Section 43.62(b) states that ''[n]ot later than July 31 of each year, each person or entity that holds an authorization pursuant to section 214 to provide international telecommunications service shall report whether it provided international telecommunications services during the preceding calendar year.'' Our records indicate that Ocean failed to file an annual international telecommunications traffic and revenue report indicating whether or not Ocean provided services in 2014, as required by section 43.62(b) of the Commission's rules. In these circumstances, and in light of Ocean's failure to respond to the Commission's rules designed to ensure its ability to communicate with the holder of the authorization, also warrants termination wholly apart from demonstrating Ocean's inability to satisfy the LOA conditions of its authorization.

### Ordering Clauses

Accordingly, *it is ordered,* pursuant to sections 4(i), 214, and 413 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 413, and sections 1.47(h), 43.62, 63.18, 63.21, 63.22(h), 63.23(e), and 64.1195 of the Commission's rules, 47 CFR 1.47(h), 43.62, 63.18, 63.21, 63.22(h), 63.23(e), 64.1195, that the international 214 authorization issued under File No. ITC–214–20121210–00323 *is hereby terminated and declared null and void.*

*It is further ordered* that the request of the U.S. Department of Justice, the Federal Bureau of Investigation, the Drug Enforcement Agency, and the U.S. Marshals Service, IS HEREBY GRANTED, to the extent set forth in this Order.

*It is further ordered* that a copy of this Order shall be sent by return receipt requested to Ocean Technology Limited at its last known addresses.

*It is further ordered* that a copy of this Order, or a summary thereof, shall be published in the **Federal Register**.

This Order is issued on delegated authority under 47 CFR 0.51, 0.261, and is effective upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 CFR 1.106, or applications for review under section 1.115 of the Commission's rules, 47 CFR 1.115, may be filed within 30 days of the date of the release of this Order.

Federal Communications Commission.

**Denise Coca,**

*Chief, Telecommunications and Analysis Division, International Bureau.*

[FR Doc. 2016–03939 Filed 2–24–16; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the notices must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 21, 2016.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement), 101 Market Street, San Francisco, California 94105–1579:

1. *H Bancorp LLC,* Irvine, California; to merge with Hopkins Bancorp, Inc., Baltimore, Maryland, and thereby indirectly acquire Hopkins Federal Savings Bank, Baltimore, Maryland. Upon acquisition, Hopkins Federal Savings Bank will merge into Bay Bank, FSB, Lutherville Timonium, Maryland, a wholly-owned subsidiary of Bay Bancorp, Inc.

In connection with this application, Applicant also has applied to acquire to acquire 51 percent of iReverse Home Loans, LLC, Owings Mill, Maryland, and thereby engage in activities related to extending credit, pursuant to sections 225.28(b)(1) and (b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, February 22, 2016.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2016–04059 Filed 2–24–16; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 151–0202]**

### Lupin Ltd., Gavis Pharmaceuticals LLC, and Novel Laboratories, Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before March 22, 2016.

**ADDRESSES:** Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/lupingavisnovelconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''In the Matter of Lupin Ltd., Gavis Pharmaceuticals LLC, and Novel Laboratories, Inc.—Consent Agreement; File No. 151–0202'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/lupingavisnovelconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of Lupin Ltd., Gavis Pharmaceuticals LLC, and Novel Laboratories, Inc.—Consent Agreement; File No. 151–0202'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Kari Wallace, (202–326–3085), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 19, 2016), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 22, 2016. Write ''In the Matter of Lupin Ltd., Gavis Pharmaceuticals LLC, and Novel Laboratories, Inc.—Consent Agreement; File No. 151–0202'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible

for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/lupingavisnovelconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''In the Matter of Lupin Ltd., Gavis Pharmaceuticals LLC, and Novel Laboratories, Inc.—Consent Agreement; File No. 151–0202'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 22, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

**Analysis of Agreement Containing Consent Orders To Aid Public Comment**

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Lupin Ltd. (''Lupin'') and Gavis Pharmaceuticals LLC and Novel Laboratories, Inc. (collectively ''Gavis'') that is designed to remedy the anticompetitive effects resulting from Lupin's acquisition of Gavis. Under the terms of the proposed Consent Agreement, the parties are required to divest all of Gavis's rights and assets related to generic doxycycline monohydrate capsules and generic mesalamine extended release (''ER'') capsules to G&W Laboratories (''G&W'').

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again evaluate the proposed Consent Agreement, along with the comments received, to make a final decision as to whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order (''Order'').

Pursuant to Purchase and Sale Agreements dated July 23, 2015, Lupin plans to acquire Gavis Pharmaceuticals LLC and Novel Laboratories, Inc. for approximately $850 million (the ''Proposed Acquisitions''). Gavis and Novel are related companies. Novel researches, develops and manufactures generic pharmaceutical products, which Gavis markets and sells. The Commission alleges in its Complaint that the Proposed Acquisitions, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening current competition in the market for generic doxycycline monohydrate capsules and future competition in the market for generic mesalamine ER capsules in the United States. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that otherwise would be eliminated by the Proposed Acquisitions.

**I. The Products and Structure of the Markets**

The Proposed Acquisitions would reduce the number of current suppliers in the market for generic doxycycline monohydrate capsules and reduce the number of future suppliers in the market for generic mesalamine ER capsules.

Generic doxycycline is an antibiotic used for treating a variety of different bacterial infections, including respiratory infections, urinary tract infections, severe acne, skin and skin structure infections, Lyme disease, and anthrax. Generic doxycycline monohydrate is available in four strengths: 50 mg, 75 mg, 100 mg, and 150 mg. Gavis and Lupin both market three of the four strengths, 50 mg, 75 mg, and 100 mg. Both Lupin and Gavis are recent entrants into the generic doxycycline monohydrate market; Lupin launched its product in March 2014, while Gavis launched its product at the end of July 2015. Endo International plc, Allergan, Inc., and Sun Pharmaceutical Industries Ltd. also offer generic doxycycline monohydrate products in the United States. All five companies offer the 100 mg strength, but only four companies offer the 50 mg and 75 mg strengths.

Mesalamine ER capsules are used to treat ulcerative colitis. Valeant Pharmaceuticals markets Apriso, the branded version of the product, which is available in a 375 mg formulation. No generic version of mesalamine ER capsules is currently available in the United States. Lupin and Gavis are developing generic mesalamine ER capsules products, and are two of a limited number of suppliers capable of entering the market in the near future.

**II. Entry**

Entry into the two relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Proposed Acquisitions. The combination of drug development times and regulatory requirements, including approval by the United States Food and Drug Administration (''FDA''), is costly and lengthy.

**III. Effects**

The Proposed Acquisitions likely would cause significant anticompetitive harm to consumers by eliminating current competition between Lupin and Gavis in the market for generic doxycycline monohydrate capsules. Market participants characterize generic

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

doxycycline monohydrate capsules as commodity products. As the number of suppliers offering a therapeutically equivalent drug increases, the price for that drug generally decreases due to the direct competition between the existing suppliers and each additional supplier. The Proposed Acquisitions would combine two of only four companies offering the 50 mg and 75 mg strengths of generic doxycycline monohydrate capsules, likely leading consumers to pay higher prices.

In addition, the Proposed Acquisitions likely would cause significant anticompetitive harm to consumers by eliminating future generic competition that would otherwise have occurred in the mesalamine ER capsule market if Lupin and Gavis remained independent. The evidence shows that anticompetitive effects are likely to result from the Proposed Acquisitions due to the elimination of an additional independent entrant in the market for generic mesalamine ER. Customers and competitors expect that the price of this pharmaceutical product will decrease with new entry by Lupin and Gavis. Thus, absent a remedy, the Proposed Acquisitions will likely cause U.S. consumers to pay significantly higher prices for generic mesalamine ER.

**IV. The Consent Agreement**

The proposed Consent Agreement effectively remedies the competitive concerns raised by the acquisitions in the markets at issue by requiring Gavis to divest all its rights and assets relating to doxycycline monohydrate capsules and mesalamine ER to G&W. Founded in 1919, G&W is a privately held, family-owned, generic pharmaceutical company. G&W develops, manufactures, sells, and distributes generic pharmaceuticals and over-the-counter products within the United States.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the Proposed Acquisitions. If the Commission determines that G&W is not an acceptable acquirer, or that the manner of the divestitures is not acceptable, the proposed Order requires the parties to unwind the sale of rights to G&W and then divest the products to a Commission-approved acquirer within six months of the date the Order becomes final. The proposed Order further allows the Commission to appoint a trustee in the event the parties fail to divest the products as required.

The proposed Consent Agreement and Order contain several provisions to help ensure that the divestitures are successful. The proposed D&O requires that Lupin supply G&W with generic doxycycline monohydrate capsules for two years while Lupin transfers the manufacturing technology to G&W's facility. To ensure the success of the generic doxycycline monohydrate capsules divestiture, the proposed D&O requires Lupin to provide transitional services to assist G&W in establishing its manufacturing capabilities and securing all of the necessary FDA approvals. These transitional services include technical assistance to manufacture the product in substantially the same manner and quality employed or achieved by Gavis, and advice and training from knowledgeable employees of the parties.

To assist G&W with completing the regulatory work and setting up and validating the manufacturing for the generic mesalamine ER product, G&W will enter into a consulting agreement with Gavis's current CEO, Dr. Veerappan Subramanian, who will not be employed by Lupin post-transaction. Dr. Subramanian is the founder of Gavis and has previously served as the chief scientist for the company. He has been involved with the development and manufacturing of the generic mesalamine ER product since the company started the formulation. G&W will also inherit Gavis's ongoing patent litigation related to mesalamine ER. G&W intends to retain Gavis's current counsel to continue the litigation.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2016–04040 Filed 2–24–16; 8:45 am]

**BILLING CODE 6750–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 151–0044]**

### Hikma Pharmaceuticals PLC and C.H. Boehringer Sohn AG & Co. KG; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before March 22, 2016.

**ADDRESSES:** Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/hikmabenconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''In the Matter of Hikma Pharmaceuticals PLC and C.H. Boehringer Sohn AG & Co. KG,—Consent Agreement; File No. 151–0044'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/hikmabenconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of Hikma Pharmaceuticals PLC and C.H. Boehringer Sohn AG & Co. KG,—Consent Agreement; File No. 151–0044'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Jordan Andrew (202–326–3678), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 19, 2016), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 22, 2016. Write ''In the Matter of Hikma Pharmaceuticals PLC and C.H. Boehringer Sohn AG & Co. KG,—Consent Agreement; File No. 151–

0044'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/hikmabenconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''In the Matter of Hikma Pharmaceuticals PLC and C.H. Boehringer Sohn AG & Co. KG,—Consent Agreement; File No. 151–0044'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 22, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

**Analysis of Agreement Containing Consent Order To Aid Public Comment**

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Hikma Pharmaceuticals PLC (''Hikma'') and C.H. Boehringer Sohn AG & Co. KG (''Boehringer'') that is designed to remedy the anticompetitive effects that otherwise would have resulted from Hikma's proposed acquisition of forty-nine Abbreviated New Drug Applications (''ANDAs'') from Ben Venue Laboratories, Inc. (''Ben Venue''), a subsidiary of Boehringer, in five generic injectable pharmaceutical markets. Boehringer recently exited the markets related to these ANDAs when it ceased its manufacturing and other operations through Ben Venue. Under the terms of the proposed Consent Agreement, Hikma is required to divest to Amphastar Pharmaceuticals, Inc. (''Amphastar'') the Ben Venue ANDAs it will acquire from Boehringer related to acyclovir sodium injection, diltiazem hydrochloride injection, famotidine injection, prochlorperazine edisylate injection, and valproate sodium injection.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again evaluate the proposed Consent Agreement, along with the comments received, in order to make a final decision as to whether it should withdraw from the proposed Consent Agreement, or make final the Decision and Order (''Order'').

Pursuant to a Sale and Purchase Agreement dated December 4, 2014 (''Proposed Acquisition''), Hikma proposes to acquire forty-nine ANDAs from Boehringer for approximately $5 million. The Commission alleges in its Complaint that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening future competition in the markets for acyclovir sodium injection, diltiazem hydrochloride injection, famotidine injection, prochlorperazine edisylate injection, and valproate sodium injection in the United States. The proposed Consent Agreement will remedy the alleged violations by replacing the competition that would otherwise be eliminated by the Proposed Acquisition.

**I. The Relevant Products and Structure of the Markets**

The relevant products are all generic versions of injectable pharmaceutical products. Generic versions of these products are usually launched after a branded product's patents expire, or a generic supplier successfully challenges such patents in court or reaches a legal settlement with the branded manufacturer. Once multiple generic suppliers enter a market, the branded drug manufacturer usually ceases to provide any competitive constraint on the prices for generic versions of the drug. Rather, the generic suppliers compete only against each other. Sometimes, however, a branded injectable drug manufacturer may choose to lower its price and compete against generic versions of the drug, in which case it would be a participant in the generic drug market.

The relevant products at issue and the structure of each of the relevant markets is as follows:

- Acyclovir sodium injection is an antiviral drug used to treat chicken pox, herpes, and other related infections. Three firms, Boehringer, Fresenius Kabi

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

AG (''Fresenius''), and AuroMedics Pharma LLC (''AuroMedics''), currently have ANDAs for this drug that have been approved by the U.S. Food and Drug Administration (''FDA''). Only Fresenius and AuroMedics currently supply acyclovir sodium injection to the market. Hikma and one other firm are likely to enter the market in the near future. The Proposed Acquisition would therefore reduce the number of likely future suppliers of acyclovir sodium injection from five to four.

• Diltiazem hydrochloride injection is a calcium channel blocker and antihypertensive used to treat hypertension, angina, and arrhythmias. There are four firms that currently have FDA-approved ANDAs for diltiazem hydrochloride injection, Hikma, Boehringer, Hospira, Inc. (''Hospira''), and Akorn, Inc. (''Akorn''), but only Hikma, Hospira, and Akorn currently supply the market. No other firms are likely to enter the market in the near future. Thus, the Proposed Acquisition would reduce the number of likely future suppliers of diltiazem hydrochloride injection from four to three.

• Famotidine injection treats ulcers and gastroesophageal reflux disease. Three firms currently sell the vial presentation of famotidine injection, Hikma, Fresenius, and Mylan N.V. Boehringer has an FDA-approved ANDA for famotidine injection vials, but had no sales of the drug in 2014. No other companies appear to be poised to enter the market in the near future. The Proposed Acquisition would therefore reduce the number of likely future suppliers of famotidine injection from four to three.

• Prochlorperazine edisylate injection is an antipsychotic used to treat schizophrenia and nausea. Boehringer owned virtually the entire market for prochlorperazine edisylate injection in 2013, but it exited the market in mid-2014. Since that time, Heritage Pharmaceuticals Inc. has assumed all sales of prochlorperazine edisylate injection. Hikma is the only other company that has an FDA-approved ANDA for prochlorperazine edisylate injection, but it is not currently supplying the market. Another firm has prochlorperazine edisylate injection in its development pipeline and anticipates achieving FDA approval of its ANDA in the near future. Thus, the Proposed Acquisition would reduce the number of likely future suppliers of prochlorperazine edisylate injection from four to three.

• Valproate sodium injection is used to treat epilepsy, seizures, bipolar disorder, anxiety, and migraine headaches. There are two firms that currently supply valproate sodium injection in the market, Hikma and Fresenius. Boehringer has an FDA-approved ANDA for valproate sodium injection but exited the market in July 2014. Another firm has valproate sodium injection in its development pipeline and anticipates achieving FDA approval of its ANDA in the near future. Thus, the Proposed Acquisition would reduce the number of likely future suppliers of valproate sodium injection from four to three.

## II. Competitive Effects

The transaction will reduce competition by decreasing the number of future suppliers in in each of these markets; in generic pharmaceutical products, prices generally decrease as the number of competing generic suppliers increases. In addition, the injectable pharmaceutical industry generally, and the generic products at issue in this investigation in particular, are highly susceptible to supply disruptions caused by the inherent difficulties of producing sterile liquid drugs. Recent manufacturing problems have made it difficult for customers to obtain sufficient quantities of, and contributed to price increases of, several of the generic injectable products impacted by this transaction. By reducing the number of likely future competitors in these markets, the Proposed Acquisition will likely create a direct and substantial anticompetitive effect on prices for each of the relevant products, absent the remedies required by the proposed Consent Agreement.

In each of the relevant markets, either Hikma or Boehringer, or both, currently do not supply an existing generic product. For markets in which Hikma is not a current competitor, it is likely to become one in the near future. Boehringer has recently exited each of these markets, but, absent the Proposed Acquisition, it would have had the incentive to sell these ANDAs to a third-party supplier who would likely bring these products to market. Hikma, which already has an approved ANDA or is likely to soon achieve FDA approval for an ANDA in each of the five relevant markets at issue, lacks that incentive, and thus, customers would be deprived of the price decreases that likely would have accompanied third-party entry into each of these concentrated markets.

## III. Entry

Entry into each of these generic injectable product markets will not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the likely anticompetitive effects of the Proposed Acquisition. The combination of drug development times and regulatory requirements, including FDA approval, takes well in excess of two years.

## IV. The Consent Agreement

The Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in each relevant market. Under the Consent Agreement, Hikma is required to divest the Ben Venue ANDAs it will acquire from Boehringer related to acyclovir sodium injection, diltiazem hydrochloride injection, famotidine injection, prochlorperazine edisylate injection, and valproate sodium injection to Amphastar. Hikma must accomplish these divestitures and relinquish its rights no later than ten days after the acquisition.

Amphastar is a global pharmaceutical company based in Rancho Cucamonga, California and has over 1,200 employees worldwide. The company owns five pharmaceutical manufacturing facilities and produces a variety of branded and generic pharmaceutical products. Amphastar manufactures and sells sixteen injectable drug products in the United States, as well as a broad range of other pharmaceutical dosage formulations, including emulsions, suspensions, jellies, and lyophilized products. The company sells most of its products through long-standing relationships with major group purchasing organizations, drug wholesalers, and retailers in the United States. With its experience in generic markets, and in injectable products in particular, Amphastar is expected to replicate fully the competition that would otherwise have been lost as a result of the Proposed Acquisition.

The Commission's goal in evaluating possible acquirers of divested assets is to maintain the competitive environment that existed prior to the acquisition. If the Commission determines that Amphastar is not an acceptable acquirer, or that the manner of the divestitures or releases is not acceptable, the parties must unwind the sale or release of rights to Amphastar and divest the products to a Commission-approved acquirer within six months of the date the Order becomes final. In that circumstance, the Commission may appoint a trustee to divest the products if the parties fail to divest the products as required.

The proposed Consent Agreement contains several provisions to help ensure that the divestitures are successful. The Order requires Boehringer to maintain the economic viability, marketability, and

competitiveness of the assets to be divested until they are transferred to Hikma, and requires Hikma to do the same until such time as they are transferred to a Commission-approved acquirer. The Order also requires that the parties transfer all confidential business information, regulatory, formulation, and manufacturing reports, as well as provide access to employees who possess or are able to identify such information. Because the products related to the Boehringer (Ben Venue) ANDA assets have already exited the market, the Order does not require a transitional supply agreement.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2016–04039 Filed 2–24–16; 8:45 am]

**BILLING CODE 6750–01–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice-PBS–2015–01; Docket 2015–0002; Sequence 30]**

### Federal Management Regulation; Redesignation of Federal Building

**AGENCY:** Public Buildings Service (PBS), General Services Administration.

**ACTION:** Notice of a bulletin.

**SUMMARY:** The attached bulletin announces the redesignation of a Federal building.

**DATES:** This bulletin expires August 26, 2016. The building redesignation remains in effect until canceled or superseded by another bulletin.

**FOR FURTHER INFORMATION CONTACT:** General Services Administration, Public Buildings Service (PBS), Office of Portfolio Management, Attn: Chandra Kelley, 77 Forsyth Street SW., Atlanta, GA 30303, at 404–562–2763, or by email at *chandra.kelley@gsa.gov.*

**SUPPLEMENTARY INFORMATION:** This bulletin announces the redesignation of a Federal building. Public Law 114–48, 129 STAT. 488, dated August 7, 2015, designated the Hollings Judicial Center located at 83 Meeting Street in Charleston, South Carolina as the ''J. Waties Waring Judicial Center.''

Dated: February 17, 2016.

**Denise Turner Roth,**

*Administrator of General Services.*

**General Services Administration**

**Redesignation of Federal Building**

**PBS–2015–01**

TO: Heads of Federal Agencies

SUBJECT: Redesignation of Federal Building

1. *What is the purpose of this bulletin*? This bulletin announces the redesignation of a Federal building.

2. *When does this bulletin expire*? This bulletin announcement expires August 26, 2016. The building designation remains in effect until canceled or superseded by another bulletin.

3. *Redesignation.* The former and new name of the redesignated building is as follows:

| Former name | New name |
|---|---|
| Hollings Judicial Center, 83 Meeting Street Charleston, SC 29401–2256. | J. Waties Waring Judicial Center, 83 Meeting Street Charleston, SC 29401–2256. |

4. *Who should we contact for further information regarding redesignation of this Federal building?* U.S. General Services Administration, Public Buildings Service, Office of Portfolio Management, Attn: Chandra Kelley, 77 Forsyth Street SW., Atlanta, GA 30303, telephone number: 404–562–2763, or email at *chandra.kelley@gsa.gov.*

Dated:

Denise Turner Roth,

*Administrator of General Services.*

[FR Doc. 2016–03963 Filed 2–24–16; 8:45 am]

**BILLING CODE 6820–Y1–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Request for Nominations of Candidates To Serve on the World Trade Center Health Program Scientific/Technical Advisory Committee (the STAC or the Committee), Centers for Disease Control and Prevention, Department of Health and Human Services

The CDC is soliciting nominations for membership on the World Trade Center (WTC) Health Program Scientific/Technical Advisory Committee (STAC).

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347 (Jan. 2, 2011), amended by Public Law 114–113 (Dec. 18, 2015), added Title XXXIII to the Public Health Service Act (PHS Act), establishing the WTC Health Program within HHS (42 U.S.C. 300mm to 300mm–61). Section 3302(a) of the PHS Act established the WTC Health Program STAC. The STAC is governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92–463, 5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees in the Executive Branch. PHS Act Section 3302(a)(1) establishes that the STAC will review scientific and medical evidence and make recommendations to the WTC Program Administrator on additional WTC Health Program eligibility criteria and on additional WTC-related health conditions. Section 3341(c) of the PHS Act requires the WTC Program Administrator to also consult with the STAC on research regarding certain health conditions related to the September 11, 2001 terrorist attacks. The STAC may also be consulted on other matters related to implementation and improvement of the WTC Health Program, as outlined in the PHS Act, at the discretion of the WTC Program Administrator.

In accordance with Section 3302(a)(2) of the PHS Act, the WTC Program Administrator will appoint the members of the committee, which must include at least:

- 4 occupational physicians, at least two of whom have experience treating WTC rescue and recovery workers;
- 1 physician with expertise in pulmonary medicine;
- 2 environmental medicine or environmental health specialists;
- 2 representatives of WTC responders;
- 2 representatives of certified-eligible WTC survivors;
- 1 industrial hygienist;
- 1 toxicologist;
- 1 epidemiologist; and
- 1 mental health professional.

At this time the Administrator is seeking nominations for members fulfilling the following categories:

- Environmental medicine or environmental health specialist
- Occupational physician;
- Pulmonary physician;
- Representative of WTC responders;
- Representative of certified-eligible WTC survivors.

Additional members may be appointed at the discretion of the WTC Program Administrator.

A STAC member's term appointment may last 3 years. If a vacancy occurs, the WTC Program Administrator may appoint a new member who fulfills the same membership category as the predecessor. STAC members may be appointed to successive terms. The frequency of committee meetings shall be determined by the WTC Program Administrator based on program needs. Meetings may occur up to four times a year. Members are paid the Special Government Employee rate of $250 per day, and travel costs and per diem are included and based on the Federal Travel Regulations.

Any interested person or organization may self-nominate or nominate one or more qualified persons for membership.

Nominations must include the following information:

- The nominee's contact information and current occupation or position;
- The nominee's resume or curriculum vitae, including prior or current membership on other National Institute for Occupational Safety and Health (NIOSH), CDC, or HHS advisory committees or other relevant organizations, associations, and committees;
- The category of membership (environmental medicine or environmental health specialist, occupational physician, pulmonary physician, representative of WTC responders, or certified-eligible WTC survivor representative) that the candidate is qualified to represent;
- A summary of the background, experience, and qualifications that demonstrates the nominee's suitability for the nominated membership category;
- Articles or other documents the nominee has authored that indicate the nominee's knowledge and experience in relevant subject categories; and
- A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in STAC meetings, and has no known conflicts of interest that would preclude membership on the Committee.

STAC members will be selected upon the basis of their relevant experience and competence in their respective categorical fields. The information received through this nomination process, in addition to other relevant sources of information, will assist the WTC Program Administrator in appointing members to serve on the STAC. In selecting members, the WTC Program Administrator will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

The CDC is committed to bringing greater diversity of thought, perspective, and experience to its advisory committees. Nominees from all races, genders, ages, and persons living with disabilities are encouraged to apply. Nominees must be U.S. citizens.

Candidates invited to serve will be asked to submit the ''Confidential Financial Disclosure Report,'' OGE Form 450. This form is used by CDC to determine whether there is a financial conflict between that person's private interests and activities and their public responsibilities as a Special Government Employee as well as any appearance of a loss of impartiality, as defined by Federal regulation. The form may be viewed and downloaded at *http://www.oge.gov/Forms-Library/OGE-Form-450_Confidential-Financial-Disclosure-Report/.* This form should not be submitted as part of a nomination.

**DATES:** Nominations must be submitted (postmarked or electronically received) by March 31, 2016.

Submissions must be electronic or by mail. Submissions should reference docket 229–D. Electronic submissions: You may electronically submit nominations, including attachments, to *nioshdocket@cdc.gov.* Attachments in Microsoft Word are preferred. Regular, Express, or Overnight Mail: Written nominations may be submitted (one original and two copies) to the following address only: NIOSH Docket 229–D, c/o Mia Wallace, Committee Management Specialist, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE., MS: E–20, Atlanta, Georgia 30333. Telephone and facsimile submissions cannot be accepted.

**FOR FURTHER INFORMATION CONTACT:** Paul Middendorf, Acting Deputy Associate Director for Science, 1600 Clifton Rd. NE., MS: E–20, Atlanta, GA 30333; telephone (404)498–2500 (this is not a toll-free number); email *pmiddendorf@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Claudette Grant,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–03933 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcements (FOA) IP16–003, Research on the Epidemiology, Prevention, Vaccine Effectiveness and Treatment of Influenza and Other Respiratory Viruses in South Africa and IP16–004, Enhanced Surveillance for New Vaccine Preventable Diseases.

*Time and Date:* 10:00 a.m.–5:00 p.m., EDT, March 30–31, 2016 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters for Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Research on the Epidemiology, Prevention, Vaccine Effectiveness and Treatment of Influenza and Other Respiratory Viruses in South Africa'', IP16–003 and ''Enhanced Surveillance for New Vaccine Preventable Diseases'', IP16–004.

*Contact Person for More Information:* Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

**Catherine Ramadei,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–03989 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day–16–16FG]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Workplace Health In America—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

CDC has developed the Workplace Health in America survey program to describe the current state of U.S. workplace health promotion and protection programs and practices in employers of all sizes, industries and regions. To date, there has not been a systematic and ongoing effort to document the evidenced-based and best practice strategies and interventions that comprise a comprehensive workplace health program from a nationally representative sample of employers. National worksite health promotion experts, employers, and content experts from the CDC advised on the survey content. Items from existing, validated surveys were used whenever possible. The survey contains yes/no, multiple choice and a small number of open-ended items.

The Workplace Health in America survey is designed to collect information about: Basic organizational characteristics; employer-sponsored health insurance; health risk assessments; staffing and other resources devoted to employee health and safety programming; incentives; work-life policies and benefits; availability of health screenings and disease management programs; occupational safety and health programs. The survey items also cover the presence of evidence-based and other health promotion programs, policies and supports related to physical activity; nutrition; weight; tobacco; excess alcohol use and drug abuse; lactation and prenatal support; musculoskeletal disorders, arthritis and back pain; stress; and sleep.

The information that is collected is intended to build an infrastructure supporting ongoing surveillance to evaluate national workplace health priorities (*e.g., Healthy People*), monitor trends, and address emerging issues; provide free and accessible benchmarking data for employers and other stakeholders in workplace health promotion and protection; provide a better understanding of employer practices to inform the development of tools and resources to support the design, implementation, and evaluation of employer-based workplace health programs; and advance workplace health promotion and protection research.

To achieve these aims, CDC has developed an infrastructure for this initial effort that can be expanded for future iterations of data collection. CDC has designed a process to select a nationally representative sample of worksites representing employers in all size categories, industry sectors, and CDC regions. The data collection platform was developed to collect information primarily by online survey or telephone assisted interview, and can be easily modified to accommodate additional survey modules. CDC has also created a dissemination plan to ensure the data and results can be used by employers and other stakeholders beyond the research community. Planned dissemination products include webinars to employer groups, an online dashboard for employers to benchmark their programs against other employers with comparable characteristics, and brief reports tailored to employers of different sizes.

OMB approval is requested for two years. CDC estimates that a total 8,085 employers will complete the Workplace Health in America survey. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 5,616.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Wellness/HR representative | Screening and Recruiting call | 11,684 | 1 | 15/60 |
| | Workplace Health in America Survey | 4,043 | 1 | 40/60 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2016–04014 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day–16–15BBT]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

State Unintentional Drug Overdose Reporting System (SUDORS)—New — National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

In 2013, there were nearly 44,000 drug overdose deaths, including nearly 36,000 unintentional drug overdose deaths, in the United States. More people are now dying of drug overdose than automobile crashes in the U.S. A major driver of the problem are overdoses related to opioids, both opioid pain relievers (OPRs) and illicit forms such as heroin. In order to address this public health problem, the U.S. Department of Health and Human Services (HHS) has made addressing the opioid abuse problem a high priority.

In order to support targeting of drug overdose prevention efforts, detect new trends in fatal unintentional drug overdoses, and assess the progress of HHS's initiative to reduce opioid abuse and overdoses, the State Unintentional Drug Overdose Reporting System (SUDORS) plans to generate public health surveillance information at the national, state, and local levels that is more detailed, useful, and timely than is currently available.

SUDORS will collect information that is currently not collected on death certificates such as whether the drug(s) causing the overdoses were injected or taken orally, decedent toxicology report, if available, and risk factors for fatal drug overdoses including previous drug overdoses, decedent's mental health, and whether the decedent recently exiting a treatment program. SUDORS will leverage on the existing web-based data collection platform, the National Violent Death Reporting System (NVDRS) (OMB Control No. 0920–0607), to collect Coroner and Medical Examiner (CME) information, including toxicology, and death certificate information on unintentional fatal drug overdoses.

This proposed collection will generate public health surveillance information on unintentional fatal drug overdoses. This information will help develop, inform, and assess the progress of drug overdose prevention strategies. Without this information, drug overdose efforts are often based on limited information available in the death certificate and anecdotal evidence.

OMB approval is requested for three years. Participation is based on secondary data and is dependent on separate data collection efforts in each state managed by the state health departments or their bona fide agent.

The estimated annual burden hours are 7,008. There are no costs to respondents.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Public Agencies | Retrieving and refile records | 16 | 876 | 30/60 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2016–04012 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–16–15BDJ]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Insurance Coverage, Employment Status, and Copayments/Deductibles Faced by Young Women Diagnosed with Breast Cancer—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Education and Awareness Requires Learning Young (EARLY) Act of 2009, which is outlined in section 10413 of the Patient Protection and Affordable Care Act, authorizes the CDC to fund research and initiatives that increase knowledge of breast health and breast cancer among women, particularly among those under the age of 40. The EARLY Act along with section 301 of the Public Health Service Act authorizes the CDC to conduct research that will inform the prevention of physical and mental diseases such as breast cancer, and serves as the main basis for this data collection activity.

Research indicates that young women diagnosed with breast cancer face many barriers accessing high-quality breast cancer care and treatment. Some research indicates that employment status, financial stability, and insurance coverage are variables that individually affect treatment compliance, access to quality care, and ultimately quality of life for young women with breast cancer. However, to date, no comprehensive assessment exists examining the impacts of these factors on young, female breast cancer patients' access to comprehensive high quality breast cancer treatment and care.

CDC propose to address this gap by answering the following two research questions: (1) What are young, female breast cancer survivors experiencing after their diagnosis in terms of (a) continuation of insurance coverage, access to care, and quality of care; (b) changes in employment status after breast cancer diagnosis; and (c) out-of-pocket medical costs? (2) What factors affect young breast cancer survivors' access to comprehensive, high quality care?

To answer these research questions, CDC is sponsoring a study to collect information from two groups of breast cancer survivors. Sample 1 will be a population-based cohort of approximately 1,200 female breast cancer survivors recruited from four state cancer registries. These respondents will be asked to complete a mail-in or web-based questionnaire. Self-reported survey data from Sample 1 will be supplemented by data maintained by their state's cancer registry, including information about tumor characteristics, date of diagnosis, and stage. The linked survey and cancer registry data will be used to answer research question about the factors that affect young breast cancer survivors' access to comprehensive, high quality care?). CDC's data collection contractor will securely maintain identifiable information from respondents recruited from state registries (Sample 1). No identifiable information will be transmitted to CDC.

Sample 2 will include a national convenience sample of 2,000 female breast cancer survivors who were diagnosed between the ages of 18 and 49 and are associated with one of two breast cancer advocacy groups, Living Beyond Breast Cancer and Young Survival Coalition. Respondents from Sample 2 will complete the web-based version of the survey. A set of screening questions will be included at the beginning of this web-based survey to confirm eligibility and so that women from the four states included in Sample 1 can be excluded. The survey data will not be linked to any other data source.

Since the study uses two distinct samples and employs the same instrument with minor modifications, survey responses from the two samples can answer the following additional research questions: (1) How generalizable are the results from the four cancer registries? (2) Are there differences in the variables of interest between young breast cancer survivors based on the length of time that has elapsed from cancer diagnosis? (3) Do the experiences and barriers faced by women diagnosed between 18 and 39 years of age differ from those of women diagnosed between 40 and 44 years of age and 45 and 49 years of age?

The results can help inform future survey data collection methodologies by showing whether drawing a convenience sample from survivorship groups can be a more feasible, less expensive, but generalizable method to recruit respondents for future breast cancer survivor surveys.

The target number of responses for the overall study is estimated to be 3,200 completed surveys. Sample 1 respondents will have the option of completing a hardcopy questionnaire or an online questionnaire, both of which are be estimated to take about 22 minutes to complete. Sample 2 respondents will complete a screener and the questionnaire online. Due to the inclusion of additional screening questions for Sample 2, a completed survey by an eligible respondent is expected to take about 24 minutes. If a respondent completes the screening section and is found to be ineligible for the study, the estimated burden per response is 2 minutes. Demographic information will be collected from all patients who participate in the study.

Findings from this study will be used to identify interventions that can

eliminate existing barriers to treatment so that young women have access to high quality breast cancer treatment and care. Results will also be used to improve care and services provided to young women diagnosed with breast cancer. Study findings will be disseminated through reports, presentations, and publications.

OMB approval is requested for one year. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 1,241.

ESTIMATED TOTAL BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Sample 1—Breast cancer survivors recruited from state cancer registries. | Breast Cancer in Young Women Survey (Mail-in or web-based questionnaire). | 1,200 | 1 | 22/60 |
| Sample 2—Breast cancer survivors associated with advocacy groups (ineligibles). | Breast Cancer in Young Women Survey (Screener only). | 25 | 1 | 2/60 |
| Sample 2—Breast cancer survivors associated with advocacy groups (eligible and complete). | Breast Cancer in Young Women Survey (Screener and Web-based questionnaire). | 2,000 | 1 | 24/60 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2016–04013 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting for the aforementioned committee:

*Times and Dates:* 9:00 a.m.–5:00 p.m., EDT, March 31, 2016; 9:00 a.m.–12:00 p.m., EDT, April 1, 2016.

*Place:* Centers for Disease Control and Prevention, Global Communications Center, Building 19, Auditorium B, 1600 Clifton Road NE., Atlanta, Georgia, 30333.

*Status:* Open to the public, limited only by the space available. Please register for the meeting at *www.cdc.gov/hicpac.*

*Purpose:* The Committee is charged with providing advice and guidance to the Director, Division of Healthcare Quality Promotion, the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), the Director, CDC, the Secretary, Health and Human Services regarding (1) the practice of healthcare infection prevention and control; (2) strategies for surveillance, prevention, and control of infections, antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of CDC guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

*Matters for Discussion:* The agenda will include updates on CDC's activities for prevention of healthcare associated infections (HAIs), updates on antimicrobial stewardship, an update on Draft Guideline for Prevention of Infections in Healthcare Personnel, chlorhexidine gluconate-impregnated dressings, and an update from the workgroup for considerations on endoscope reprocessing.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Erin Stone, M.S., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE., Mailstop A–07, Atlanta, Georgia 30333. Telephone (404) 639–4045. Email: *hicpac@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Claudette Grant,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–03929 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, Announces the Following Meeting

*Name:* ICD–10 Coordination and Maintenance (C&M) Committee meeting.

*Time and Date:* 9:00 a.m.–5:00 p.m., EST, March 9–10, 2016.

*Place:* Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 240 people. We will be broadcasting the meeting live via Webcast at *http://www.cms.gov/live/.*

*Security Considerations:* Due to in creased security requirements CMS has instituted stringent procedures for entrance into the building by non-government employees. Attendees will need to present valid government-issued picture identification, and sign-in at the security desk upon entering the building.

Attendees who wish to attend the March 9–10, 2016 ICD–10–CM C&M meeting must submit their name and organization by March 1, 2016 for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting.

Participants who attended previous Coordination and Maintenance meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you wish attend.

Please register to attend the meeting on-line at: *http://www.cms.hhs.gov/apps/events/.* Please contact Mady Hue (410–786–4510 or *Marilu.hue@cms.hhs.gov*), for questions about the registration process.

*Purpose:* The ICD–10 Coordination and Maintenance (C&M) Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Tenth Revision, Clinical Modification and ICD–10 Procedure Coding System.

*Matters for Discussion:* Agenda items include: March 9–10, 2016.

ICD–10–PCS Topics

Removal of Thrombus and Emboli
Insertion of Endobronchial Coils
Hematopoietic Cell Transplant Donor
Fluorescence Vascular Angiography (FVA) (FVA)
Rapid Deployment Aortic Valve Replacement Replacement
Branch Endograft Repair of Common Iliac Aneurysm
Total Anomalous Pulmonary Venous Return
Administration of Andexanet Alfa Injection for I.V. Infusion
Administration of VISTOGARD (uridine triacetate)
Mechanical Embolectomy with Stent Retriever Retrieve
Intracranial Aneurysm Procedure Using Flow Diverter Stent
Spinal Bracing and Distraction System
Interbody Spinal Fusion with Nano-Textured Surface
Therapeutic Artificial Rupture of Membranes
Application of Biologic Wound Matrix (MircoDERM)
Oxidized Zirconium on Polyethylene Bearing Surfaces
GEM Structure and Update Requests
Addenda and Key Updates

ICD–10–CM Diagnosis Topics

Antenatal Screening
*Clostridium difficile*
Congential Sacral Dimple
Exercise Counseling
Hepatic Encephalopathy
Lacunar Infarction
Pediatric Cryptorchidism
Post-operative Seroma
Soft Tissue Sarcoma
Spinal Stenosis
Temporomandibular Joint Disorders
Zika Virus Infection
ICD–10–CM Addendum

Agenda items are subject to change as priorities dictate.

**Note:** CMS and NCHS no longer provide paper copies of handouts for the meeting. Electronic copies of all meeting materials will be posted on the CMS and NCHS Web sites prior to the meeting at *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/03_meetings.asp#TopOfPage* and *http://www.cdc.gov/nchs/icd/icd9cm_maintenance.htm*

*Contact Persons for Additional Information:* Donna Pickett, Medical Systems Administrator, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Hyattsville, Maryland 20782, email *dfp4@cdc.gov,* telephone 301–458–4434 (diagnosis); Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244, email *marilu.hue@cms.hhs.gov,* telephone 410–786–4510 (procedures).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

**Claudette Grant,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–03930 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

*Times and Dates:* 9:00 a.m.–5:00 p.m., Eastern Time, March 23, 2015; 8:15 a.m.–12:30 p.m., Eastern Time, March 24, 2015.

*Public Comment Time and Date:* 5:00 p.m.–6:00 p.m.*, Eastern Time, March 23, 2015.

* Please note that the public comment period may end before the time indicated, following the last call for comments. Members of the public who wish to provide public comments should plan to attend the public comment session at the start time listed.

*Place:* Hilton Tampa Airport Westshore, 2225 N. Lois Avenue, Tampa, Florida 33607; Phone: (800) 445–8667; Fax: (813) 872–0603. Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 with a pass code of 9933701. Live Meeting CONNECTION: *https://www.livemeeting.com/cc/cdc/join?id=GHFDT9&role=attend&pw=ABRWH;* Meeting ID: GHFDT9; Entry Code: ABRWH.

*Status:* Open to the public, limited only by the space available. The meeting space accommodates approximately 100 people.

*Background:* The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2017.

*Purpose:* This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

*Matters for Discussion:* The agenda for the Advisory Board meeting includes: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; Report by the Dose Reconstruction Review Methods Work Group; Dose Reconstruction Report to the Secretary; SEC Petitions Update; Site Profile review for: Pinellas Plant (Clearwater, Florida); SEC petitions for: Lawrence Livermore National Laboratory (1974–1995; Livermore, California), Idaho National Laboratory (1949–1970; Scoville, Idaho), and Argonne National Laboratory West (1951–1979; Scoville, Idaho); and Board Work Sessions.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be

submitted to the contact person below well in advance of the meeting. Any written comments received will be provided at the meeting in accordance with the redaction policy provided below.

Policy on Redation of Board Meeting Transcripts (Public Comment):

(1) If a person making a comment gives his or her personal information, no attempt will be made to redact the name; however, NIOSH will redact other personally indentifiable information, such as contact information, social security numbers, case numbers, etc., of the commenter.

(2) If an individual in making a statement reveals personal information (*e.g.,* medical or employment information) about themselves that information will not usually be redacted. The NIOSH Freedom of Information Act (FOIA) coordinator will, however, review such revelations in accordance with the Federal Advisory Committee Act and if deemed appropriate, will redact such information.

(3) If a commenter reveals personal information concerning a living third party, that information will be reviewed by the NIOSH FOIA coordinator, and upon determination, if deemed appropriated, such information will be redacted, unless the disclosure is made by the third party's authorized representative under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) program.

(4) In general, information concerning a deceased third party may be disclosed; however, such information will be redacted if (a) the disclosure is made by an individual other than the survivor claimant, a parent, spouse, or child, or the authorized representative of the deceased third party; (b) if it is unclear whether the third party is living or deceased; or (c) the information is unrelated or irrelevant to the purpose of the disclosure.

The Board will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings.

*Contact Person for More Information:* Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., MS E–20, Atlanta, Georgia 30333, telephone: (513) 533–6800, toll free: 1–800–CDC–INFO, email: *dcas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Claudette Grant,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–03928 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Request for Nominations of Candidates To Serve on the Board of Scientific Counselors, Office of Public Health Preparedness and Response (BSC, OPHPR)

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for possible membership on the BSC, OPHPR. The BSC, OPHPR consists of 11 experts in the fields associated with public health preparedness and response. This board provides advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Director, CDC, and the Director, OPHPR, concerning strategies and goals for the programs within the divisions; conducts peer-review of scientific programs; and monitors the overall strategic direction and focus of the divisions. The BSC, OPHPR may perform second-level peer review of applications for grants-in-aid for research and research training activities, cooperative agreements, and research contract proposals relating to the broad areas within the office (*http://www.cdc.gov/phpr/science/counselors.htm*).

Nominations are being sought for individuals who have the expertise and qualifications necessary to contribute to accomplishment of the board's objectives. Nominees will be selected based on expertise in the fields relevant to the issues addressed by the divisions within the coordinating office, including: business, crisis leadership, emergency response and management, engineering, epidemiology, health policy and management, informatics, laboratory science, medicine, mental and behavioral health, public health law, public health practice, risk communication, and social science. Federal employees will not be considered for membership. Members may be invited to serve for terms of up to four years.

The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of professional training and background, points of view represented, and the board's function. Consideration is given to a broad representation of geographic areas within the U.S., with equitable representation of gender, all ethnic and racial groups, and persons with disabilities. Nominees must be U.S. citizens.

The next cycle of selection of candidates will begin in the spring of 2016, for selection of potential nominees to replace members whose terms will end on September 30, 2016.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of OPHPR objectives (*http://www.cdc.gov/phpr/about.htm*).

Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address)
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services.

The deadline for receipt of all application materials (for consideration for term beginning October 1, 2016) is April 15, 2016. All files must be submitted electronically as email attachments to: CDR Christye Brown, c/o BSC OPHPR Coordinator, email: *cbrown12@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

**Claudette Grant,**

*Acting Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–03931 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket Number CDC–2016–0016; NIOSH 248–D]**

### World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP STAC or Advisory Committee), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

*Time and Date:* 1:00 p.m.–4:30 p.m., March 22, 2016 (All times are Eastern Daylight Savings Time).

*Place:* This meeting will be available via telephone and Web Conference. Audio will be available by telephone only and visuals will be available by Web Conference only. The USA toll-free, dial-in number is 1–800–988–0221. To be connected to the meeting, you will need to provide the following participant code to the operator: 4534900. To obtain further instructions on how to access the meeting online through Web Conference, see the instructions at the Committee's meeting Web site: To view the Web conference, enter the following Web address in your Web browser: *https://odniosh.adobeconnect.com/wtcstac/.*

*Public Comment Time and Date:* 1:30 p.m.–2:00 p.m. EDT, March 22, 2016.

Please note that the public comment period ends at the time indicated above or following the last call for comments, whichever is earlier. Members of the public who want to comment must sign up by providing their name by mail, email, or telephone, at the addresses provided below by March 18, 2016. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come-first served basis. Written comments will also be accepted from those unable to attend the public session.

*Status:* Open to the public, limited only by the number of telephone lines. The conference line will accommodate up to 50 callers; therefore it is suggested that those interested in calling in to listen to the committee meeting share a line when possible.

*Background:* The Advisory Committee was established by Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347 (Jan. 2, 2011), amended by Public Law 114–113 (Dec. 18, 2015), adding Title XXXIII to the Public Health Service Act (42 U.S.C. 300mm to 300mm–61).

*Purpose:* The purpose of the Advisory Committee is to review scientific and medical evidence and to make recommendations to the World Trade Center (WTC) Program Administrator regarding additional WTC Health Program eligibility criteria, potential additions to the list of covered WTC-related health conditions, and research regarding certain health conditions related to the September 11, 2001 terrorist attacks. Title XXXIII of the Public Health Service Act (PHS Act) established the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001 or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors). Certain specific activities of the WTC Program Administrator are reserved to the Secretary, HHS, to delegate at her discretion; other WTC Program Administrator duties not explicitly reserved to the Secretary, HHS, are assigned to the Director, NIOSH. The administration of the Advisory Committee is left to the Director of NIOSH in his role as WTC Program Administrator. CDC and NIOSH provide funding, staffing, and administrative support services for the Advisory Committee. The charter was reissued on May 12, 2015, and will expire on May 12, 2017.

*Matters for Discussion:* The agenda for the Advisory Committee meeting includes a discussion of the Chair's report on establishing control groups for WTC health research, a presentation of a report by the Children's Research Workgroup report and developing recommendations on children's research.

The agenda is subject to change as priorities dictate.

To view the notice, visit *http://www.regulations.gov* and enter CDC–2016–0016 in the search field and click ''Search.''

Public Comment Sign-up and Submissions to the Docket: To sign up to provide public comments or to submit comments to the docket, send information to the NIOSH Docket Office by one of the following means:

*Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C–34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226.

*Email: nioshdocket@cdc.gov.*

*Telephone:* (513) 533–8611.

In the event an individual cannot attend, written comments may be submitted. The comments should be limited to two pages and submitted through *http://www.regulations.gov* by March 18, 2016. Efforts will be made to provide the two-page written comments received by the deadline above to the committee members before the meeting. Comments in excess of two pages will be made publicly available at *http://www.regulations.gov.* To view background information and previous submissions go to NIOSH docket *http://www.cdc.gov/niosh/docket/archive/docket248-D.html* and *http://www.cdc.gov/niosh/docket/archive/docket248-A.html.*

Policy on Redaction of Committee Meeting Transcripts (Public Comment): Transcripts will be prepared and posted to *http://www.regulations.gov* within 60 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include a statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted. If individuals in making a statement reveal personal information (*e.g.,* medical information) about themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and, if deemed appropriate, will redact such information. Disclosures of information concerning third party medical information will be redacted.

*Contact Person for More Information:* Paul J. Middendorf, Ph.D., Designated Federal Officer, NIOSH, CDC, 2400 Century Parkway NE., Mail Stop E–20, Atlanta, GA 30345, telephone 1 (888) 982–4748; email: *wtc-stac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

**Claudette Grant,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–03932 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) CK16–006, Research on Technical Improvement of Personal Protective Equipment (PPE) to be used in Healthcare Settings for Infection Control, including Ebola and other Emerging Pathogens.

*Time and Date:* 10:00 a.m.–5:00 p.m., EST, March 17, 2016 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters for Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Research on Technical Improvement of Personal Protective Equipment (PPE) to be used in Healthcare Settings for Infection Control, including Ebola and other Emerging Pathogens'', CK16–006.

*Contact Person for More Information:* Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Catherine Ramadei,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–03988 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Clinical Laboratory Improvement Advisory Committee, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Clinical Laboratory Improvement Advisory Committee, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has been renewed for a 2-year period through February 19, 2018.

For information, contact William R. MacKenzie M.D., Designated Federal Officer, Clinical Laboratory Improvement Advisory Committee, 1600 Clifton Road, NE., Mailstop F–11, Atlanta, Georgia 30333, telephone 404–498–6297 or via email at *wrm0@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Claudette Grant,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–03927 Filed 2–24–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–3322–FN]**

### Medicare and Medicaid Programs: Continued Approval of the American Association for Accreditation of Ambulatory Surgery Facilities Rural Health Clinic Accreditation Program

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Final notice.

**SUMMARY:** This final notice announces our decision to approve the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) for continued recognition as a national accrediting organization for Rural Health Clinics (RHCs) that wish to participate in the Medicare or Medicaid programs.

**DATES:** This final notice is effective March 23, 2016 through March 23, 2022.

**FOR FURTHER INFORMATION CONTACT:** Monda Shaver, (410) 786–3410, or Patricia Chmielewski, (410) 786–6899.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

A healthcare provider may enter into an agreement with Medicare to participate in the program as a Rural Health Clinic (RHC) provided certain requirements are met. Sections 1861(aa)(1) and 1905(l)(1) of the Social Security Act (the Act), establish distinct criteria for facilities seeking designation as a RHC. Regulations concerning Medicare provider agreements are at 42 CFR part 489 and those pertaining to the survey and certification for Medicare participation of providers and certain types of suppliers are at 42 CFR part 488. The regulations at 42 CFR part 491, subpart A specify the conditions that a provider must meet to participate in the Medicare program as a RHC.

Generally, to enter into a Medicare provider agreement, a facility must first be certified by a state survey agency as complying with the conditions or requirements set forth in part 491, subpart A, of our Medicare regulations. Thereafter, the RHC is subject to periodic surveys by a state survey agency to determine whether it continues to meet these conditions. However; there is an alternative to certification surveys by state agencies. Accreditation by a nationally recognized Medicare accreditation program approved by the Centers for Medicare & Medicaid Services (CMS) may substitute for both initial and ongoing state review.

Section 1865(a)(1) of the Act provides that, if the Secretary of the Department of Health and Human Services (the Secretary) finds that accreditation of a provider entity by an approved national accreditation organization meets or exceeds all applicable Medicare conditions or requirements, we may ''deem'' the provider entity to be in compliance. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

Part 488, subpart A implements the provisions of section 1865 of the Act. It requires that a national accrediting organization applying for approval of its Medicare accreditation program must provide CMS with reasonable assurance that the accrediting organization requires its accredited provider or supplier entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require an accrediting organization to reapply for continued approval of its Medicare accreditation program every 6 years or sooner as determined by CMS. The American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF's) current term of approval for their RHC accreditation program expires March 23, 2016.

## II. Application Approval Process

Section 1865(a)(3)(A) of the Act requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days after the date of receipt of a complete application to publish a notice announcing our approval or denial of an application.

## III. Provisions of the Proposed Notice

On September 25, 2015, we published a proposed notice in the **Federal Register** (80 FR 57822) entitled, ''Application from the American Association for Accreditation of Ambulatory Surgery Facilities for Continued Approval of its Rural Health Accreditation Program.'' In that notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we conducted a review of AAAASF's Medicare RHC accreditation application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of AAAASF's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluating its RHC surveyors; (4) ability to investigate and respond appropriately to complaints against accredited RHCs; and, (5) survey review and decision-making process for accreditation.
- The comparison of AAAASF's Medicare accreditation program standards to our current Medicare RHC conditions for certification.
- A documentation review of AAAASF's survey process to:

++ Determine the composition of the survey team, surveyor qualifications, and AAAASF's ability to provide continuous surveyor training.

++ Compare AAAASF's processes to those we require of State survey agencies, including periodic resurvey and the ability to investigate and respond appropriately to complaints against accredited RHCs.

++ Evaluate AAAASF's procedures for monitoring RHCs it has found to be out of compliance with AAAASF's program requirements. (This pertains only to monitoring procedures when AAAASF identifies non-compliance. If noncompliance is identified by a State survey agency through a validation survey, the State survey agency monitors corrections as specified at § 488.9(c)(1).)

++ Assess AAAASF's ability to report deficiencies to the surveyed RHC and respond to the RHC's plan of correction in a timely manner.

++ Establish AAAASF's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of AAAASF's staff and other resources.

++ Confirm AAAASF's ability to provide adequate funding for performing required surveys.

++ Confirm AAAASF's policies with respect to surveys being unannounced.

++ Obtain AAAASF's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the September 25, 2015 proposed notice also solicited public comments regarding whether AAAASF's requirements met or exceeded the Medicare conditions for certification for RHCs. We received no public comments in response to our proposed notice.

## IV. Provisions of the Final Notice

### *A. Differences Between AAAASF's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements*

We compared AAAASF's RHC accreditation requirements and survey process with the Medicare conditions for certification at part 491, subpart A and the survey and certification process requirements at parts 488 and 489. We reviewed AAAASF's RHC accreditation program application as described in section III of this final notice. In response to our request AAAASF revised its standards and certification processes to ensure that its surveyors complete the required number of medical record reviews for each accredited facility.

### *B. Term of Approval*

Based on our review and observations described in section III of this final notice, we approve AAAASF as a national accreditation organization for RHCs that request participation in the Medicare program, effective March 23, 2016 through March 23, 2022.

## V. Collection of Information Requirements

This document does not impose information collection requirements, that is, 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.

Dated: February 9, 2016.

**Andrew M. Slavitt,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2016–04092 Filed 2–24–16; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10599]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

**ACTION:** Notice; Correction.

**SUMMARY:** On Wednesday, February 10, 2016 (81 FR 7124), the Centers of Medicare & Medicaid Services (CMS) published a Notice document titled ''Agency Information Collection Activities; Proposed Collection; Comment Request''. That notice invited

public comments on four separate information collection requests. Through the publication of this correction document, we are notifying the public that we are no longer requesting or accepting public comments on the information collection request that published on Wednesday, February 10, 2016 (81 FR 7124), and is titled ''Medicare Prior Authorization of Home Health Services Demonstration.'' *Form number:* CMS–10599 (OMB control number: 0938—New). All public comments regarding CMS–10599 should be submitted via the instructions listed in the original notice. The original notice for CMS–10599 published on Friday, February 5, 2016 (81 FR 6275). The original 60-day comment period for the notice that published on February 5, 2016 (81 FR 6275) remains in effect and ends on April 5, 2016.

Dated: February 19, 2016.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2016–03922 Filed 2–24–16; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–7040–N]**

### Health Insurance Marketplace℠, Medicare, Medicaid, and the Children's Health Insurance Program; Meeting of the Advisory Panel on Outreach and Education (APOE)

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces the new meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of Health Insurance Marketplace℠,[1] Medicare, Medicaid, and Children's Health Insurance Program (CHIP) consumer education strategies. This meeting is open to the public.

**DATES:**

*Meeting Date:* Wednesday, March 23, 2016, 8:30 a.m. to 4:00 p.m. eastern daylight time (e.d.t.).

*Deadline for Meeting Registration, Presentations, Special Accommodations and Comments:* Wednesday, March 9, 2016, 5:00 p.m., eastern standard time (e.s.t.).

**ADDRESSES:**

*Meeting Location:* U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 425A, Conference Room, Washington, DC 20201.

*Presentations and Written Comments:* Presentations and written comments should be submitted to: Abigail Huffman, Designated Federal Official (DFO), Division of Forum and Conference Development, Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1 05–06, Baltimore, MD 21244 1850 or via email at *Abigail.Huffman1@cms.hhs.gov*.

*Registration:* The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the Web site *https://www.regonline.com/apoemar2016meeting* or by contacting the DFO as listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Abigail Huffman, Designated Federal Official, Office of Communications, CMS, 7500 Security Boulevard, Mail Stop S1–05–06, Baltimore, MD 21244, 410–786–0897, email *Abigail.Huffman1@cms.hhs.gov*. Additional information about the APOE is available on the Internet at: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.html*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory Panel on Medicare Education [2] (the predecessor to the APOE) on January 21, 1999 (64 FR 7899, February 17, 1999) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105–33).

The Medicare Modernization Act of 2003 (MMA) (Pub. L. 108–173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. We have had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Affordable Care Act (Patient Protection and Affordable Care Act, Pub. L. 111–148, and Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and the Children's Health Insurance Program (CHIP). Qualified individuals and qualified employers are

[1] Health Insurance Marketplace℠ and Marketplace℠ are service marks of the U.S. Department of Health & Human Services.

[2] We note that the Citizens' Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR 4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

now able to purchase private health insurance coverage through competitive marketplaces, called Affordable Insurance Exchanges (we also call an Exchange a Health Insurance Marketplace℠ or Marketplace℠). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through a Marketplace℠. The APOE (the Panel) allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 21, 2015, and will terminate on January 21, 2017 unless renewed by appropriate action.

Under the current charter, the APOE will advise the Secretary and the Administrator on optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), or coverage available through a Health Insurance Marketplace℠.
- Enhancing the federal government's effectiveness in informing Health Insurance Marketplace℠, Medicare, Medicaid, and CHIP consumers, issuers, providers, and stakeholders, through education and outreach programs, on issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Health Insurance Marketplace℠, Medicare, Medicaid, and CHIP education programs.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel are: Kellan Baker, Associate Director, Center for American Progress; Robert Blancato, President, Matz, Blancato & Associates; Dale Blasier, Professor of Orthopedic Surgery, Department of Orthopedics, Arkansas Children's Hospital; Deborah Britt, Executive Director of Community & Public Relations, Piedmont Fayette Hospital; Deena Chisolm, Associate Professor of Pediatrics & Public Health, The Ohio State University, Nationwide Children's Hospital; Josephine DeLeon, Director, Anti-Poverty Initiatives, Catholic Charities of California; Robert Espinoza, Vice President of Policy, Paraprofessional Healthcare Institute; Jennifer Gross, Manager of Political Field Operations, Planned Parenthood of Montana; Louise Scherer Knight, Director, The Sidney Kimmel Comprehensive Cancer Center at Johns Hopkins; Miriam Mobley-Smith, Director of Strategic Alliances, Pharmacy Technician Certification Board; Roanne Osborne-Gaskin, M.D., Senior Medical Director, MDWise, Inc.; Cathy Phan, Outreach and Education Coordinator, Asian American Health Coalition DBA HOPE Clinic; Kamilah Pickett, Litigation Support, Independent Contractor; Brendan Riley, Outreach and Enrollment Coordinator, NC Community Health Center Association; Jeanne Ryer, Director, New Hampshire Citizens Health Initiative, University of New Hampshire; Alvia Siddiqi, Medicaid Managed Care Community Network (MCCN) Medical Director, Advocate Physician Partners, Carla Smith, Executive Vice President, Healthcare Information and Management Systems Society (HIMSS); Tobin Van Ostern, Vice President and Co-Founder, Young Invincible Advisors; and Paula Villescaz, Senior Consultant, Assembly Health Committee, California State Legislature.

**II. Meeting Agenda**

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the March 23, 2016 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (January 13, 2016) meeting
- Affordable Care Act initiatives
- An opportunity for public comment
- Meeting summary, review of recommendations, and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

**III. Security, Building, and Parking Guidelines**

This meeting will be held in a federal government building; therefore, federal security measures are applicable. The Real ID Act, enacted in 2005, establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits Federal agencies from accepting an official driver's license or ID card from a state unless the Department of Homeland Security determines that the state meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a state or territory not in compliance with the Real ID Act will not be accepted as identification to enter Federal buildings. Visitors from these states/territories will need to provide alternative proof of identification (such as a valid passport) to gain entrance into CMS buildings. The current list of states from which a Federal agency may accept driver's licenses for an official purpose is found at *http://www.dhs.gov/real-id-enforcement-brief.* We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government issued photographic identification to the Federal Protective Service or Guard Service personnel.

• Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.

• Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

**Note:** Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

**Authority:** Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

Dated: February 18, 2016.

**Andrew M. Slavitt,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2016–04091 Filed 2–24–16; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–N–0001]**

### Developing an Evidentiary Standards Framework for Safety Biomarkers Qualification; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

**SUMMARY:** The Food and Drug Administration (FDA), in co-sponsorship with the Foundation for the National Institutes of Health Biomarkers Consortium (FNIH BC), is announcing a public workshop entitled ''Developing an Evidentiary Standards Framework for Safety Biomarkers Qualification Workshop.'' The purpose of the workshop is to discuss the evidentiary standards needed to support biomarker qualification with a particular emphasis on drug safety markers. The 2-day workshop will focus on the standards relevant to the qualification of a range of safety biomarkers and examine case studies in several different organ systems.

**DATES:** The public workshop will be held on April 14, 2016, from 9 a.m. to 5 p.m. and April 15, 2016, from 8 a.m. to 5 p.m.

**ADDRESSES:** The public workshop will be held at the Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Rd., Bethesda, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Janelle Lewis, Foundation for the National Institutes of Health, 9650 Rockville Pike, Bethesda, MD 20814, 301–594–2919, FAX: 301–480–2752, email: *jlewis@fnih.org.*

**SUPPLEMENTARY INFORMATION:** The need for evidentiary standards to qualify biomarkers was identified in FDA's Critical Path Initiative as essential to improving the efficiency and effectiveness of drug development. Evidentiary standards vary among different types of biomarkers and according to the context(s) of use (COU) for which qualification is being considered, and there are specific challenges involved in qualifying drug safety biomarkers. This workshop is aimed at creating alignment among scientific stakeholders including FDA, the National Institutes of Health (NIH), the biopharmaceutical industry, academic researchers, and patient groups regarding a proposed framework for determining the levels of evidence required to qualify biomarkers for use in drug development, with an emphasis on biomarkers used in determinations of drug safety assessments. Development of a general framework for biomarker qualification will be discussed, along with specific application to different COUs related to drug safety, including consideration of several specific case studies involving qualification of clinical markers of toxicity in different organ systems.

*Registration:* There is no fee to attend the workshop, but attendees must register in advance. Space is limited, and registration will be on a first-come, first-served basis. Persons interested in attending this workshop must register online at *www.fnih.org/evidentiarystandardsworkshop* by April 1, 2016. For those persons without Internet access, please contact Janelle Lewis at the Foundation for the NIH (see **FOR FURTHER INFORMATION CONTACT**) to register.

Attendees are responsible for their own hotel accommodations. Attendees making reservations at the Bethesda North Marriott Hotel and Conference Center (see **ADDRESSES**) are eligible for a reduced rate of $226 per night (equivalent to the government per diem rate), not including applicable taxes. To receive the reduced rate, follow the Web link that will be provided to you upon completion of online registration.

If you need special accommodations due to a disability, please contact Janelle Lewis (see **FOR FURTHER INFORMATION CONTACT**) at the Foundation for the NIH at least 7 days in advance of the workshop.

Dated: February 19, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–04027 Filed 2–24–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–4040–0010 60D]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Electronic Government Office, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Electronic Government Office (EGOV), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a 3-year extension for OMB Control Number 4040–0010. The ICR will expire on September 30, 2016. The 4040–0010 is composed of the following forms: Project Abstract; Project Performance Site Location(s); and Key Contacts. The ICR also requests categorizing these forms as common forms, meaning HHS will only request approval for its own use of the form rather than aggregating the burden estimate across all Federal Agencies as was done for previous actions on this OMB control number. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

**DATES:** Comments on the ICR must be received on or before April 25, 2016.

**ADDRESSES:** Submit your comments to *ed.calimag@hhs.gov* or (202) 690–7569.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the OMB control number 4040–0010. Form is available at *http://www.grants.gov* or upon request.

*Information Collection Request Title:* Project Abstract; Project Performance Site Location(s); Key Contacts.

*OMB No.:* 4040–0010.

*Abstract:* The Project Abstract; Project Performance Site Location(s); Key Contacts forms are used by Federal grant-making agencies for applicants to apply for Federal financial assistance.

*Need and Proposed Use of the Information:* The Project Abstract; Project Performance Site Location(s); Key Contacts forms are used by the public to apply for Federal financial assistance in the form of grants. These forms are submitted to the Federal grant-making agencies for evaluation and review.

*Likely Respondents:* Organizations and institutions seeking grants.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

HHS estimates that each of the respective forms will take 1 hour to complete. Once OMB approves the use of the Project Abstract; Project Performance Site Location(s); Key Contacts forms as common forms, federal agencies may request OMB approval to use this common form without having to publish notices and request public comments for 60 and 30 days. Each agency must account for the burden associated with their use of the common form.

EGOV specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| Project Abstract | 85 | 1 | 1 | 85 |
| Project Performance Site Location(s) | 143,567 | 1 | 1 | 143,567 |
| Key Contacts | 3,565 | 1 | 1 | 3,565 |
| Total | 147,217 | | | 147,217 |

**Darius Taylor,**

*Information Collection Clearance Officer.*

[FR Doc. 2016–04056 Filed 2–24–16; 8:45 am]

**BILLING CODE 4150–57–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–4040–0001 60D]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Electronic Government Office, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Electronic Government Office (EGOV), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a 3-year extension for OMB Control Number 4040–0001. The ICR will expire on June 30, 2016. The ICR also requests categorizing 4040–0001 as a common form, meaning HHS will only request approval for its own use of the form rather than aggregating the burden estimate across all Federal Agencies as was done for previous actions on this OMB control number. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

**DATES:** Comments on the ICR must be received on or before April 25, 2016.

**ADDRESSES:** Submit your comments to *ed.calimag@hhs.gov* or (202) 690–7569.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the OMB control number 4040–0001. Form is available *http://www.grants.gov* or upon request.

*Information Collection Request Title:* SF–424 Application for Federal Assistance—Research and Related.

*OMB No.:* 4040–0001.

*Abstract:* The SF–424 Application for Federal Assistance—Research and Related is a set of common forms used by Federal research grant-making agencies for organizations to apply for Federal financial assistance.

*Need and Proposed Use of the Information:* The SF–424 Application for Federal Assistance—Research and Related forms are used by organizations to apply for Federal financial assistance in the form of research-based grants. These forms are submitted to the Federal grant-making agencies for evaluation and review.

*Likely Respondents:* Organizations and institutions seeking research-based grants. Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying

information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

HHS estimates that the SF–424 Application for Federal Assistance forms will take 1 hour to complete.

Once OMB approves the use of this common form, federal agencies may request OMB approval to use this common form without having to publish notices and request public comments for 60 and 30 days. Each agency must account for the burden associated with their use of the common form.

EGOV specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| SF–424 Application for Federal Assistance—Research and Related | 137,407 | 1 | 1 | 137,407 |
| Research and Related Budget 5 Year | 121,416 | 1 | 1 | 121,416 |
| Research and Related Budget 10 Year | 1,118 | 1 | 1 | 1,118 |
| SF–424 Research and Related Multi-Project Cover | 1,570 | 1 | 1 | 1,570 |
| Research & Related Multi-Project 10 Year Budget | 1,570 | 1 | 1 | 1,570 |
| R & R Multi-Project Subaward Budget Attachment(s) Form 10YR 30ATT | 1,570 | | | 1,570 |
| R & R Subaward Budget Attachment(s) Form | 217 | | | 217 |
| R & R Subaward Budget Attachment(s) Form 5 YR 30 ATT | 121,088 | 1 | 1 | 121,088 |
| R & R Subaward Budget Attachment(s) Form 10 YR 30 ATT | 1,118 | 1 | 1 | 1,118 |
| Research & Related Senior/Key Person Profile | 218 | 1 | 1 | 218 |
| Research and Related Senior/Key Person Profile (Expanded) | 136,940 | 1 | 1 | 136,940 |
| Research And Related Other Project Information | 137,699 | 1 | 1 | 137,699 |
| SBIR/STTR Information | 21,289 | 1 | 1 | 21,289 |
| Total | 683,220 | | | 683,220 |

**Darius Taylor,**

*Information Collection Clearance Officer.*

[FR Doc. 2016–04054 Filed 2–24–16; 8:45 am]

**BILLING CODE 4150–57–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–4040–0004 60D]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Electronic Government Office, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Electronic Government Office (EGOV), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a 3-year extension for OMB Control Number 4040–0004. The ICR will expire on August 31, 2016. Grants.gov also requests categorizing this form as common forms, meaning HHS will only request approval for its own use of the form rather than aggregating the burden estimate across all Federal Agencies as was done for previous actions on this OMB control number. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

**DATES:** Comments on the ICR must be received on or before April 25, 2016.

**ADDRESSES:** Submit your comments to *ed.calimag@hhs.gov* or (202) 690–7569.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the OMB control number 4040–0004. Form is available at *http://www.grants.gov* or upon request.

*Information Collection Request Title:* SF–424 Application for Financial Assistance.

*OMB No.:* 4040–0004.

*Abstract:* The SF–424 Application for Financial Assistance is used by Federal grant-making agencies for applicants to apply for Federal financial assistance.

*Need and Proposed Use of the Information:* The SF–424 Application for Financial Assistance is used by the public to apply for Federal financial assistance in the form of grants. These forms are submitted to the Federal grant-making agencies for evaluation and review.

*Likely Respondents:* Organizations and institutions seeking grants.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

HHS estimates that each of the respective forms will take 1 hour to

complete. Once OMB approves the use of the SF–424 Application for Financial Assistance as a common form, federal agencies may request OMB approval to use this common form without having to publish notices and request public comments for 60 and 30 days. Each agency must account for the burden associated with their use of the common form. EGOV specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| SF–424 Application for Financial Assistance | 14,883 | 1 | 1 | 14,883 |
| Total | 14,883 | | | 14,883 |

**Darius Taylor,**

*Information Collection Clearance Officer.*

[FR Doc. 2016–04055 Filed 2–24–16; 8:45 am]

**BILLING CODE 4150–57–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:* Center for Scientific Review Special Emphasis Panel; Biomedical Engineering in Surgical Sciences.

*Date:* March 15, 2016.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–OD15–006: Abuse Liability Associated with Reduced Nicotine Content Tobacco Products.

*Date:* March 17–18, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, 301–523–0646, *mintzermz@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Topics in Drug Discovery and Mechanisms of Antimicrobial Resistance.

*Date:* March 17–18, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Molecular and Cellular Causal Aspects of Alzheimer's Disease.

*Date:* March 21–22, 2016.

*Time:* 8:30 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Grand, 2350 M Street NW., Washington, DC 20037.

*Contact Person:* Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, 301–435–1203, *laurent.taupenot@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–GM–16–003: Maximizing Investigators' Research Award for New and Early Stage Investigators.

*Date:* March 22–23, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

*Contact Person:* Kathryn M. Koeller, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040N, MSC 7806, Bethesda, MD 20892, 301–408–9333, *koellerk@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: Cell Biology, Developmental Biology and Bioengineering.

*Date:* March 22–23, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Pathogen/Host Interactions.

*Date:* March 22, 2016.

*Time:* 8:00 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 (Virtual Meeting).

*Contact Person:* David B. Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Pain and Chemosensory Mechanisms.

*Date:* March 22–23, 2016.

*Time:* 8:00 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 (Virtual Meeting).

*Contact Person:* John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182,

MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Pilot and Feasibility Clinical Studies (R21) in Kidney Diseases.

*Date:* March 22–23, 2016.

*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 (Virtual Meeting).

*Contact Person:* Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2188 MSC7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrative Neuroscience.

*Date:* March 22, 2016.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR 13–204: Infectious Diseases and Microbiology: Research In Biomedicine and Agriculture.

*Date:* March 22, 2016.

*Time:* 10:00 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:* Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Language and Communication.

*Date:* March 22, 2016.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts: Kidney, Nutrition, Obesity, and Diabetes Epidemiology.

*Date:* March 22, 2016.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Ellen K. Schwartz, EDD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3144, MSC 7770, Bethesda, MD 20892, 301–828–6146, *schwarel@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Oral, Dental and Craniofacial Sciences.

*Date:* March 23–24, 2016.

*Time:* 8:00 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:* Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR13–195: Preclinical Research on Model Organisms to Predict Treatment Outcomes for Disorders Associated with Intellectual and Developmental Disabilities.

*Date:* March 23, 2016.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Drug Development and Therapeutics.

*Date:* March 24–25, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–GM–16–003: Maximizing Investigators' Research Award for New and Early, Stage Investigators (R35).

*Date:* March 24–25, 2016.

*Time:* 8:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Maqsood A. Wani, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–15–146: Countermeasures Against Chemical Threats (CounterACT), Research Centers of Excellence (U54).

*Date:* March 24, 2016.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Monaco, Baltimore, 2 North Charles Street, Baltimore, MD 21201.

*Contact Person:* Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: Infectious Diseases and Microbiology.

*Date:* March 24–25, 2016.

*Time:* 8:00 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, (Virtual Meeting).

*Contact Person:* Alexander D. Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–RM–15–009: Development of Glycoscience Tools (U01).

*Date:* March 24, 2016.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*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:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Infectious Diseases and Drug Discovery.

*Date:* March 24, 2016.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–13–208: CounterACT-Countermeasurers against Chemical Threats.

*Date:* March 25, 2016.

*Time:* 8:00 a.m. to 7:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Monaco, Baltimore, 2 North Charles Street, Baltimore, MD 21201.

*Contact Person:* Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Emerging Technologies in Neuroscience.

*Date:* March 25, 2016.

*Time:* 10:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Sharon S. Low, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, 301–237–1487, *lowss@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bacterial Pathogenesis and Host Interactions.

*Date:* March 25, 2016.

*Time:* 10:00 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 (Virtual Meeting).

*Contact Person:* Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@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)

February 19, 2016.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–03992 Filed 2–24–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; 30-Day Comment Request; CareerTrac

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 16, 2015, page 78243–78244 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Fogarty International Center (FIC), National Institute of Environmental Health Sciences (NIEHS), including the Intramural Research and Training Award (IRTA) and Superfund Research Program (SRP) within NIEHS, National Institute of General Medical Science (NIGMS), and National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Dr. Rachel Sturke, Evaluation Officer, Division of Science Policy, Planning, and Evaluation, FIC, NIH, 16 Center Drive, Bethesda, MD 20892 or call non-toll-free number (301) 480–6025 or Email your request, including your address to: *rachel.sturke@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

*Proposed Collection:* CareerTrac, 0925–0568, Expiration Date: 02/29/2016—Revision, Fogarty International Center (FIC), National Institute of Environmental Health Sciences (NIEHS), National Institute of General Medical Science (NIGMS), National Cancer Institute (NCI), National Institutes of Health (NIH).

*Need and Use of Information Collection:* This data collection system is being developed to track, evaluate and report short and long-term outputs, outcomes and impacts of trainees involved in health research training programs—specifically tracking this for at least ten years following training by having Principal Investigators enter data after trainees have completed the program. The data collection system provides a streamlined, web-based application permitting principal investigators to record career achievement progress by trainee on a voluntary basis. FIC, NLM, NIEHS, NCI and NIGMS management will use this data to monitor, evaluate and adjust grants to ensure desired outcomes are achieved, comply with OMB Part requirements, respond to congressional inquiries, and as a guide to inform future strategic and management decisions regarding the grant program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 8,714.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Number of respondents | Number of responses per respondent | Average time per response (in hours) | Annual hour burden |
|---|---|---|---|---|
| FIC Grantee | 50 | 90 | 30/60 | 2250 |
| NIEHS Grantee | 60 | 45 | 30/60 | 1350 |
| NCI Grantee | 240 | 22 | 30/60 | 2640 |
| NIGMS Grantee | 50 | 150 | 30/60 | 3750 |
| Superfund Grantee | 20 | 105 | 30/60 | 1050 |
| NLM Grantee | 16 | 135 | 30/60 | 1080 |
| Total | 196 | 24,240 | ..... | 12,120 |

Dated: February 19, 2016.

**Celia Wolfman,**

*Project Clearance Liaison, FIC, NIH.*

[FR Doc. 2016–04050 Filed 2–24–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

*Date:* March 25, 2016.

*Time:* 11:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Jay B. Sundstrom, Ph.D., Scientific Review Official, Scientific Review Program, Division of Extramural Activities, Room 3G11A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5045, *sundstromj@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 19, 2016.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–03995 Filed 2–24–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Licensing information may be obtained by emailing the indicated licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479; telephone: 301–402–5579. A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

**SUPPLEMENTARY INFORMATION:** Technology description follows.

**Software for Fully Automating Myocardial Perfusion Quantification Description of Technology**

Software is has been developed and available for licensing that fully automates image processing for the quantification of myocardial blood flow (MBF) pixel maps from first-pass contrast-enhanced cardiac magnetic resonance (CMR) perfusion images. The system removes the need for laborious manual quantitative CMR perfusion pixel map processing and can process prospective and retrospective studies acquired from various imaging protocols. In full automation, arterial input function (AIF) images are processed for motion correction and myocardial perfusion images are corrected for intensity bias. The corrected AIF images are processed for left ventricle signal detection and the corrected myocardial perfusion images and processed for myocardial signal detection. Both data sets are then corrected for nonlinear signaling, synchronized, and pixel-wise deconvolution processed. The resulting pixel map shows accurate myocardial blood flow.

Potential Commercial Applications:

- MRI Imaging of the myocardium
- Blood Perfusion Imaging

Development Stage:

- In vivo data
- Software system
- Source code.

Inventors: Li-Yueh Hsu, Matthew Jacobs, Mitchel Benovoy, Andrew Arai (NHLBI)

Intellectual Property: HHS Reference No. E–097–2016/0—Software Materials.

Licensing Contact: Michael Shmilovich, Esq, CLP; 301–435–5019; *shmilovm@mail.nih.gov.*

Dated: January 15, 2016.

**Michael Shmilovich,**

*Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.*

[FR Doc. 2016–03990 Filed 2–24–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; 30-Day Comment Request; Impact of Clinical Research Training and Medical Education at the NIH Clinical Center on Physician Careers in Academia and Clinical Research (CC)

*Summary:* Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 15, 2015, pages 77647–77648 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH Clinical Center (CC), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Direct Comments To OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if

received within 30-days of the date of this publication.

*For Further Information Contact:* To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Robert M. Lembo, MD, Office of Clinical Research Training and Medical Education, NIH Clinical Center, National Institutes of Health, 10 Center Drive, Room 1N252C, Bethesda, MD 20892–1158, or call non-toll-free number (301) 496–2636, or Email your request, including your address to: *robert.lembo@nih.gov. Formal requests for additional plans and instruments must be requested in writing.*

*Proposed Collection:* The Impact of Clinical Research Training and Medical Education at the Clinical Center on Physician Careers in Academia and Clinical Research, Revision OMB#0925–0602 Expiration Date: 3/31/16, Clinical Center (CC), National Institutes of Health (NIH).

*Need and Use of Information Collection:* The information collected will allow continued assessment of the value of the training provided by the Office of Clinical Research Training and Medical Education (OCRTME) at the NIH Clinical Center and the extent to which this training has promoted: (a) Professional competence; (b) research productivity and independence; and (c) future career development within clinical, translational, and academic research settings. The information received from respondents is presented to, evaluated by, and incorporated into the ongoing operational improvement efforts of the Director of the OCRTME and the Director, NIH Clinical Center. This information will continue to support the ongoing operational improvement efforts of the OCRTME and its commitment to provide clinical research training and medical education of the highest quality to each trainee at the NIH Clinical Center.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The estimated annualized burden hour total is 320.

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| Doctoral Level | 515 | 1 | 20/60 | 172 |
| Students | 415 | 1 | 20/60 | 138 |
| Other | 30 | 1 | 20/60 | 10 |

Dated: February 16, 2016.

**Laura Lee,**

*Project Clearance Liaison, Warren Grant Magnuson Clinical Center, National Institutes of Health.*

[FR Doc. 2016–04051 Filed 2–24–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Human Genome Research Institute Special Emphasis Panel; Diversity Action Plan (DAP).

*Date:* March 23, 2016.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Keith McKenney, Ph.D., Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 19, 2016.

**Sylvia Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–03991 Filed 2–24–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; The Midlife Study.

*Date:* March 18, 2016.

*Time:* 11:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, The Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Development of Measures of Fatigability in Older Adults (R21).

*Date:* March 21, 2016.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Carmen Moten, MPH, National Institute On Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 19, 2016.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–03994 Filed 2–24–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel.

*Date:* March 18, 2016.

*Time:* 10:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Room 3An.12N, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Lisa A. Dunbar, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–2849, *dunbarl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 19, 2016.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–03993 Filed 2–24–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[DHS–2016–0012]**

### Homeland Security Science and Technology Advisory Committee Meeting

**AGENCY:** Science and Technology Directorate, DHS.

**ACTION:** Committee Management; Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet on March 10–11, 2016 in Washington, DC. The meeting will be both in-person and virtual (webinar)—open session.

**DATES:** The HSSTAC will meet in-person on Thursday, March 10, 2016, from 9:30 a.m.–4:00 p.m. and Friday, March 11, 2016, from 9:00 a.m.–3:00 p.m.

Due to security requirements, screening pre-registration is required for this event. Please see registration information below. Also, please note the meeting may close early if the committee has completed its business.

**ADDRESSES:** Department of Homeland Security, 1120 Vermont Avenue NW., 8th Floor, Washington DC, 20005.

**Virtual Meeting**

For information on services for individuals with disabilities or to request special assistance at the meeting, please contact Bishop Garrison as soon as possible. If you plan to attend the meeting in-person you must RSVP by Tuesday, March 8, 2016. To register, send an email to *HSSTAC@hq.dhs.gov* with the following subject line: RSVP to HSSTAC Meeting. The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending.

To pre-register for the virtual meeting (webinar) please send an email to: *HSSTAC@hq.dhs.gov*. The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending.

To facilitate public participation, we invite public comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** below. Written comments must be received by February 25, 2016. Please include the docket number (DHS–2016–0012) and submit via *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: HSSTAC@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–254–6176.
- *Mail:* Bishop Garrison, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number. Comments received will be posted without alteration at *http://www.regulations.gov*.

*Docket:* For access to the docket to read the background documents or comments received by the HSSTAC, go to *http://www.regulations.gov* and enter the docket number into the search function: DHS–2016–0012.

A period is allotted for public comment on March 10 and March 11, 2016 at the end of each open session. Please note that the public comment period may end before the time indicated, following the last call for comments. To register as a speaker, contact the person listed below.

**FOR FURTHER INFORMATION CONTACT:** Bishop Garrison, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205, 202–254–5617, (Office), 202–254–6176 (Facsimile) m*bishop.garrison@hq.dhs.gov* (Email).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under section 10(a) of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (Pub. L. 92–463). The committee addresses areas of interest and importance to the Under Secretary for Science and Technology, such as new developments in systems engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other federal agencies and by the private sector. It also advises the Under Secretary on policies, management processes, and organizational constructs as needed.

*Agenda: Day 1:* The morning session will cover the HSSTAC deliverables, specifically a whitepaper on an interdisciplinary approach to resilience. Comments and questions from the public will follow the first session. The second morning session will be a panel discussion on the new face of research and development and emerging issues in the science and technology field, followed by questions and comments from the public. The afternoon session will consist of discussions with Dr. Reginald Brothers, Under Secretary for Science and Technology. Topics include major issues from DHS S&T leadership in each of the following divisions: Research and Development Partnerships

(RDP), First Responder Group (FRG), Capability Development Support (CDS) and Homeland Security Advanced Research Projects Agency (HSARPA). The rest of the afternoon will consist of breakout sessions for discussion on the issues presented earlier by S&T leadership. This session will be followed by questions and comments from the public. *Day 2:* The morning session will begin with a small working group session focused on developing whitepapers, implementation plans, and tangible recommendations from the HSSTAC. The afternoon session will include a continuation of the breakout session, followed by a presentation of an executive summary of the group's discussions. This session will be followed by questions and comments from the public. The committee will then deliberate on any preliminary recommendations, and formulate initial recommendations on the science and technology issues presented earlier.

Dated: February 22, 2016.

**Bishop Garrison,**

*Executive Director, Homeland Security Science and Technology Advisory Committee.*

[FR Doc. 2016–04068 Filed 2–24–16; 8:45 am]

**BILLING CODE 9110–9F–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2016–0005]**

### National Infrastructure Advisory Council

**AGENCY:** National Protection and Programs Directorate, DHS.

**ACTION:** Committee Management; Notice of an Open Federal Advisory Committee Meeting.

**SUMMARY:** The National Infrastructure Advisory Council will meet Monday, March 14, 2016, at 1310 N. Courthouse Road, Suite 300, the Virginia Conference Room, Arlington, VA 22201. This meeting will be open to the public.

**DATES:** The National Infrastructure Advisory Council will meet on March 14, 2015 from 1:30 p.m.–3:30 p.m. EST. The meeting may close early if the committee has completed its business. For additional information, please consult the National Infrastructure Advisory Council Web site, *www.dhs.gov/NIAC,* or contact the National Infrastructure Advisory Council Secretariat by phone at (703) 235–2888 or by email at *NIAC@hq.dhs.gov.*

**ADDRESSES:** 1310 N. Courthouse Road, Suite 300, the Virginia Conference Room, Arlington, VA 22201. Members of the public will register at the registration table prior to entering the meeting room. For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Council as listed in the **SUMMARY** section below. Comments must be submitted in writing no later than 12:00 p.m. on March 9,2016, in order to be considered by the Council in its meeting. The comments must be identified by ''DHS–2016–0005,'' and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting written comments.
- *Email: NIAC@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (703) 235–9707.
- *Mail:* Ginger Norris, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0612, Washington, DC 20598–0607.

*Instructions:* All written submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Written comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket or to read background documents or comments received by the National Infrastructure Advisory Council, go to *www.regulations.gov.* Enter ''NIAC'' in the search line and the Web site will list all relevant documents for your review.

Members of the public will have an opportunity to provide oral comments on the topics on the meeting agenda below, and on any previous studies issued by the National Infrastructure Advisory Council. We request that comments be limited to the issues and studies listed in the meeting agenda and previous National Infrastructure Advisory Council studies. All previous National Infrastructure Advisory Council studies can be located at *www.dhs.gov/NIAC.* Public comments may be submitted in writing or presented in person for the Council to consider. Comments received by Ginger Norris on or after 1:30 p.m. on March 14, 2015, will still be accepted and reviewed by the members, but not necessarily at the time of the meeting. In-person presentations will be limited to three minutes per speaker, with no more than 15 minutes for all speakers. Parties interested in making in-person comments should register on the Public Comment Registration list available at the entrance to the meeting location prior to the beginning of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Ginger Norris, National Infrastructure Advisory Council, Alternate Designated Federal Officer, Department of Homeland Security, (703) 235–2888.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix. The National Infrastructure Advisory Council shall provide the President, through the Secretary of Homeland Security, with advice on the security and resilience of the Nation's critical infrastructure sectors. The NIAC will meet to discuss issues relevant to critical infrastructure security and resilience as directed by the President.

The meeting will commence at 1:30 p.m. EST. At this meeting, the council will discuss its on-going study on Water Resilience. All presentations will be posted prior to the meeting on the Council's public Web page—*www.dhs.gov/NIAC.*

**Public Meeting Agenda**

I. Opening of Meeting
II. Roll Call of Members
III. Opening Remarks and Introductions
IV. Approval of Meeting Minutes
V. Status Update on Water Resilience Working Group
VI. Open Discussion and Public Comment
VII. Closing Remarks

Dated: February 19, 2016.

**Ginger Norris,**

*Alternate Designated Federal Officer for the National Infrastructure Advisory Council.*

[FR Doc. 2016–03925 Filed 2–24–16; 8:45 am]

**BILLING CODE 9110–9B–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Intent To Request Renewal From OMB of One Current Public Collection of Information: Pipeline Operator Security Information

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-Day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0055, abstracted below that we will submit to

OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. Specifically, the collection involves the submission of data concerning pipeline security incidents.

**DATES:** Send your comments by April 25, 2016.

**ADDRESSES:** Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh at the above address, or by telephone (571) 227–2062.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Information Collection Requirement**

*OMB Control Number 1652–0055; Pipeline Operator Security Information.* Under the Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71, 115 Stat. 597 (November 19, 2001)) and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for ''security in all modes of transportation * * * including security responsibilities * * * over modes of transportation that are exercised by the Department of Transportation.'' In executing its responsibility for modal security, TSA produced the Pipeline Security Guidelines in December 2010.

As the lead Federal agency for pipeline security, TSA desires to be notified of all incidents which are indicative of a deliberate attempt to disrupt pipeline operations or activities that could be precursors to such an attempt. The Pipeline Security Guidelines encourage pipeline operators to notify the Transportation Security Operations Center (TSOC) via phone at 866–615–5150 or email at *TSOC.ST@dhs.gov* as soon as possible if any of the following incidents occurs or if there is other reason to believe that a terrorist incident may be planned or may have occurred:

- Explosions or fires of a suspicious nature affecting pipeline systems, facilities, or assets.
- Actual or suspected attacks on pipeline systems, facilities, or assets.
- Bomb threats or weapons of mass destruction (WMD) threats to pipeline systems, facilities, or assets.
- Theft of pipeline company vehicles, uniforms, or employee credentials.
- Suspicious persons or vehicles around pipeline systems, facilities, assets, or right-of-way.
- Suspicious photography or possible surveillance of pipeline systems, facilities, or assets.
- Suspicious phone calls from people asking about the vulnerabilities or security practices of a pipeline system, facility, or asset operation.
- Suspicious individuals applying for security-sensitive positions in the pipeline company.
- Theft or loss of Sensitive Security Information (SSI) (detailed pipeline maps, security plans, etc.).
- Actual or suspected cyber-attacks that could impact pipeline Supervisory Control and Data Acquisition (SCADA) or enterprise associated IT systems.

When contacting the TSOC, the Guidelines request pipeline operators to provide as much of the following information as possible:

- Name and contact information (email address, telephone number).
- The time and location of the incident, as specifically as possible.
- A description of the incident or activity involved.
- Who has been notified and what actions have been taken.
- The names and/or descriptions of persons involved or suspicious parties and license plates as appropriate.

In addition to the reporting of security incident data to the TSOC, the Pipeline Security Guidelines previously included collecting information on recommendations for the voluntary submission of pipeline operator security manager contact information to TSA. *See* 74 FR 37723 (July 29, 2009) and 75 FR 49943 (August 16, 2010). TSA is revising the collection of information and will no longer collect the security manager contact information; however, the agency will continue to collect information on the reporting of security incident data to TSOC.

TSA expects reporting of pipeline security incidents will occur on an irregular basis. TSA estimates that approximately 30 incidents will be reported annually, requiring a maximum of 30 minutes to collect, review, and submit event information. The potential burden to the public is estimated to be 15 hours (30 incidents × 30 minutes = 15 hours).

Dated: February 22, 2016.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2016–04067 Filed 2–24–16; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2016–N028; FXES11130800000–167–FF08E00000]**

### Endangered Species Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

**DATES:** Comments on these permit applications must be received on or before March 28, 2016.

**ADDRESSES:** Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Daniel Marquez, Fish and Wildlife

Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

**SUPPLEMENTARY INFORMATION:** The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

**Applicants**

*Permit No. TE–157221*

Applicant: UC Berkeley, Berkeley, California

The applicant requests a permit renewal to take (capture, measure, handle, and release) the giant kangaroo rat (*Dipodomys ingens*) in conjunction with surveys and research in the Carrizo Plain National Monument, San Luis Obispo County, California, for the purpose of enhancing the species' survival.

*Permit No. TE–843381*

Applicant: California Department of Parks and Recreation, Mendocino, California

The applicant requests a permit renewal to take (harass/harm while conducting habitat restoration activities) the Behren's silverspot butterfly (*Speyeria zerene behrensii*); and take (harass by survey, and harass/harm while conducting habitat restoration activities) the Point Arena mountain beaver (*Aplodontia rufa nigra*) in conjunction with survey and restoration activities in California State lands within Mendocino and Sonoma Counties for the purpose of enhancing the species' survival.

*Permit No. TE–23162B*

Applicant: Eric L. Herman, Cochise, Arizona

The applicant requests a permit amendment to take (harass by survey and conduct nest monitoring) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–86356B*

Applicant: SeaWorld San Diego, San Diego, California

The applicant requests a new permit to take (perform rescue operations, capture, handle, collect, transport, rehabilitate, mark/tag, return to wild, display for educational purposes, perform veterinarian care, and euthanize) the green sea turtle (*Chelonia mydas*), leatherback sea turtle (*Dermochelys coriacea*), loggerhead sea turtle (North Pacific Ocean Distinct Population Segment (DPS)) (*Caretta caretta*), Olive Ridley sea turtle (*Lepidochelys olivacea*), and Hawksbill sea turtle (*Eretmochelys imbricata*) in conjunction with stranded sea turtle operations, research, and enhancement of wild populations throughout the range of the species in California, Oregon, and Washington, for the purpose of enhancing the species' survival.

*Permit No. TE–837760*

Applicant: Kendall H. Osborne, Riverside, California

The applicant requests a permit amendment to take (harass by survey, capture, mark, and perform telemetry) the Casey's June beetle (*Dinacoma caseyi*); and take (harass by survey, captive rear, and handle throughout the lifecycle) the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–86378B*

Applicant: Thomas Gast & Associates Environmental Consultants, Arcata, California

The applicant requests a permit to take (harass by survey, perform biological sampling, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with survey activities in Humboldt County, California, for the purpose of enhancing the species' survival.

*Permit No. TE–018909*

Applicant: Kelly M. Rios, Brea, California

The applicant requests a permit renewal to take (harass by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and El Segundo blue butterfly (*Euphilotes battoides allyni*); and take (harass by capture, handle, and release) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–045994*

Applicant: U.S. Geological Survey, San Diego, California

The applicant requests a permit amendment to take (harass by capture, transport, hold in captivity, propagate, and translocate) the mountain yellow-legged frog (southern California DPS) (*Rana muscosa*), in conjunction with research activities in Los Angeles, Riverside, and San Bernardino Counties, California, for the purpose of enhancing the species' survival.

*Permit No. TE–86461B*

Applicant: Cirrus Ecological Solutions, LC, Logan, UT

The applicant requests a permit to take (survey by pursuit) the Mount Charleston blue butterfly (*Plebejus shasta charlestonensis*) in conjunction with survey activities in Clark County, Nevada, for the purpose of enhancing the species' survival.

*Permit No. TE–072650*

Applicant: Jennifer C. Michaud-Laired, Sebastopol, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California freshwater shrimp (*Syncaris pacifica*) in Sonoma, Marin, and Napa Counties, California; and take (survey, capture, handle, and release) the California tiger salamander (Santa Barbara County and Sonoma County DPS) (*Ambystoma californiense*) in Sonoma County, California, in conjunction with surveys and demographic studies for the purpose of enhancing the species' survival.

*Permit No. TE–825573*

Applicant: Brian L. Cypher, Bakersfield, California

The applicant requests a permit renewal to take (capture, measure, sex, weigh, ear-tag, radio-collar, and collect biological samples) the San Joaquin kit fox (*Vulpes macrotis mutica*); take (capture, handle, mark, passive integrated transponder (PIT) tag, attach/remove radio transmitters, take biological samples, hold in captivity, and release) the blunt-nosed leopard lizard (*Gambelia silus*), Fresno kangaroo rat (*Dipodomys nitratoides exilis*), giant kangaroo rat (*Dipodomys ingens*), and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*); take (capture, handle, mark, take biological samples, and release) the Buena Vista Lake shrew (*Sorex ornatus relictus*); and remove/reduce to possession *Opuntia basilaris* var. *treleasei* (*O. treleasei*) (Bakersfield cactus) from Federal lands in

conjunction with surveys and research throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–48210A*

Applicant: Area West Environmental, Inc., Orangevale, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (harass by survey, capture, handle, and release) the California tiger salamander ((central DPS, Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

*Permit No. TE–56889A*

Applicant: Melissa Odell, Oakhurst, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (harass by survey, capture, handle, and release) the California tiger salamander ((central DPS, Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

*Permit No. TE–36109B*

Applicant: Lenny Grimaldo, San Francisco, California

The applicant requests a permit amendment to take (capture, handle, collect, and release) the delta smelt (*Hypomesus transpacificus*) in conjunction with research activities in the San Francisco Bay Estuary in California for the purpose of enhancing the species' survival.

**Public Comments**

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Angela Picco,**

*Acting Regional Director, Pacific Southwest Region, Sacramento, California.*

[FR Doc. 2016–04016 Filed 2–24–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–HQ–IA–2016–N043; FXIA16710900000–156–FF09A30000]**

### Endangered Species; Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

**DATES:** We must receive comments or requests for documents on or before March 28, 2016.

**ADDRESSES:** *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2016–N043.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2016–N043; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). *Viewing Comments:* Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

**I. Public Comment Procedures**

*A. How do I request copies of applications or comment on submitted applications?*

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**II. Background**

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

**III. Permit Applications**

*Endangered Species*

Applicant: The Board of Trustees of the University of Illinois, Champaign, IL; PRT–84465A

The applicant requests an amendment to their permit to import samples from captive-born and wild hutia species (*Capromys species*), Cuban solenodon (*Solenodon cubanus*), Haitian/Hispaniolan solenodon (*Solenodon paradoxus*), Asian elephant (*Elephas maximus*), black rhinoceros (*Diceros bicornis*), Northern white rhinoceros (*Ceratotherium simum cottoni*), Javan rhinoceros (*Rhinoceros sondaicus*), Indian rhinoceros (*Rhinoceros unicornis*), Sumatran rhinoceros (*Dicerorhinus sumatrensis*), cheetah (Acinonyx jubatus), Pakistan sand cat (*Felis margarita scheffeli*), black-footed cat (*Felis nigripes*), Baird's tapir (*Tapirus bairdii*), lion (*Panthera leo leo*), and leopard (*panther pardus*) from multiple locations for the purpose of enhancement of the species through scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Wildlife Conservation Society, Bronx, NY; PRT–82159B

The applicant requests a permit to import two male captive-bred red-collared brown lemurs (*Eulemur collaris*) from Tierpark Berlin–Friedrichsfelde, Berlin, Germany, for the purpose of enhancement of the survival of the species through zoological display and captive propagation.

Applicant: Atlanta-Fulton County Zoo, dba Zoo Atlanta, Atlanta, GA; PRT–85599B

The applicant requests a permit to export two captive-bred female giant panda (*Ailuropoda melanoleuca*) to Chengdu Research Base of Giant Panda Breeding, Chengdu, China, for the purpose of enhancement of the survival of the species through conservation breeding.

Applicant: Steven Lambert, La Mesa CA; PRT–121977

The applicant requests an amendment to an existing captive-bred wildlife registration under 50 CFR 17.21(g) to add the following species to enhance species propagation or survival: Bolson tortoise (*Gopherus flavomarginatus*), aquatic box turtle (*Terrapene Coahuila*), yellow-spotted river turtle (*Podocnemis unifilis*), spotted pond turtle (*Geoclemys hamiltonii*), Grand Cayman blue iguana (*Cyclura lewisi*), and Cuban ground iguana (*Cyclura nubila nubila*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: U.S. Geological Survey, National Wildlife Health Center, Honolulu, HI; PRT–105568

The applicant requests a permit to import biological samples and carcasses from wild, captive-held, or captive born animals for the purpose of enhancement of the survival of the species and scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Carmelo Musacchia New York, NY; PRT–80906B

Applicant: Victor Sanchez, Humble, TX; PRT–84418B

Applicant: Thomas Salmon, Odessa, TX; PRT–86900B

Applicant: Danny Janecka, Waelder, TX; PRT–87863B

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2016–04000 Filed 2–24–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[15X 1109AF LLUTY00000 L12200000. MA0000 24 1A]**

### Final Supplementary Rules for Public Lands Managed by the Moab and Monticello Field Offices in Grand and San Juan Counties, UT

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final supplementary rules.

**SUMMARY:** In accordance with the Records of Decision (RODs) for the Moab and Monticello Field Office Approved Resource Management Plans (RMPs) and associated Environmental Impact Statements (EIS), the Bureau of Land Management (BLM) is finalizing supplementary rules for BLM-managed public land in Grand and San Juan Counties, Utah. These final supplementary rules apply to the operation of motorized and mechanized vehicles, camping and campfires, firewood and petrified wood collection, and the use of glass containers.

**DATES:** These final supplementary rules are effective on March 28, 2016.

**ADDRESSES:** You may direct inquiries by letter to Jeffrey Smith, Recreation Division Chief, Bureau of Land Management, Moab Field Office, 82 East Dogwood Avenue, Moab, UT 84532, or by email to *blm_ut_mb_mail@blm.gov*. The final supplementary rules are available for inspection at the Moab Field Office, on the Moab Field Office Web site *www.blm.gov/ut/st/en/fo/moab.html,* at the Monticello Field Office, on the Monticello Field Office Web site *www.blm.gov/ut/st/en/fo/monticello.html*.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Smith, Recreation Division Chief,

82 East Dogwood Avenue, Moab, UT 84532, 435–259–2100, or *blm_ut_mb_mail@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question with the above individual. The FIRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Discussion of Public Comments
III. Discussion of Final Supplementary Rules
IV. Procedural Matters

## I. Background

The BLM is establishing these final supplementary rules under the authority of 43 Code of Federal Regulations (CFR) 8365.1–6, which allows state directors to establish supplementary rules for the protection of persons, property, and the public lands and resources. This provision allows the BLM to issue rules of less than national effect without codifying the rules in the CFR. These final supplementary rules apply to public lands managed by the Moab and Monticello Field Offices. Maps of the management areas and boundaries can be obtained by contacting the Moab or Monticello Field Office or by accessing Moab or Monticello Field Office Web sites (*SEE* **ADDRESSES** *SECTION ABOVE*). The final supplementary rules will be available for inspection at the Moab and Monticello Field Offices.

In 2008, the BLM finalized RMPs for the Moab and Monticello Field Offices. During the public planning and EIS processes, the BLM identified the need to establish supplementary rules to provide for visitor health and safety, and to protect the cultural and natural resources on the BLM-Moab and Monticello Field Office lands.

The BLM has recorded significant increases in visitation numbers and resulting pressures on recreation areas and archaeological sites in the Moab and Monticello areas. Therefore, the BLM has determined that the final rules are necessary to protect visitor health and safety, prevent natural and cultural resource degradation, and promote high-quality outdoor recreation opportunities. Some of the final rules apply to the entire field office areas, while others apply only to specific geographic areas experiencing the most intense visitation pressures. The geographic applicability of each rule is addressed in sections III and V of this Notice.

The BLM took the following steps to involve the public in developing the plans, which are the basis for the final supplementary rules:

(1) The BLM held five scoping meetings for the Moab and Monticello Field Offices between October 14 and November 13, 2003, in the planning area. A formal scoping period was held between June 6, 2003, and January 31, 2004. The BLM also engaged in Tribal consultation during the planning process.

(2) The Draft RMP/EIS, which included recommendations for published closures, limitations, restrictions, and special rules, was available for a 90-day public comment period. Moab's Draft RMP/EIS was available from August 24, 2007, to November 30, 2007. Four public meetings were held on the Draft RMP beginning September 25, 2007. Monticello's Draft RMP/EIS was available for public review and comment from November 2, 2007, through February 8, 2008. Five public meetings were held on the Draft RMP in January 2008.

(3) The BLM released the Proposed RMPs and Final EISs, which included recommendations for published closures, limitations, restrictions, and special rules on August 1, 2008 (Moab), and on September 5, 2008 (Monticello), for a 30-day comment period.

(4) The BLM summarized all public comments and addressed them in the Final EISs approved on August 1, 2008 (Moab), and September 5, 2008 (Monticello).

## II. Discussion of Public Comments

The BLM published proposed supplementary rules on July 18, 2014 (79 FR 42035). Twelve comment letters were received during the 90-day public comment period. Eleven of the commenters expressed support for the supplementary rules.

One comment concluded that the dispersed camping limitations applied to the entire Canyon Country District, and expressed opposition to this district-wide imposition of camping rules. Dispersed camping limitations only apply to enumerated areas as defined in the final supplementary rules.

One comment requested that language of Rule 4 (Moab Field Office) and Rule 5 (Monticello Field Office) be changed to conform to the field office's Travel Management Plans. The Travel Management Plans for the Moab and Monticello Field Offices state: ''In areas limited to designated routes, only designated routes are open to motorized use.'' However, the supplementary rules must describe prohibited acts and, therefore, Moab Rule 4 and Monticello Rule 5 will be clarified by adding the underlined text: ''You must not operate a motorized or mechanized vehicle on any route, trail or area not designated as open to such use by a BLM sign, a BLM map or the [appropriate field office] Travel Management Plan.''

Another comment requested that the rules be changed to clarify that researchers should be able to enter archaeological sites via ropes (Monticello Rule 3). Researchers will still be able to access archaeological sites via ropes assuming they have obtained the necessary permits from either the Moab or Monticello Field Office allowing such research to be conducted.

Another comment requested that the definition of climbing aids be clarified (Monticello Rule 3). The rule language is taken directly from the Approved Monticello RMP. The definition of a climbing aid has been augmented to include the use of ladders as requested by the commenter.

Another comment requested a correction of a typographical error in Rule 5 (Monticello), which refers to the Moab, rather than the Monticello, Field Office. The typographical error has been corrected.

One comment disagreed with the proposed rule restricting campfires in Dark Canyon and White Canyon Special Recreation Management Areas (SRMAs) in their entirety. The commenter agreed with the campfire restriction in the canyons, but stated that the restriction on campfires along the rims of these canyons was overly restrictive. The language in the RMP only restricts campfires within the canyons of these SRMAs; it does not restrict campfires on the rims. The wording of the final rule has been changed to clarify the restriction and to more accurately reflect the decision in the RMP.

## III. Discussion of Final Supplementary Rules

*The BLM-Moab Field Office*

The BLM-Moab Field Office's jurisdiction is bound by the Grand County line to the north, the Utah-Colorado state line to the east, Harts Draw and Lisbon Valley to the south, and the Green River to the west. The public lands managed by the BLM-Moab Field Office are domestic and international tourist destinations. Since 1999, annual visitation has increased by over 500,000, to 1.8 million visitors per year.

The final supplementary rules are critical to provide for public health and safety and to protect natural and cultural resources on public lands

experiencing high levels of sustained and concentrated visitor use. For over 20 years supplementary rules have been in place for several specific locations with high visitor use in the BLM-Moab Field Office. See 57 FR 33005 (July 24, 1992), 58 FR 17424 (April 2, 1993), and 61 FR 60724 (Nov. 29, 1996). Those rules have been effective in providing for visitor health and safety, and protecting cultural and natural resources in the specified locations. The final rules in this notice do not replace existing rules. The final rules supplement existing rules by providing protection to additional high visitation areas and to the entire Moab Field Office area.

The final rules regarding camping, campfires, human waste, and wood gathering (Moab Rules 7, 8, 9 and 10) cover areas that receive an estimated 90 percent of the 1.8 million visitors to the Moab Field Office. The restrictions are directly related to the degradation of natural resources, health and safety issues posed by the presence of human waste, and the overuse of undeveloped camping areas where no facilities exist to mitigate visitor impacts.

All of the locations listed for camping restrictions were also specifically listed in the 2008 Moab RMP/EIS. In the majority of the areas affected by camping restrictions, the BLM offers existing campgrounds with toilet facilities and trash disposal, thus ensuring the public's ability to camp on these BLM lands. Public lands that do not receive intense visitation and are not listed in this notice and the 2008 RMP/EIS will not be affected by the final camping rules.

The reasoning for each rule is addressed below.

1. Final rule: *You must not burn wood pallets.*

Wood pallets are the wood frames typically used in shipping operations. Burning wood pallets is hazardous to visitors, BLM personnel, wildlife, and livestock because they contain nails that remain behind after the pallets are burned. These nails can cause physical injury to people and animals, and property damage to vehicles. By prohibiting the burning of wood pallets, the BLM will be better able to ensure the safety of people and animals, and to minimize the risk of property damage. This rule applies to all lands managed by the Moab Field Office because the hazards are the same regardless of where the pallets are burned.

2. Final rule: *You must not camp in archaeological sites posted as closed to camping.*

Camping activities destroy fragile archaeological resources and cause irreparable damage. Although visitors may not intentionally harm archaeological sites when they camp, several activities associated with camping may cause inadvertent damage. For example, campfires can destroy and/or contaminate the archaeological record, which is important to our scientific and historical understanding of archaeological resources. Also, inadvertent trampling from foot traffic and the use of camping shelters causes movement of artifacts and site features. Camping in archaeological sites also increases the risk of illegal artifact collection. Finally, food preparation often results in food scraps being left behind on the ground, and this attracts animals that dig in and damage the site. This rule applies throughout the Moab Field Office because of the high density of archaeological sites across the entire region. The definition of archaeological site is found in the ''Definitions'' section.

3. Final rule: *You must not camp in historic sites posted as closed to camping.*

Once these rules are finalized, historic sites that are important to the historical record and local and national heritage will be posted as closed to camping. Sites that are included or eligible for inclusion in the National Register of Historic Places are covered under this rule. Camping activities in these areas can destroy fragile historical resources and may cause irreparable damage. Although visitors may not intentionally harm historical sites when they camp, several activities associated with camping cause inadvertent damage. For example, campfires can destroy and/or contaminate the historical record, which is important to our understanding of historical resources. Also, inadvertent trampling from foot traffic and the use of camping shelters causes movement of structures and site features.

4. Final rule: *You must not operate a motorized or mechanized vehicle on any route, trail or area not designated as open to such use by a BLM sign, a BLM map, or the Moab Field Office Travel Management Plan.*

Mechanized and motorized travel across sensitive desert landscapes and off of established routes can damage scenic, cultural, soil, vegetation, and wildlife habitat resources. The final rule limits these modes of travel to designated routes in order to prevent the degradation of the public land resources that draw people to the area. The proliferation of user-created routes also contributes to confusion among visitors as to their location and this has contributed to an increased demand on search and rescue resources. This rule applies to all lands managed by the Moab Field Office because the resources at risk of damage from vehicles are present across the entire region.

5. Final rule: *You must not gather petrified wood.*

In the Moab area, there are two BLM SRMAs where petrified wood can be found exposed on the ground. These two SRMAs experience heavy visitation and, as a result, petrified wood often is collected and removed from the public lands. In order to preserve this resource for future public viewing, the collection of petrified wood is prohibited. This potential restriction was analyzed in the 2008 Moab RMP/EIS. The two SRMAs that are affected by this rule are the Colorado Riverway SRMA, and the high visitation areas within Labyrinth Rim/Gemini Bridges SRMA.

6. Final rule: *You must not possess or use glass beverage containers.*

The potential for broken glass arising from the possession or use of glass beverage containers presents a health and safety hazard to visitors, especially in areas where children and adults are likely to go barefoot. This final rule applies only to two specific areas that the BLM has determined poses the greatest health and safety risks: The Sand Hill area near the entrance of Arches National Park, where visitors can be harmed by broken glass hidden in the sand; and the Powerhouse/Mill Creek area, a rare swimming hole near the city of Moab, where visitors can be harmed by broken glass in the stream bed. Broken glass has been a problem at these two locations and this rule will help safeguard the public. The geographic descriptions of these locations are listed in the ''Final Supplementary Rules.

7. Final rule: *You must not camp at a non-designated site.*

This final rule applies only to specific geographic areas where dispersed camping is degrading natural, visual, and wildlife resources, and/or causing risks to human health. The affected areas, which are enumerated in the Final Supplementary Rules section, reflect the recreation management decision (REC–6) in the 2008 Moab RMP to limit dispersed camping as visitation impacts and environmental conditions warrant. By regulating campsites along scenic highways and byways, the BLM will be better able to preserve the view shed for those travelling along the roads. Also, dispersed camping is negatively affecting crucial Desert Bighorn Sheep lambing areas shown in Map 9 of the Moab RMP. In addition, the presence of campers without the benefit of toilet facilities devalues adjacent private property and poses a health threat to

domestic water wells in Spanish Valley and Castle Valley. All the geographic locations affected by this final rule are listed in the Final Supplementary Rules.

8. Final rule: *You must not ignite or maintain a campfire at a non-designated site.*

Campfires made without a metal fire ring create an increased risk of wildfire, and resulting damage to natural and cultural resources and harm to public health and safety. In addition, non-designated campfire rings, ashes, and associated garbage that are often left behind at campfire sites have a negative visual impact on the area. Finally, the presence of non-designated campfire rings encourages repeated illegal camping. The areas affected by this rule receive the most intense visitation and so the risks posed by campfires are amplified in these areas. All the geographic locations affected by this final rule are enumerated in the Final Supplementary Rules.

9. Final rule: *You must not dispose of human waste in any container other than a portable toilet.*

Exposure to human waste is a health risk to the public and BLM personnel. The continuous deposition of human waste on or just beneath the surface of the ground—which is largely sand and bare rock in the Moab region—is a risk that is not naturally mitigated. In high visitation areas, the risk of exposure to human waste is amplified. This risk may be mitigated by limiting the methods of disposal. This rule applies to the enumerated areas because they experience the highest levels of visitation and, in the case of the Areas of Critical Environmental Concern and Desert Bighorn Sheep lambing areas, the lands are especially sensitive to human impacts. All geographic locations affected by this final rule are listed in the Final Supplementary Rules.

10. Final rule: *You must not gather wood.*

Wood gathering depletes an already limited supply of wood that is not readily replaced in the desert environment. The areas to which this rule applies are at a great risk of resource damage and depletion due to high visitation. In order to ensure that future visitors can enjoy the visual resources, and the sensitive desert ecology is protected, wood gathering in the enumerated areas is prohibited. All geographic locations affected by this final rule are listed in the Final Supplementary Rules.

*The BLM-Monticello Field Office*

The BLM-Monticello Field Office's jurisdiction is bound by Harts Draw and Lisbon Valley to the north, the Utah-Colorado state line to the east, the Navajo Indian Reservation and Utah-Arizona state line to the south, and Canyonlands National Park and the Glen Canyon National Recreation Area to the west. A number of archaeological and historical resources are located on the public lands throughout the BLM-Monticello Field Office.

The BLM-Monticello Field Office's final supplementary rules are integral to protecting natural and cultural resources. The office currently enforces supplementary rules that have been effective in protecting resources in the Indian Creek area. See 63 FR 110 (Jan. 2, 1998). The final rules in this notice do not replace existing rules. The final rules supplement existing rules and provide protection to archaeological sites. Each of the final rules was analyzed in the 2008 Monticello RMP and accompanying EIS.

The reasoning for each rule is addressed below.

1. Final rule: *You must not camp in archaeological sites posted as closed to camping.*

Camping activities destroy fragile archaeological resources and cause irreparable damage. Although visitors may not intentionally harm archaeological sites when they camp, several activities associated with camping cause inadvertent damage. For example, campfires can destroy and/or contaminate the archaeological record, which is important to our scientific and historical understanding of cultural resources. Also, inadvertent trampling from foot traffic and camping shelters causes movement of artifacts and site features. Camping in sites also increases the risk of illegal artifact collection. Finally, food preparation often results in food scraps being left behind on the ground and this attracts animals that dig in and damage the site. This rule applies throughout the Monticello Field Office because of the high density of archaeological sites across the entire region. The definition of archaeological site is found in the ''Definitions'' section.

2. Final rule: *You must not enter archaeological sites posted as closed to the public.*

Individual archaeological sites are closed on a case-by-case basis due to degradation from increased visitation. Closing these sites to the general public protects them for future generations and our national heritage, and also ensures the integrity of the site for further scientific study. These sites may still be enjoyed from outside the barriers but due to the degradation and their fragile nature, further public visitation within the barriers would cause irreparable damage. This rule applies throughout the Monticello Field Office because of the high density of archaeological sites across the entire region. A definition of archaeological site is in the ''Definitions'' section of the Final Supplementary Rules.

3. Final rule: *You must not use ropes or other climbing aids to access archaeological sites.*

The use of ropes or other climbing aids to access archaeological sites can cause irreparable damage and it increases visitation and resulting degradation to otherwise rare and inaccessible sites. Ropes and climbing aids cause damage because climbers put them in direct contact with fragile features such as prehistoric walls and towers. For example, ropes rub against walls as climbers go up and over sites, and climbing aids such as bolts and other protection pieces cause direct damage to the rock where they are placed. Also, the use of climbing aids in general increases human contact with fragile sites and artifacts. Many otherwise inaccessible sites still retain cultural integrity and important scientific information, and the use of ropes and climbing aids to access these sites may destroy what little remains of the cultural heritage and valuable knowledge of the past. This rule applies throughout the Monticello Field Office because of the high density of archaeological sites across the entire region. A definition of archaeological site is in the ''Definitions'' section of the Final Supplementary Rules.

4. Final rule: *You must not bring domestic pets or pack animals to archaeological sites posted as closed to the public.*

Pets and pack animals cause damage to archaeological sites when they paw, dig in, defecate on, and trample fragile structures and artifacts. In order to promote the integrity and longevity of these sites, pets and pack animals are prohibited. This rule applies throughout the Monticello Field Office because of the high density of archaeological sites across the entire region. A definition of archaeological site is in the ''Definitions'' section of the Final Supplementary Rules.

5. Final rule: *You must not operate a motorized or mechanized vehicle on any route, trail, or area not designated as open to such use by a BLM sign, a BLM map or the Monticello Field Office Travel Management Plan.*

Similar to the Moab area, mechanized and motorized travel across sensitive desert landscapes and off of established routes in the Monticello area damages scenic, cultural, soil, vegetation, and wildlife habitat resources. The final rule

limits these modes of travel to designated routes in order to prevent the degradation of the public land resources that draw people to area. The proliferation of user-created routes also contributes to confusion among visitors as to their location on the ground, and has contributed to more frequent search and rescue activity. This rule applies throughout the Monticello Field Office because the resources at risk of damage from vehicles are present across the entire region.

6. Final rule: *You must not ignite or maintain a campfire within the canyons of the Dark Canyon Special Recreation Management Area or White Canyon Special Recreation Management Area.*

Campfires are prohibited within the canyons of the Dark Canyon SRMA because of the canyons' high density of archaeological resources. Prohibiting campfires will reduce the risk of starting wildfires, which can cause extensive damage to those resources. Also, by prohibiting campfires within the canyons, the BLM will reduce the risk that visitors will remove ancient wood from archaeological sites for fuel. Campfires also are prohibited in the canyon in the White Canyon SRMA because it is a narrow slot canyon in which burning poses significant health and safety risks. In addition, the logjams that people rely on to navigate the canyon are targeted for firewood. By prohibiting campfires within the canyons of these SRMAs, the likelihood of wildfires will be greatly reduced, thereby providing greater protection of human safety, wildlife, livestock, public land resources, and private property.

*Other Revisions*

The BLM has made the following changes to the rules as proposed:

- The BLM has removed the proposed definition of off-highway vehicles because that term is not used in any of the substantive proposed or final supplementary rules.
- The BLM has revised Moab Rule 2 and Monticello Rule 1, both of which prohibit camping in archaeological sites, by adding the phrase, ''posted as closed to camping.'' The public is not aware of every archaeological site. This revision discloses how the BLM will promote public awareness of the sites that are subject to the supplementary rule.
- The BLM has revised Moab Rule 4 and Monticello Rule 5, both of which prohibit operation of vehicles in locations not designated as open, by revising the description of such locations to read ''not designated as open by a BLM sign, a BLM map, or the [Moab or Monticello] Field Office Travel Management Plan.'' These revisions disclose the multiple ways that the BLM will promote public awareness of travel designations.
- The BLM has revised Monticello Rule 3, which prohibits using ropes or other climbing aids to access archaeological sites, by adding the phrase, ''unless operating under a permit.'' This modification allows for researchers to obtain a permit to enter archaeological sites using climbing aids.
- The BLM has revised Monticello Rule 4, which prohibits bringing pets or pack animals to archaeological sites, by adding the phrase, ''posted as closed to the public.'' The public is not aware of every archaeological site. This revision discloses how the BLM will promote public awareness of the sites that are subject to the supplementary rule.
- The BLM has removed the proposed ''Penalties'' provision and has replaced it with an ''Enforcement'' provision that is in accordance with recent BLM policy.
- The BLM has revised the ''Exemptions'' provision to read as a complete sentence, to add a statement that these rules are not intended to affect any valid existing rights, and to delete a statement pertaining to penalties. These revisions are intended to improve the clarity of the ''Exemptions'' provision.

## IV. Procedural Matters

*Executive Order 12866, Regulatory Planning and Review*

These final supplementary rules are not significant regulatory actions and are not subject to review by the Office of Management and Budget under Executive Order 12866. These final supplementary rules will not have an annual effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. These final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The final supplementary rules will not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor does it raise novel legal or policy issues. These supplementary rules merely establish rules of conduct for public use on a limited area of public lands.

*National Environmental Policy Act*

These final supplementary rules are consistent with and necessary to properly implement decisions proposed, analyzed, and approved in the 2008 Moab and Monticello Field Office RMPs, Final EISs, and RODs. They establish rules of conduct for public use of public lands managed by the Moab and Monticello Field Offices in order to protect public health and safety and protect natural and cultural resources on the public lands. The approved RMPs, EISs, and RODs are available for review at the physical and on-line locations identified in the **ADDRESSES** section.

These final rules are a component of a larger planning process for the Moab and Monticello Field Offices (*i.e.,* the RMPs/RODs). In developing the RMPs/RODs, the BLM prepared two Draft and Final EISs, which include analysis of the final rules. The Draft and Final EISs, the Proposed RMPs, and the RMPs/RODs are on file and available to the public in the BLM administrative record at the address specified under **ADDRESSES**. The documents are also online at: *http://www.blm.gov/ut/st/en/fo/moab/planning/rod_approved_rmp.html* and *http://www.blm.gov/ut/st/en/fo/monticello/planning/Monticello_Resource_Management_Plan.html.*

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules merely establish rules of conduct for public use on a limited area of public lands. Therefore, the BLM has determined that the final supplementary rules will not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act*

These final supplementary rules are not ''major'' as defined under 5 U.S.C. 804(2). The final supplementary rules merely establish rules of conduct for public use on a limited area of public lands and will not affect commercial or business activities of any kind.

*Unfunded Mandates Reform Act*

These final supplementary rules will not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector of more than $100 million per year; nor will they have a significant or unique effect on small governments. The final

supplementary rules will have no effect on governmental or Tribal entities and will impose no requirements on any of these entities. The final supplementary rules merely establish rules of conduct for public use on a limited selection of public lands and will not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

These final supplementary rules do not have significant takings implications, nor are they capable of interfering with Constitutionally-protected property rights. The final supplementary rules merely establish rules of conduct for public use on a limited area of public lands and do not affect any valid existing rights. Therefore, the Department of the Interior has determined that these final supplementary rules will not cause a ''taking'' of private property or require preparation of a takings assessment under this Executive Order.

*Executive Order 13132, Federalism*

These final supplementary rules will not have a substantial direct effect on the States, the relationship between the Federal Government and the states, nor the distribution of power and responsibilities among the various levels of government. These final supplementary rules will not conflict with any State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that these final supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

*Executive Order 13175, Consultation and Coordination With Tribal Governments*

In accordance with Executive Order 13175, the BLM conducted consultation and coordination with Tribal governments in the development of the RMPs, which form the basis for the final rules.

Moab

The final rules are in accordance with the issues raised in consultation with the Tribes during the RMP planning process.

As part of the RMP/EIS scoping process, by letter dated August 1, 2003, the Utah State Director initiated consultation for land use planning with 34 Tribal organizations. Between November 2003 and May 2004, all 34 Tribal organizations were contacted to determine the need for additional or future consultation for the study areas identified in the consultation letter. Meetings were arranged when requested.

In consulting with Tribes or Tribal entities, the BLM emphasized the importance of identifying historic properties having cultural significance to Tribes (commonly referred to as Traditional Cultural Properties). The BLM held meetings with 12 Tribal organizations between December 2003 and May 2004. During these meetings, Tribal organizations were invited to be a cooperating agency in the development of the land use plan. None of the Tribal organizations requested to be a cooperating agency.

In 2006 and 2007, the Moab Field Office manager and archaeologist participated in a second round of meetings with the five Tribes who so requested. At these meetings, the draft RMP/EIS alternatives were discussed with special emphasis on cultural resource issues. A copy of the Moab Draft RMP/EIS was mailed in August 2007 to 12 Tribal organizations. In April 2008, the BLM extended an invitation to meet with Tribal organizations regarding the proposed RMP/Final EIS. Two Tribes accepted this invitation.

Monticello

The final rules are in accordance with the issues raised in consultation with the Tribes during the RMP planning process.

Consultations with Native Americans on the Monticello RMP began in 2003. The Draft RMP/EIS was sent to the Tribes for review and comment on November 5, 2007. Monticello FO received comments from three tribes, the Hopi Tribe, the Navajo Nation, and the Ute Mountain Ute Tribe. Tribal concerns related to the Draft RMP/EIS were focused on the following:

1. Maintaining access for collection of plants for medicinal, spiritual, and sustenance uses.

2. Protection of the cultural resources in the Allen and Cottonwood Canyon areas, which are important to the culture and history of the White Mesa Utes.

3. Allocation of sites for scientific use.

4. Ongoing consultation on selection and allocation of sites for interpretive development, educational, public, and scientific uses.

5. Inadvertent discoveries.

The BLM provided additional clarification or modifications in developing the Proposed RMP to address these concerns. None of the Tribes filed a protest.

*Energy Supply, Distribution, or Use*

Under Executive Order 13211, the BLM has determined that the final supplementary rules will not comprise a significant energy action, and that they will not have an adverse effect on energy supplies, production, or consumption.

*Paperwork Reduction Act*

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Federal criminal investigations or prosecutions may result from these rules, and the collection of information for these purposes is exempt from the Paperwork Reduction Act, 44 U.S.C. 3518(c)(1).

**Final Supplementary Rules**

*Author*

The principal author of these supplementary rules is Jason Moore, Supervisory Staff Law Enforcement Ranger, Canyon Country District Office, 82 East Dogwood Avenue, Moab, Utah 84532.

For the reasons stated in the preamble, and under the authorities for supplementary rules found at 43 U.S.C. 1740, 43 U.S.C. 315a, and 43 CFR 8365.1–6, the BLM Utah State Director establishes the following supplementary rules to read as follows:

*Definitions*

The following definitions apply to the supplementary rules of both the Moab Field Office and the Monticello Field Office.

*Archaeological Site:* Any site containing material remains of past human life or activities that are at least 100 years old and are of archaeological interest. Material remains include, but are not limited to: Structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, surface or subsurface artifact concentrations, and the physical site, location, or context in which they are found, such as alcoves and caves.

*Campfire:* Any outdoor fire used for warmth or cooking.

*Camping:* The erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel, for the apparent purpose of overnight occupancy while engaged in recreational activities such as hiking, hunting, fishing, bicycling, sightseeing, off-road vehicle activities, or other generally recognized forms of recreation.

*Climbing Aid:* Climbing aids include, but are not limited to: Bolts, anchors, ascenders, rappelling devices, webbing and cord material, cams, stoppers, ladders, and other protection devices.

*Colorado Riverway Special Recreation Management Area:* Public land located along the Colorado River corridor from Dewey Bridge to the boundary of Canyonlands National Park. The SRMA also includes public land along Kane Creek, in Long Canyon, and along the Dolores River. Maps of the area can be viewed at the BLM Moab Field Office.

*Dark Canyon Special Recreation Management Area:* The Dark Canyon SRMA includes canyon rims and bottoms for Dark Canyon, Gypsum Canyon, Bowdie Canyon, Lean To Canyon, Palmer Canyon, Lost Canyon, Black Steer Canyon, Young's Canyon, and Fable Valley Canyon. Trailheads and associated parking/camping areas at these canyons are included within the SRMA boundaries.

*Historic Site:* Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term ''eligible for inclusion in the National Register of Historic Places'' includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register of Historic Places listing criteria.

*Labyrinth Rims/Gemini Bridges Special Recreation Management Area:* Public land located south of the Blue Hills Road, west of Arches National Park, north of the Colorado River and Canyonlands National Park, and east of the Green River. High visitation sites within this SRMA are defined as those areas listed in the approved Moab Resource Management Plan as Focus Areas (FA). These FAs consist of the following: Highway 313 Scenic Driving Corridor FA, Goldbar/Corona Arch Hiking FA, Spring Canyon Hiking FA, Labyrinth Canyon Canoe FA, Seven Mile Canyon Equestrian FA, Klondike Bluffs Mountain Biking FA, Bar M Mountain Biking FA, Tusher Slickrock Mountain Biking FA, Mill Canyon/Upper Courthouse Mountain Biking FA, Gemini Bridges/Poison Spider Mesa FA, Mineral Canyon/Horsethief Point Competitive Base Jumping FA, Bartlett Slickrock Freeride FA, Dee Pass Motorized Trail FA, Airport Hills Motocross FA, and White Wash Sand Dunes Open OHV FA. Maps of the Labyrinth Rims/Gemini Bridges SRMA and FAs can be viewed at the BLM-Moab Field Office.

*Mechanized Vehicle:* Any device propelled solely by human power, upon which a person, or persons, may ride on land, having any wheels, with the exception of a wheelchair.

*Portable Toilet:* (1) A containerized and reusable system; (2) A commercially available biodegradable system that is landfill disposable (*e.g.,* a ''WAG bag''); or (3) A toilet within a camper, trailer or motor home.

*Wheelchair:* Any device that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

*White Canyon Special Recreation Management Area:* The White Canyon SRMA includes canyon rims and bottoms in White Canyon as it parallels State Route 95 from Natural Bridges National Monument to Glen Canyon National Recreation Area. Trailheads and associated parking/camping areas at these canyons are included within the SRMA boundaries.

*Moab Field Office*

Unless otherwise authorized, on all public lands within the BLM-Moab Field Office jurisdiction:

(1) You must not burn wood pallets.

(2) You must not camp in archaeological sites posted as closed to camping.

(3) You must not camp in historic sites posted as closed to camping.

(4) You must not operate a motorized or mechanized vehicle on any route, trail, or area not designated as open to such use by a BLM sign, a BLM map, or the Moab Field Office Travel Management Plan.

The following rules apply only to the enumerated areas:

(5) You must not gather petrified wood in the following two areas:

i. The Colorado Riverway SRMA; and

ii. High visitation sites within the Labyrinth Rim/Gemini Bridges SRMA.

(6) You must not possess or use glass beverage containers in the following areas:

i. Moab Canyon Sand Hill within sections 20 and 21 of Township 25 South, Range 21 East, Salt Lake Meridian; and

ii. Powerhouse Lane Trailhead, Lower Mill Creek, and the North Fork of Mill Creek for a distance of one mile from the trailhead at Powerhouse Lane within sections 3, 4, 5, 8, 9 and 10 of Township 26 South, Range 22 East, Salt Lake Meridian.

(7) You must not camp at a non-designated site.

(8) You must not ignite or maintain a campfire at a non-designated site.

(9) You must not dispose of human waste in any container other than a portable toilet.

(10) You must not gather wood.

Rules 7, 8, 9 and 10 apply to lands within one half mile of the following roads:

i. Utah Highway 313;

ii. The Island in the Sky entrance road between Utah Highway 313 and Canyonlands;

iii. The Gemini Bridges Route (Grand County Road No. 118) and the spur route into Bride Canyon within section 24, Township 25 South, Range 20 East, Salt Lake Meridian; and

iv. The Kane Springs Creek Canyon Rim route from U.S. Highway 191 to where it first crosses the eastern boundary of section 20, Township 27 South, Range 22 East, Salt Lake Meridian, exclusive of the State and private land west of Blue Hill in sections 25, 26, 35, and 36.

Rules 7, 8, 9 and 10 also apply to the following:

v. Lands within Long Canyon (Grand County Road No. 135) coincident with a portion of the Colorado Riverway SRMA and the BLM lands within Dead Horse Point State Park.

vi. Lands along both sides of U.S. Highway 191 bounded by Arches National Park on the east, private lands in Moab Valley on the south, the Union Pacific Railroad Potash Rail Spur on the west, and private and state land near the lower Gemini Bridges Trailhead on the north.

vii. Lands located between the upper end of the Nefertiti Rapid parking area in section 1, Township 19 South, Range 16 East, Salt Lake Meridian, along the shoreline of the Green River on the east side of the river to Swaseys Take-Out in section 3, Township 20 South, Range 16 East, Salt Lake Meridian. This includes all public lands between Nefertiti and Swaseys along Grand County Road No. 154.

viii. Lands including Castle Rock, Ida Gulch, Professor Valley, Mary Jane Canyon, and the upper Onion Creek areas that are south of the Colorado Riverway SRMA, below the rims of Adobe and Fisher Mesas, and west of the private land in Fisher Valley.

ix. Lands along the Potash Trail (Grand County Road Nos. 134 and 142, between the western end of Potash

Lower Colorado River Scenic Byway (Grand County Road No. 279) and Canyonlands National Park) that are east of Canyonlands National Park, south of Dead Horse Point State Park, and other state and private lands north of the Colorado River and west of the Colorado Riverway SRMA, excluding riverside campsites accessible by water craft from the Colorado River.

x. Lands located at the southern end of Spanish Valley located on the east and west sides of U.S. Highway 191 to the rim of the valley, south of the San Juan County line to the Kane Springs Creek Canyon Rim Road.

xi. Lands within the Mill Creek Canyon ACEC and the Mill Creek Canyon Wilderness Study Area (WSA). Backpack-type camping within the Mill Creek Canyon ACEC and the Mill Creek Canyon WSA is allowed at sites one-quarter mile or farther from designated roads and greater than 100 feet from Mill Creek and archaeological sites.

xii. Lands within Desert Bighorn Sheep lambing areas (46,319 acres) as shown on Map 9 of the Approved Moab RMP.

*Monticello Field Office*

Unless otherwise authorized, on all public lands administered by the BLM-Monticello Field Office:

(1) You must not camp in archaeological sites posted as closed to camping.

(2) You must not enter archaeological sites posted as closed to the public.

(3) You must not use ropes or other climbing aids to access archaeological sites, unless operating under a permit.

(4) You must not bring domestic pets or pack animals to archaeological sites, posted as closed to the public.

(5) You must not operate a motorized or mechanized vehicle on any route, trail, or area not designated as open to such use by a BLM sign, a BLM map, or the Monticello Field Office Travel Management Plan.

(6) You must not ignite or maintain a campfire within the canyons in the Dark Canyon SRMA or White Canyon SRMA.

*Enforcement*

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Utah law.

*Exemptions*

Any Federal, State, local or military persons acting within the scope of their duties, and members of an organized rescue or firefighting force in performance of an official duty are exempt from these rules. These rules are not intended to affect any valid existing rights.

Approved:

**Jenna Whitlock,**

*Acting State Director.*

[FR Doc. 2016–04065 Filed 2–24–16; 8:45 am]

**BILLING CODE 4310–DQ–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–16–006]**

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** March 4, 2016 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agendas for future meetings: None.

2. Minutes.

3. Ratification List.

4. Vote in Inv. Nos. 701–TA–555 and 731–TA–1310 (Preliminary) (Certain Amorphous Silica Fabric from China). The Commission is currently scheduled to complete and file its determinations on March 7, 2016; views of the Commission are currently scheduled to be completed and filed on March 14, 2016.

5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Dated: February 22, 2016.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2016–04122 Filed 2–23–16; 11:15 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1110–0006]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Law Enforcement Officers Killed or Assaulted

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) has submitted the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the established review procedures of the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. Samuel Berhanu, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Law Enforcement Officers Killed or Assaulted.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The applicable component within the Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Under Title 28, U.S. Code 534, Acquisition, Preservation, and Exchange of Identification Records; Appointments of Officials, 1930, this collection requests Law Enforcement Officers Killed and Assaulted data from city, county, state, federal, and tribal law enforcement agencies in order for the FBI UCR Program to serve as the national clearinghouse for the collection and dissemination of crime data and to publish these statistics in the Law Enforcement Officers Killed and Assaulted annual publication.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,498 law enforcement agency respondents; calculated estimates indicate 7 minutes per report.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 162,235 hours, annual burden associated with this information collection.

*If additional information is required contact:* Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: February 22, 2016.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2016–04024 Filed 2–24–16; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### 180th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 180th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on March 16, 2016.

The meeting will take place in Room S–2508, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 3:30 p.m., is to welcome the new members, introduce the Council Chair and Vice Chair, receive an update from the Assistant Secretary of Labor for the Employee Benefits Security Administration, and set the topics to be addressed by the Council in 2016.

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before March 9, 2016 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as email attachments in text or pdf format transmitted to *good.larry@dol.gov*. It is requested that statements not be included in the body of the email. Relevant statements received on or before March 9, 2016 will be included in the record of the meeting. No deletions, modifications, or redactions will be made to the statements received, as they are public records.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations, or others who need special accommodations, should contact the Executive Secretary by March 9.

Signed in Washington, DC, this 18th day of February 2016.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration.*

[FR Doc. 2016–03987 Filed 2–24–16; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,797; TA–W–82,797A; TA–W–82,797B]**

### Simpson Lumber Company LLC, John's Prairie Operations Division, Shelton, Washington; Simpson Lumber Company LLC Sawmill and Mill #5, Including On-Site Leased Workers of Express Employment Services, Shelton, Washington; Interfor Corporation, NW Region—Tacomas; F/K/A Simpson Lumber Company, Inc.; Including On-Site Leased Workers From Almond and Associates and Optistaff; Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Simpson Lumber Company, Inc.; Tacoma Washington; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 21, 2013 applicable to workers and former workers of Simpson Lumber Company LLC, John's Prairie Operations Division, Shelton, Washington. Workers of the subject firm are engaged in activities related to the production of softwood dimensional lumber.

The intent of the Department's certification is to include all workers at the subject firm who were adversely affected by increased imports of softwood dimensional lumber.

The Department has determined that the workers of Interfor Corporation, NW Region—Tacoma, f/k/a Simpson Lumber Company, Inc., including on-site leased workers from Almond and Associates and, including workers whose unemployment insurance (UI) wages are reported through Simpson Lumber Company, Inc., Tacoma, Washington operated in conjunction with the subject firm and that the workers of Interfor Corporation, NW Region—Tacoma, f/k/a Simpson Lumber Company, Inc., including on-site leased workers from Almond and Associates and, including workers whose unemployment insurance (UI) wages are reported through Simpson Lumber Company, Inc., Tacoma, Washington are impacted

by increased imports of articles like or directly competitive with the softwood dimensional lumber produced at the subject firm.

Based on these findings, the Department is amending this certification to also include workers of Interfor Corporation, NW Region—Tacoma, f/k/a Simpson Lumber Company, Inc., including on-site leased workers from Almond and Associates and, including workers whose unemployment insurance (UI) wages are reported through Simpson Lumber Company, Inc., Tacoma, Washington.

The amended notice applicable to TA–W–82,797 is hereby issued as follows:

All workers of Simpson Lumber Company LLC, John's Prairie Operations Division, Shelton, Washington (TA–W–82,797); Simpson Lumber Company LLC, Sawmill and Mill #5, including on-site leased workers of Express Employment Services, Shelton, Washington (TA–W–82,797A); and Interfor Corporation, NW Region—Tacoma, f/k/a Simpson Lumber Company, Inc., including on-site leased workers from Almond and Associates and, including workers whose unemployment insurance (UI) wages are reported through Simpson Lumber Company, Inc., Tacoma, Washington (TA–W–82,797B), who became totally or partially separated from employment on or after June 7, 2012 through June 21, 2015, and all workers in the three groups threatened with total or partial separation from employment on June 21, 2013 through June 21, 2015 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 10th day of February, 2016.

**Jessica R. Webster,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2016–04001 Filed 2–24–16; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than March 7, 2016.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 7, 2016.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of February 2016.

**Jessica R. Webster,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[127 TAA petitions instituted between 1/11/16 and 2/5/16]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 91315 | Pacific States Plywood (State/One-Stop) | Springfield, OR | 01/11/16 | 01/07/16 |
| 91316 | Martel (a Fluke company) (Company) | Derry, NH | 01/11/16 | 01/07/16 |
| 91317 | United Health Group/Optum Healthcare (State/One-Stop) | Hartford, CT | 01/11/16 | 01/08/16 |
| 91318 | Felman Production LLC (Union) | Letart, WV | 01/11/16 | 01/06/16 |
| 91319 | Zup's Food Market (State/One-Stop) | Aurora, MN | 01/11/16 | 01/08/16 |
| 91320 | Jamar Company (State/One-Stop) | Duluth, MN | 01/11/16 | 01/08/16 |
| 91321 | Nelson Williams (State/One-Stop) | Mountain Iron, MN | 01/11/16 | 01/08/16 |
| 91322 | Gardner Denver Nash (State/One-Stop) | Trumbull, CT | 01/11/16 | 01/08/16 |
| 91323 | Leggett & Platt Spring Manufacturing LLC (Union) | Delano, PA | 01/11/16 | 01/08/16 |
| 91324 | Baldwin Supply (State/One-Stop) | Hibbing, MN | 01/11/16 | 01/08/16 |
| 91325 | Essar Steel (State/One-Stop) | Hibbing, MN | 01/12/16 | 01/11/16 |
| 91326 | VanHouse Construction (State/One-Stop) | Silver Bay, MN | 01/12/16 | 01/11/16 |
| 91327 | WP & RS Mars Co. (State/One-Stop) | Hibbing, MN | 01/12/16 | 01/11/16 |
| 91328 | Nova Lifestyle Inc (State/One-Stop) | Commerce, CA | 01/12/16 | 01/11/16 |
| 91329 | Iracore International Inc. (State/One-Stop) | Hibbing, MN | 01/12/16 | 01/11/16 |
| 91330 | Primary Sensors, Inc. (State/One-Stop) | Hibbing, MN | 01/12/16 | 01/11/16 |
| 91331 | Motion Industries, Inc. (State/One-Stop) | Mountain Iron, MN | 01/12/16 | 01/11/16 |
| 91332 | Quantum Resources Recovery (State/One-Stop) | Portland, OR | 01/13/16 | 01/07/16 |
| 91333 | Emerson Network Power (Company) | Delaware, OH | 01/13/16 | 01/12/16 |
| 91334 | TII Fiber Optics (State/One-Stop) | Frederick, MD | 01/13/16 | 01/12/16 |
| 91335 | Climax Portable Machine Tools, Inc. (State/One-Stop) | Newberg, OR | 01/13/16 | 01/12/16 |
| 91336 | Spirit Aerosystems, Inc. (State/One-Stop) | Wichita, KS | 01/13/16 | 01/12/16 |
| 91337 | Syncreon Supply Chain Solutions (State/One-Stop) | Torrance, CA | 01/13/16 | 01/12/16 |
| 91338 | EnerSys (Union) | Cleveland, OH | 01/13/16 | 01/12/16 |
| 91339 | MBDA Inc (Workers) | Camarillo, CA | 01/13/16 | 01/12/16 |
| 91340 | Newmont Mining Corp (State/One-Stop) | Greenwood Village, CO | 01/13/16 | 01/12/16 |
| 91341 | Capco Machinery Systems (Workers) | Roanoke, VA | 01/13/16 | 01/12/16 |
| 91342 | Hewlett Packard (State/One-Stop) | East Pontiac, MI | 01/13/16 | 01/13/16 |
| 91343 | Holston Medical Group (Company) | Kingsport, TN | 01/14/16 | 01/13/16 |
| 91344 | Mark TK Welding, Inc. (Workers) | Kittanning, PA | 01/14/16 | 01/13/16 |

APPENDIX—Continued

[127 TAA petitions instituted between 1/11/16 and 2/5/16]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 91345 | Champion Charter (State/One-Stop) | Fridley, MN | 01/15/16 | 01/14/16 |
| 91346 | Commercial Vehicle Group, Inc. (Company) | Edgewood, IA | 01/15/16 | 01/14/16 |
| 91347 | Eurest Services (State/One-Stop) | Southfield, MI | 01/15/16 | 01/14/16 |
| 91348 | Honeywell International Inc. (State/One-Stop) | Melville, NY | 01/15/16 | 01/14/16 |
| 91349 | International Business Machines (State/One-Stop) | Las Vegas, NV | 01/15/16 | 01/14/16 |
| 91350 | TE Connectivity/Tyco (Workers) | Mount Joy, PA | 01/15/16 | 01/14/16 |
| 91351 | Team Solutions (State/One-Stop) | Taylor, MI | 01/15/16 | 01/14/16 |
| 91352 | Noranda Aluminium Holding Corporation (State/One-Stop) | New Madrid, MO | 01/15/16 | 01/14/16 |
| 91353 | Chemours Chemical Company- Edge Moor Plant (Union) | Edge Moor, DE | 01/19/16 | 01/18/16 |
| 91354 | Texas Oncology (Workers) | Richardson, TX | 01/19/16 | 01/15/16 |
| 91355 | Ortho Organizers, Inc. (State/One-Stop) | Carlsbad, CA | 01/19/16 | 01/15/16 |
| 91356 | Paul Ecke Ranch (State/One-Stop) | Encinitas, CA | 01/19/16 | 01/15/16 |
| 91357 | WestRock Services, Inc. (State/One-Stop) | Uncasville, CT | 01/19/16 | 01/15/16 |
| 91358 | Ruhrpumpen, Inc. (Company) | Tulsa, OK | 01/19/16 | 01/15/16 |
| 91359 | CA Technologies (State/One-Stop) | Islandia, NY | 01/19/16 | 01/15/16 |
| 91360 | Amsted Rail—ASF Keystone Division (Union) | Granite City, IL | 01/20/16 | 01/15/16 |
| 91361 | Henkel Corporation (Workers) | South Easton, MA | 01/20/16 | 01/04/16 |
| 91362 | JDS Uniphase/Lumentum (Workers) | Bloomfield, CT | 01/20/16 | 01/06/16 |
| 91363 | Ericsson Inc. (Company) | Piscataway, NJ | 01/20/16 | 01/20/16 |
| 91364 | Atlas Medical Software (Workers) | Calabasas, CA | 01/21/16 | 01/20/16 |
| 91365 | CNH Industrial (State/One-Stop) | Grand Island, NE | 01/21/16 | 01/05/16 |
| 91366 | Convergys Corp, Technical Support Group (State/One-Stop) | Omaha, NE | 01/21/16 | 01/05/16 |
| 91367 | Freeport-McMoRan Sierrita, Inc. (Company) | Green Valley, AZ | 01/21/16 | 01/20/16 |
| 91368 | Grain Systems Inc. (GSI) (State/One-Stop) | Marshall, MI | 01/21/16 | 01/20/16 |
| 91369 | Noramco Engineering Corporation (State/One-Stop) | Hibbing, MN | 01/21/16 | 01/20/16 |
| 91370 | Print Media, LLC (YP) (Union) | Tucker, GA | 01/21/16 | 01/20/16 |
| 91371 | Rivergate Scrap Metals (State/One-Stop) | Portland, OR | 01/21/16 | 01/20/16 |
| 91372 | WorleyParsons (State/One-Stop) | Monrovia, CA | 01/21/16 | 01/20/16 |
| 91373 | McGovern Metals (State/One-Stop) | Roseburg, OR | 01/22/16 | 01/20/16 |
| 91374 | Bose Corporation (State/One-Stop) | Westborough, MA | 01/22/16 | 01/21/16 |
| 91375 | JV Industrial Companies (State/One-Stop) | Pasadena, TX | 01/22/16 | 01/21/16 |
| 91376 | Sypris Technologies (State/One-Stop) | Louisville, KY | 01/22/16 | 01/21/16 |
| 91377 | BAE Systems (Union) | Fort Wayne, IN | 01/22/16 | 01/21/16 |
| 91378 | Alcoa (Union) | Point Comfort, TX | 01/26/16 | 01/25/16 |
| 91379 | Climax Portable Machine Tools Inc. (Company) | Newberg, OR | 01/26/16 | 01/25/16 |
| 91380 | Gardner Denver Nash LLC (Workers) | Trumbull, CT | 01/26/16 | 01/22/16 |
| 91381 | Hydraulic Technologies—A Ligon Company (State/One-Stop) | Galion, OH | 01/26/16 | 01/25/16 |
| 91382 | Independent Pattern Shop (Company) | Erie, PA | 01/26/16 | 01/22/16 |
| 91383 | MSSL Wiring System Inc (State/One-Stop) | Warren, OH | 01/26/16 | 01/22/16 |
| 91384 | Norfolk Southern Railway (Union) | Ashtabula, OH | 01/26/16 | 01/23/16 |
| 91385 | Tool-Rite, Inc (Company) | Springboro, PA | 01/26/16 | 01/25/16 |
| 91386 | Belden Wire (Company) | Monticello, KY | 01/27/16 | 01/22/16 |
| 91387 | Cameron International Corp. (Company) | Millbury, MA | 01/27/16 | 01/19/16 |
| 91388 | L-Com (State/One-Stop) | North Andover, MA | 01/27/16 | 01/26/16 |
| 91389 | Cambia Health Solutions, Inc (State/One-Stop) | Medford, OR | 01/27/16 | 01/26/16 |
| 91390 | Kathrein Inc. Scala Division (State/One-Stop) | Medford, OR | 01/27/16 | 01/26/16 |
| 91391 | Halliburton (State/One-Stop) | Homer City, PA | 01/27/16 | 01/26/16 |
| 91392 | Graphic Packaging International, Inc. (Union) | Renton, WA | 01/27/16 | 01/25/16 |
| 91393 | Sprint, IT Workers (State/One-Stop) | Overland Park, KS | 01/27/16 | 01/26/16 |
| 91394 | SweetWorks Confections, LLC (Workers) | Buffalo, NY | 01/27/16 | 01/26/16 |
| 91395 | Capital One Services, LLC (State/One-Stop) | Las Vegas, NV | 01/28/16 | 01/26/16 |
| 91396 | Southern Graphics System (State/One-Stop) | Battle Creek, MI | 01/28/16 | 01/27/16 |
| 91397 | Southwestern Energy Co (6 Locations in AR) (State/One-Stop) | Conway, AR | 01/28/16 | 01/27/16 |
| 91398 | K Building Components (State/One-Stop) | Hibbing, MN | 01/28/16 | 01/27/16 |
| 91399 | Invista (Workers) | Orange, TX | 01/28/16 | 01/27/16 |
| 91400 | Schawk Inc. (State/One-Stop) | Minneapolis, MN | 01/28/16 | 01/27/16 |
| 91401 | Schwartz Redi Mix (State/One-Stop) | LaPrarie, MN | 01/28/16 | 01/27/16 |
| 91402 | MicroFibres (Union) | Pawtucket, RI | 01/28/16 | 01/28/16 |
| 91403 | Kraft Foods (State/One-Stop) | Woburn, MA | 01/28/16 | 01/28/16 |
| 91404 | Qual-Pro Corporation (State/One-Stop) | Gardena, CA | 01/28/16 | 01/27/16 |
| 91405 | Fairmont Supply Oil & Gas (Company) | Warren, PA | 01/28/16 | 01/28/16 |
| 91406 | Osram Sylvania (State/One-Stop) | Wilmington, MA | 01/28/16 | 01/28/16 |
| 91407 | Emerald Coal Resources (Union) | Waynesburg, PA | 01/28/16 | 01/28/16 |
| 91408 | Manpower (State/One-Stop) | Coldwater, MI | 01/28/16 | 01/28/16 |
| 91409 | Southern Graphic System (Workers) | Springfield, MI | 01/29/16 | 01/27/16 |
| 91410 | Consol Energy Inc. (State/One-Stop) | Canonsburg, PA | 01/29/16 | 01/28/16 |
| 91411 | Parker Hannifin (State/One-Stop) | Oxford, MI | 01/29/16 | 01/28/16 |
| 91412 | Caterpillar Precision Seals (Workers) | Toccoa, GA | 01/29/16 | 01/29/16 |
| 91413 | First Advantage (State/One-Stop) | St. Petersburg, FL | 02/01/16 | 01/29/16 |
| 91414 | Keywell LLC (State/One-Stop) | Falconer, NY | 02/01/16 | 01/29/16 |

APPENDIX—Continued

[127 TAA petitions instituted between 1/11/16 and 2/5/16]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 91415 | HCL America—Alcatel-Lucent (ALUS) (State/One-Stop) | Phoenix, AZ | 02/01/16 | 01/29/16 |
| 91416 | General Mills (State/One-Stop) | Lodi, CA | 02/02/16 | 02/01/16 |
| 91417 | AK Coal Resources (State/One-Stop) | Friedens, PA | 02/02/16 | 02/01/16 |
| 91418 | OpSec Security (State/One-Stop) | Robbinsville, NJ | 02/03/16 | 02/02/16 |
| 91419 | LCT Energy, LP (Workers) | Johnstown, PA | 02/03/16 | 01/29/16 |
| 91420 | Panasonic Appliances Company of America—Sales Department (Company). | Rolling Meadows, IL | 02/03/16 | 02/02/16 |
| 91421 | Lenovo USFC MFG (Workers) | Whitsett, NC | 02/03/16 | 01/28/16 |
| 91422 | Allegheny Technologies Incorporated (Workers) | Washington, PA | 02/03/16 | 02/02/16 |
| 91423 | Heraeus Materials Technology North America LLC (Company) | Chandler, AZ | 02/03/16 | 02/02/16 |
| 91424 | National Oilwell Varco—Hydralift/Amclyde Inc. (State/One-Stop) | St Paul, MN | 02/03/16 | 02/02/16 |
| 91425 | Universal Lighting Technologies (Workers) | Los Indios, TX | 02/03/16 | 02/02/16 |
| 91426 | Van Air Systems/Van Gas Technologies (Union) | Lake City, PA | 02/04/16 | 02/02/16 |
| 91427 | The Babcock and Wilcox Company (Company) | West Point, MS | 02/04/16 | 02/02/16 |
| 91428 | CSI—Compressco Partners (State/One-Stop) | Oklahoma City, OK | 02/04/16 | 02/03/16 |
| 91429 | Industrial Lubricant Company (State/One-Stop) | Grand Rapids, MN | 02/04/16 | 02/03/16 |
| 91430 | Gardner Companies/Chilp Mill (State/One-Stop) | Millinocket, ME | 02/04/16 | 02/03/16 |
| 91431 | Amgen (State/One-Stop) | Thousand Oaks, CA | 02/04/16 | 02/03/16 |
| 91432 | Williams Companies (State/One-Stop) | Oklahoma City, OK | 02/04/16 | 02/03/16 |
| 91433 | Strike Pipeline Construction/Ardent Services (State/One-Stop) | Lafayette, LA | 02/04/16 | 02/03/16 |
| 91434 | Omak Wood Products LLC (State/One-Stop) | Omak, WA | 02/05/16 | 01/26/16 |
| 91435 | Allvac (Union) | Lockport, NY | 02/05/16 | 01/26/16 |
| 91436 | Eurest Dining Service—Ocwen Mortgage Site (State/One-Stop) | Waterloo, IA | 02/05/16 | 02/04/16 |
| 91437 | Hoquiam Plywood Products (State/One-Stop) | Hoquiam, WA | 02/05/16 | 02/04/16 |
| 91438 | Neovia Logistics (Workers) | Normal, IL | 02/05/16 | 02/04/16 |
| 91439 | Baker Hughes Grand Prairie AMO (Workers) | Grand Prairie, TX | 02/05/16 | 02/04/16 |
| 91440 | DLHBowles Inc. (Company) | Bristol, TN | 02/05/16 | 02/04/16 |
| 91441 | Sealed Air Corp (Workers) | Duncan, SC | 02/05/16 | 02/04/16 |

[FR Doc. 2016–04002 Filed 2–24–16; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of January 11, 2016 through February 5, 2016.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(e) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 86,060 | Worthington Industries, Inc, Engineered Cabs Division, Olsten Staffing, Spherion Staffing, etc. | Florence, SC | June 3, 2014. |
| 86,089 | Huntington Alloys Corporation, Special Metals Division, Special Metals Corporation, Kelly Services. | Huntington, WV | June 10, 2014. |
| 90,101 | Vallourec Star, LP, Vallourec Group NA, Midwest Industrial Contract Services, LLC, etc. | Youngstown, OH | January 1, 2014. |
| 91,037 | Paramount Apparel International, Inc, Domestic Cut & Sew Division | Winona, MO | October 7, 2014. |
| 91,195 | Dunkirk Power LLC, NRG Energy, Inc, Pontoon Solutions, Inc | Dunkirk, NY | December 4, 2014. |
| 91,257 | Huntley Power LLC, NRG Energy, Inc, Pontoon Solutions, Inc | Tonawanda, NY | December 22, 2014. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 85,153 | Staples, Inc, Global Technology, IT HelpDesk Support Division | Framingham, MA | March 14, 2013. |
| 85,237 | Hyundia America Shipping Agency, Inc, Charlotte Regional Customer Service Center. | Charlotte, NC | March 31, 2013. |
| 85,249 | Mitel, Inc, Solutions Validation Engineering Department, R&D Lab | Mesa, AZ | April 19, 2013. |
| 85,267 | Support.com, Inc | Redwood City, CA | April 18, 2013. |
| 85,395 | StreetLinks Lender Solutions, Aerotek, Appletree Staffing, Infinity Staffing, etc | Indianapolis, IN | June 13, 2013. |
| 85,615 | Trane U.S. Inc, Tyler Operations/Residential HVAC, Ingersoll-Rand, Remedy Intelligent Staff. | Tyler, TX | November 24, 2014. |
| 85,705 | KeyBank, NA, Operations Balance and Control Department, Account Temps, etc. | Brooklyn, OH | December 7, 2013. |
| 85,771 | Eastman Kodak Company, CFG-Finance, Planning and Analysis Division, Adecco. | Rochester, NY | January 19, 2014. |
| 85,812 | Deluxe 3D LLC, Deluxe Entertainment Services Group, etc | Burbank, CA | February 3, 2014. |
| 85,918 | Interactive Data Corporation, PRD Division | Bedford, MA | March 16, 2014. |
| 85,949 | Asset Acceptance, LLC, Encore Capital Group, Customer Service and Support (CSS) Department. | Warren, MI | April 20, 2014. |
| 90,032 | Infineon Technologies Americas Corp., International Rectifier, Targetcw, Top Echelon, and Ultimate Staffing. | El Segundo, CA | January 1, 2014. |
| 90,060 | Lenovo (United States) Inc, Enterprise Business Group, Lenovo Holding Company, Inc. | Morrisville, NC | January 1, 2014. |
| 90,069 | First Advantage Background Services Corp., Verifications, Inc, Tapfin | Watertown, SD | January 1, 2014. |
| 90,107 | Morgan Stanley & Company, LLC, Finance Division, Pride Technologies | New York, NY | January 1, 2014. |
| 90,124 | McKesson Corp., Contract Administration Division, McKesson, Insight Global | Carrollton, TX | January 1, 2014. |

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 90,157 | L.A. Darling Company, Gondola Division, People Source and Hometown Employment. | Corning, AR | January 1, 2014. |
| 90,172 | Maxim Integrated Products, Inc | Dallas, TX | January 1, 2014. |
| 90,188 | AXA Equitable Life Insurance Company, Re-Insurance and HR-Payroll Group, AXA Financial, Inc, Kelly, etc. | Syracuse, NY | January 1, 2014. |
| 90,260 | SK&A Information Services, Inc, Research Division, IMS Health Technology Solutions, Appleone Grange, etc. | Irvine, CA | January 1, 2014. |
| 91,021 | Triumph Aerostructures, Vought Aircraft Division, Aeorstructures Contract Employees, Inc, etc. | Grand Prairie, TX | March 20, 2015. |
| 91,091 | Caterpillar Precision Seals, Caterpillar, Inc, Franklin Division, Spherion, Manpower, Phillips, etc. | Franklin, NC | October 30, 2014. |
| 91,108 | Volcano Corporation, Aerotek Staffing | Rancho Cordova, CA | September 24, 2015. |
| 91,109 | Hoffman Enclosures, Inc, Technical Solutions, Pentair, Adecco, Kentucky Staffing Solutions, Aerotek. | Mt. Sterling, KY | November 4, 2014. |
| 91,122 | Alcoa Intalco Works, AnovaWorks, PLLC, GCA Services Group, etc | Ferndale, WA | November 9, 2014. |
| 91,125 | Wenatchee Works, Alcoa, Inc, AnovaWorks, PLLC, etc | Malaga, WA | November 6, 2014. |
| 91,145 | Joy Global Underground Mining, LLC, All Seasons Temporaries, Inc | Franklin, PA | November 27, 2015. |
| 91,145A | On-Site Leased Workers from Technical Solutions, Inc, etc, Precision Resource Company, ACS Engineering Group, etc. | Franklin, PA | November 16, 2014. |
| 91,156 | The Guardian Life Insurance Company of America, Kelly Services | Appleton, WI | November 18, 2014. |
| 91,174 | SourceMedia LLC, Trinet | New York, NY | November 23, 2014. |
| 91,178 | Energizer Holdings, Inc, Staff Management/SMX | Bennington, VT | November 25, 2014. |
| 91,179 | J.P. Morgan Chase & Company, Commerical Banking Credit Services Administration Group. | Louisville, KY | November 25, 2014. |
| 91,191 | Farrowmed Innovations LLC, BSN Medical, Farrowmed LLC, Express Employment Professionals. | Bryan, TX | November 24, 2014. |
| 91,193 | KIK Custom Products, KIK International LLC, Select Staffing | Los Angeles, CA | December 3, 2014. |
| 91,197 | Mercer HR Services, LLC, Mercer (US) Inc, Pontoon Solutions, Inc | Dallas, TX | December 4, 2014. |
| 91,203 | Tango Networks, Inc, Trinet | Frisco, TX | December 7, 2014. |
| 91,205 | KBR, Inc, Technical Staffing Resources | Houston, TX | December 8, 2014. |
| 91,217 | Flextronics America, LLC, Flextronics International USA, Inc | West Columbia, SC | December 10, 2014. |
| 91,221 | Rockwood Lithium, Inc, Lithium Division, Albemarle Corporation | New Johnsonville, TN | December 11, 2014. |
| 91,224 | GM Subsystems Manufacturing, LLC, General Motors Company | Lake Orion, MI | December 14, 2014. |
| 91,233 | Thermo Fisher Scientific, ATR, Adecco, Aerotek and Kelly Services | Austin, TX | December 15, 2014. |
| 91,239 | Umicore Optical Materials USA Inc, Substrates Division, Umicore USA, Inc, Express Employment Professionals. | Quapaw, OK | December 17, 2014. |
| 91,240 | Static Control Components, Inc | Sanford, NC | December 18, 2014. |
| 91,244 | Amphenol Corporation, Aerospace and Industrial Division | Sidney, NY | December 3, 2015. |
| 91,245 | Concentrix, Synnex | Greenville, SC | December 18, 2014. |
| 91,256 | Electrofilm Manufacturing Company LLC, Envirotech LLC, Aerotek Commercial Staffing, Ronin Staffing LLC, etc. | Valencia, CA | December 21, 2014. |
| 91,270 | Eaton Corporation, Cooper Power Systems Division, Aerotek Staffing and Adecco. | Pewaukee, WI | January 25, 2016. |
| 91,291 | Alorica | Omaha, NE | December 24, 2014. |
| 91,333 | Emerson Network Power, Emerson, Liebert Corporation and Liebert North America, Inc. | Delaware, OH | February 21, 2016. |
| 91,338 | EnerSys, EnerSys Delaware Inc, RG Staffing and Robert Half Management Resources. | Cleveland, OH | January 12, 2015. |
| 91,358 | Ruhrpumpen, Inc, The Addison Group, Abundant Solutions, The Rowland Group, etc. | Tulsa, OK | January 15, 2015. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1) or (b)(1) (employment decline or threat of separation) of section 222 has not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 85,317 | Child Care Services, Boaz Eagle Corps Investments | Courtland, MS. | |
| 85,878 | MicroTelecom Systems LLC | Uniondale, NY. | |
| 85,965 | Cathedral Art Metal Company, Inc | Providence, RI. | |
| 90,167 | International Business Machines (IBM), Mainframe Service Delivery, Artech Information Systems LLC. | Seattle, WA. | |
| 91,283 | Rapids Process Equipment, Inc | Cohasset, MN. | |

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 90,154 | AVA Design LLC | New York, NY. | |

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 85,001 | Boehringer Ingelheim Chemicals, Inc. (BICI), Boehringer Ingelheim, Mechanical, Industrial Turnaround, etc. | Petersburg, VA. | |
| 85,055 | Associated Creditors Exchange, Inc., D/B/A Ace Global | Phoenix, AZ. | |
| 85,103 | Guru Denim, Inc., True Religion Apparel, Inc | Vernon, CA. | |
| 85,139 | Syncreon US Inc., Malone, Sentech, Drive Source, and Midwest | Sterling Heights, MI. | |
| 85,583 | Metalfab Tool & Machine, Inc | Mio, MI. | |
| 85,865 | Harland Clarke Corp., Base Stock Plant/Specialty Products, Account Temps, Robert Half, etc. | San Antonio, TX. | |
| 85,968 | Wolff Fording and Company, Partnership Staffing | Richmond, VA. | |
| 90,090 | Hallmark Cards, Inc. and Hallmark Marketing Company, LLC, Guidant Group and Staffmark. | Enfield, CT. | |
| 90,092 | Geokinetics, Inc., Geokinetics, USA, Inc., Greyco Seismic Personnel Services | Houston, TX. | |
| 90,099 | Smith's Medical ASD, Inc., Adecco | Rockland, MA. | |
| 90,210 | Uni-Select USA, Uni-Select USA Holdings, Inc | Tonawanda, NY. | |
| 90,211 | UnitedHealth Group, Optum Shared Services Transactions Division, etc | Trumbull, CT. | |
| 91,218 | Mesabi Radial Tire Company, 1801 5th Avenue East | Hibbing, MN. | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 86,101 | Paragon Store Fixtures | Big Lake, MN. | |
| 86,126 | SSAC (Solid State Advanced Controls), Littelfuse, Inc., Adecco, Carr Recruiting Solutions, etc. | Baldwinsville, NY. | |
| 90,148 | Molycorp Minerals LLC | Mountain Pass, CA. | |
| 91,062 | Unipower LLC | Dunlap, TN. | |

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 91,061 | Johnson Metall, Inc | Lorain, OH. | |
| 91,271 | AVX Corporation, Kyocera Corporation | Myrtle Beach, SC. | |
| 91,271A | AVX Corporation, Kyocera Corporation | Conway, SC. | |
| 91,295 | Allegheny Technologies Incorporated | Midland, PA. | |
| 91,362 | JDS Uniphase/Lumentum | Bloomfield, CT. | |

I hereby certify that the aforementioned determinations were issued during the period of January 11, 2016 through February 5, 2016. These determinations are available on the Department's Web site *www.tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade

Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 11th day of February 2016.

**Jessica R. Webster,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2016–04003 Filed 2–24–16; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Provider Enrollment Form

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Provider Enrollment Form,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before March 28, 2016.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201601-1240-007* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks approval under the PRA for revisions to the Provider Enrollment Form, Form OWCP–1168, information collection that requests profile information on a provider enrolling in one or more OWCP benefit programs, so the OWCP can pay for services rendered to beneficiaries using an automated bill processing system. This information collection has been classified as a revision, because while not affecting burden estimates, the agency has updated Form OWCP–1168 including the provider letter, Privacy Act statement, and several items on the form and instructions. Federal Employees' Compensation Act section 9, Black Lung Benefits Act section 413, and Energy Employees Occupational Illness Compensation Program Act of 2000 section 3629(c) authorize this information collection. *See* 5 U.S.C. 8103, 30 U.S.C. 936, and 42 U.S.C. 7384t.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0021. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 7, 2015 (80 FR 38749).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0021. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–OWCP.

*Title of Collection:* Provider Enrollment Form.

*OMB Control Number:* 1240–0021.

*Affected Public:* Private Sector—businesses or other for profits.

*Total Estimated Number of Respondents:* 31,979.

*Total Estimated Number of Responses:* 31,979.

*Total Estimated Annual Time Burden:* 4,252 hours.

*Total Estimated Annual Other Costs Burden:* $16,629.

Dated: February 17, 2016.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2016–03986 Filed 2–24–16; 8:45 am]

**BILLING CODE 4510–CR–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Health Insurance Claim Form

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Health Insurance Claim Form,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995

(44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before March 28, 2016.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201601-1240-009* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Health Insurance Claim Form information collection. The OWCP uses Form OWCP–1500 to process bills for medical services provided by medical professionals other than medical services provided by hospitals, pharmacies, or certain other medical providers. This information is required to pay health care providers for services rendered to injured employees covered under OWCP-administered programs, because appropriate payment cannot be made without documentation of the medical services provided by the health care provider billing the OWCP. The OWCP uses information obtained to identify the patient and determine benefit eligibility. The OWCP also uses the information to decide whether services and supplies received are covered by OWCP programs and to assure that proper payment is made. Federal Employees' Compensation Act section 9, Black Lung Benefits Act section 413, and Energy Employees Occupational Illness Compensation Program Act of 2000 section 3629(c) authorize this information collection. *See* 5 U.S.C. 8103, 30 U.S.C. 936, and 42 U.S.C. 7384t.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0044.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 16, 2015 (80 FR 34459).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0044. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–OWCP.

*Title of Collection:* Health Insurance Claim Form.

*OMB Control Number:* 1240–0044.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 58,923.

*Total Estimated Number of Responses:* 2,777,034.

*Total Estimated Annual Time Burden:* 280,856 hours.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: February 18, 2016.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2016–03985 Filed 2–24–16; 8:45 am]

**BILLING CODE 4510–CR–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Names:* Proposal Review Panel for Materials Research—Materials Research Science & Engineering Centers Site Visit, University of Minnesota (V160695) #1203.

*Dates and Times:* April 14, 2016; 9:00 a.m. EST–5:00 p.m. EST.

*Place:* University of Minnesota, Minneapolis, MN 55455.

*Type of Meeting:* Part—Open.

*Contact Person:* Dr. Daniele Finotello, Program Director, Materials Research Science and Engineering Centers, MRSEC. Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

*Purpose of Meeting:* NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

**Agenda**

*Thursday, April 14, 2016*

8:45 a.m.–9:00 a.m.: Informal Meeting NSF PDs & MRSEC Director (CLOSED)
9:00 a.m.–9:05 a.m.: Introductions
9:05 a.m.–10:00 a.m.: Minnesota MRSEC Overview (Lodge)
10:00 a.m.–10:20 a.m.: Coffee Break
10:20 a.m.–11:30 a.m.: IRGs & SEEDs
11:30 a.m.–12:00 p.m.: Education and Outreach
12:00 p.m.–1:05 p.m.: Lunch with MRSEC

students and postdocs
1:10 p.m.–2:15 p.m.: Shared Experimental Facilities Tour
2:15 p.m.–3:00 p.m.: NSF Panel Caucus (CLOSED)
3:00 p.m.–3:30 p.m.: NSF debrief MRSEC Executive Committee (CLOSED)

*Reason for Closing:* The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 22, 2016.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2016–04077 Filed 2–24–16; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Materials Research Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Names:* Proposal Review Panel for Materials Research—Materials Research Science & Engineering Centers Site Visit, Pennsylvania State University (V160687) #1203.

*Dates and Times:* April 5, 2016; 9:00 a.m. EST–5:00 p.m. EST.

*Place:* Pennsylvania State University, University Park, PA 16802.

*Type of Meeting:* Part—Open.

*Contact Person:* Dr. Daniele Finotello, Program Director, Materials Research Science & Engineering Centers, MRSEC. Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

*Purpose of Meeting:* NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

**Agenda**

*Tuesday, April 5, 2016*

8:45 a.m.–9:00 a.m.: Informal Meeting NSF PDs & MRSEC Director (Closed)
9:00 a.m.–9:05 a.m.: Introductions
9:05 a.m.–10:00 a.m.: Penn State MRSEC Overview (Crespi)
10:00 a.m.–10:20 a.m.: Coffee Break
10:20 a.m.–11:45 a.m.: IRGs & SEEDs
11:45 a.m.–12:15 p.m.: Education and Outreach
12:15 p.m.–1:15 p.m.: Lunch with MRSEC students and postdocs
1:20 p.m.–2:20 p.m.: Shared Experimental Facilities Tour
2:30 p.m.–3:15 p.m.: NSF Panel Caucus (Closed)
3:15 p.m.–3:45 p.m.: NSF debrief MRSEC Executive Committee (Closed)

*Reason for Closing:* The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 22, 2016.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2016–04075 Filed 2–24–16; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Names:* Proposal Review Panel for Materials Research—Materials Research Science & Engineering Centers Site Visit, University of Chicago (V160698) #1203.

*Dates and Times:* April 29, 2016; 9:00 a.m. EST–5:00 p.m. EST.

*Place:* University of Chicago, Chicago, IL 60637.

*Type of Meeting:* Part—Open.

*Contact Person:* Dr. Daniele Finotello, Program Director, Materials Research Science & Engineering Centers, MRSEC. Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

*Purpose of Meeting:* NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

**Agenda**

*Friday, April 29, 2016*

8:45 a.m.–9:00 a.m.: Informal Meeting NSF PDs & MRSEC Director (CLOSED)
9:00 a.m.–9:05 a.m.: Introductions
9:05 a.m.–10:00 a.m.: Chicago MRSEC Overview (Gardel)
10:00 a.m.–10:20 a.m.: Coffee Break
10:20 a.m.–11:30 a.m.: IRGs & SEEDs
11:30 a.m.–12:00 p.m.: Education and Outreach
12:00 p.m.–1:05 p.m.: Lunch with MRSEC students and postdocs
1:10 p.m.–2:15 p.m.: Shared Experimental Facilities Tour
2:15 p.m.–3:00 p.m.: NSF Panel Caucus (CLOSED)
3:00 p.m.–3:30 p.m.: NSF debrief MRSEC Executive Committee (CLOSED)

*Reason for Closing:* The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 22, 2016.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2016–04079 Filed 2–24–16; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Names:* Proposal Review Panel for Materials Research—Materials Research Science & Engineering Centers Site Visit, Colorado State University (V160688) #1203.

*Dates and Times:* April 8, 2016; 9:00 a.m. EST–5:00 p.m. EST.

*Place:* Colorado State University, Fort Collins, CO 80523.

*Type of Meeting:* Part—Open.

*Contact Person:* Dr. Daniele Finotello, Program Director, Materials Research Science & Engineering Centers, MRSEC. Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

*Purpose of Meeting:* NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

**Agenda**

*Friday, April 8, 2016*

8:45 a.m.–9:00 a.m.: Informal Meeting NSF PDs & MRSEC Director (CLOSED)
9:00 a.m.–9:05 a.m.: Introductions
9:05 a.m.–10:05 a.m.: Colorado MRSEC Overview (Clark)
10:05 a.m.–10:25 a.m.: Coffee Break
10:25 a.m.–11:25 a.m.: IRGs & SEEDs
11:25 a.m.–11:55 a.m.: Education and Outreach
12:00 p.m.–1:05 p.m.: Lunch with MRSEC students and postdocs
1:10 p.m.–2:15 p.m.: Shared Experimental Facilities Tour

2:15 p.m.–3:00 p.m.: NSF Panel Caucus (CLOSED)
3:00 p.m.–3:30 p.m.: NSF debrief MRSEC Executive Committee (CLOSED)

*Reason for Closing:* The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 22, 2016.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2016–04076 Filed 2–24–16; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Materials Research Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Names:* Proposal Review Panel for Materials Research—Materials Research Science & Engineering Centers Site Visit, MIT (V160685) #1203.

*Dates and Times:* March 23, 2016; 9:00 a.m. EST–5:00 p.m. EST.

*Place:* Massachusetts Institute of Technology, Cambridge, MA 10027.

*Type of Meeting:* Part—Open.

*Contact Person:* Dr. Daniele Finotello, Program Director, Materials Research Science & Engineering Centers, MRSEC. Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

*Purpose of Meeting:* NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

**Agenda**

*Wednesday, March 23, 2016*

8:45 a.m.–9:00 a.m.: Informal Meeting NSF PDs & MRSEC Director (Closed)
9:00 a.m.–9:05 a.m.: Introductions
9:05 a.m.–9:55 a.m.: MIT MRSEC Overview (Rubner) Includes intro to seeds, diversity plan, collaborations, SEFs, management plan and budget
9:55 a.m.–10:10 a.m.: Coffee Break
10:10 a.m.–11:40 a.m.: Three IRG presentations; 25 mins each/5 mins each discussion
11:40 a.m.–12:30 p.m.: Lunch with MRSEC students and postdocs
12:30 p.m.–1:15 p.m.: Education and Outreach
1:15 p.m.–2:15 p.m.: Shared Experimental Facilities Tour
2:15 p.m.–3:00 p.m.: NSF Panel Caucus (Closed)
3:00 p.m.–3:30 p.m.: NSF debrief MRSEC Executive Committee (Closed)

*Reason for Closing:* The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 22, 2016.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2016–04073 Filed 2–24–16; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Materials Research Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Names:* Proposal Review Panel for Materials Research—Materials Research Science & Engineering Centers Site Visit, Harvard University (V160686) #1203.

*Dates and Times:* March 24, 2016; 9:00 a.m. EST–5:00 p.m. EST.

*Place:* Harvard University, Cambridge, MA 02138.

*Type of Meeting:* Part—Open.

*Contact Person:* Dr. Daniele Finotello, Program Director, Materials Research Science & Engineering Centers, MRSEC. Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

*Purpose of Meeting:* NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

**Agenda**

*Thursday, March 24, 2016*

8:45 a.m.–9:00 a.m.: Informal Meeting NSF PDs & MRSEC Director (Closed)
9:00 a.m.–9:05 a.m.: Introductions
9:05 a.m.–10:00 a.m.: Harvard MRSEC Overview (Weitz)
10:00 a.m.–10:20 a.m.: Coffee Break
10:20 a.m.–11:30 a.m.: IRGs & SEEDs
11:30 a.m.–12:00 p.m.: Education and Outreach
12:00 p.m.–1:05 p.m.: Lunch with MRSEC students and postdocs
1:10 p.m.–2:15 p.m.: Shared Experimental Facilities Tour
2:15 p.m.–3:00 p.m.: NSF Panel Caucus (Closed)
3:00 p.m.–3:30 p.m.: NSF debrief MRSEC Executive Committee (Closed)

*Reason for Closing:* The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 22, 2016.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2016–04074 Filed 2–24–16; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Names:* Proposal Review Panel for Materials Research—Materials Research Science & Engineering Centers Site Visit, University of Nebraska (V160697) #1203.

*Dates and Times:* April 27, 2016; 9:00 a.m. EST–5:00 p.m. EST.

*Place:* University of Nebraska, Lincoln, NE 68588.

*Type of Meeting:* Part—Open.

*Contact Person:* Dr. Daniele Finotello, Program Director, Materials Research Science & Engineering Centers, MRSEC. Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

*Purpose of Meeting:* NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

**Agenda**

*Wednesday, April 27, 2016*

8:45 a.m.–9:00 a.m.: Informal Meeting NSF PDs & MRSEC Director (Closed).
9:00 a.m.–9:05 a.m.: Introductions.
9:05 a.m.–10:00 a.m.: Nebraska MRSEC Overview (Tsymbal).
10:00 a.m.–10:20 a.m.: Coffee Break.
10:20 a.m.–11:30 a.m.: IRGs & SEEDs.
11:30 a.m.–12:00 p.m.: Education and Outreach.

12:00 p.m.–1:05 p.m.: Lunch with MRSEC students and postdocs.

1:10 p.m.–2:15 p.m.: Shared Experimental Facilities Tour.

2:15 p.m.–3:00 p.m.: NSF Panel Caucus (Closed).

3:00 p.m.–3:30 p.m.: NSF debrief MRSEC Executive Committee (Closed).

*Reason for Closing:* The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 22, 2016.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2016–04078 Filed 2–24–16; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### National Science Board: Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

**DATE AND TIME:** Tuesday, March 1, 2016 at 8:00–9:00 p.m. EST.

**SUBJECT MATTER:** NSB Chair's opening remarks; discussion re construction and initial operations awards for NEON; action item re consideration of NEON Resolution; NSB Chair's closing remarks.

**STATUS:** Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*www.nsf.gov/nsb*) for information or schedule updates, or contact: Ronald Campbell, (*jrcampbe@nsf.gov*), National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

**Kyscha Slater-Williams,**

*Program Specialist.*

[FR Doc. 2016–04208 Filed 2–23–16; 4:15 pm]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–8610; NRC–2008–0591]**

### Stepan Company

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License termination; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is providing public notice of the termination of Source Materials License No. STC–1333. The NRC has terminated the license of the decommissioned Stepan Company facility in Maywood, New Jersey, and has approved the site for unrestricted release.

**DATES:** Notice of termination of Source Materials License No. STC–1333 issued on February 25, 2016.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0591 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0591. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Kim Conway, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1335, email: *Kimberly.Conway@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The NRC has terminated License No. STC–1333, held by Stepan Company (Stepan), for a site in Maywood, New Jersey, and has approved the site for unrestricted release.

Maywood Chemical Works processed thorium ore at its Maywood facility in northeastern New Jersey between 1916 and 1956. Radioactive contamination resulted from these processing operations and associated material storage and waste disposal practices. In 1959, Stepan Chemical Company (now Stepan Company) purchased the Maywood facility. In the late 1960s, Stepan took corrective measures at some of the former disposal areas by re-locating approximately 19,000 cubic yards of thorium wastes and consolidating the wastes into three onsite burial pits. The three onsite burial pits were subsequently licensed by the NRC under materials license STC–1333.

In 1983, the U.S. Environmental Protection Agency (EPA) included the Maywood facility on its National Priorites List for cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In 1984, the U.S. Department of Energy (DOE) assumed responsibility for remediating the Maywood facility (including the NRC-licensed burial pits) and 87 other designated residential, commercial, and government properties that were contaminated by the thorium processing activities at the former Maywood Chemical Works. The Maywood facility was included in the Formerly Utilized Sites Remedial Action Program (FUSRAP) along with the other 87 radiologically contaminated properties.

In October 1997, the administration of FUSRAP was transferred from DOE to the U.S. Army Corps of Engineers (USACE). In September 2003, the Record of Decision (ROD) for Soils and Buildings at the FUSRAP Maywood Superfund Site was issued. In the ROD, the specific concentration-based cleanup criteria for the radioactive contamination in soil for commercial properties (relevant to the Stepan burial pits) was determined to be an average of 15 picocuries/gram (pCi/g) of the combined radium-226 (Ra-226) plus thorium-232 (Th-232) concentrations above background, with an ''as low as is reasonably achievable'' (ALARA) goal of 5 pCi/g. The ROD also includes a criterion of 100 pCi/g above background for total uranium, which equates to approximately 50 pCi/g of uranium-238 (U–238).

On October 21, 2008, the NRC executed a Confirmatory Order to

suspend Stepan's license, contingent upon USACE notifying the NRC of their intent to take physical possession of all, or part, of the licensed portions of the site (ADAMS Accession No. ML082760095). The Order provided the USACE with the mechanism to request that the NRC suspend the NRC's license for the Stepan burial pits. In December 2008, August 2009, and January 2010, the USACE notified the NRC that it had taken physical possession of Burial Pits #2, #3, and #1, respectively.

On February 14, 2012, the USACE notified the NRC that the remediation response action had been completed for all three of the NRC-licensed burial pits, and pursuant to the MOU, USACE also provided notification of its intent to terminate physical possession of all three licensed burial pits in May 2012 (ADAMS Accession No. ML120880217). On May 7, 2012, NRC license STC–1333 was reinstated when Stepan reestablished possession of the burial pits in accordance with the Confirmatory Order (ADAMS Accession No. ML12159A537). By letter dated August 15, 2014, Stepan submitted a request to the NRC for the termination of their materials license (ADAMS Accession No. ML14259A103). As part of this submittal, Stepan provided the NRC with the USACE's Post Remedial Action Reports for each of the burial pits (ADAMS Accession Nos. ML12046A500, ML12046A502, and ML12046A504, respectively). On July 20, 2015, Stepan provided a response to the NRC's request for additional information (ADAMS Accession No. ML15217A026) and a radiological dose assessment (ADAMS Accession No. ML15217A025).

The NRC has now completed its review of the reports and associated documents according to NUREG–1757, ''Consolidated Decommissioning Guidance,'' and guidance in the Multi-Agency Radiation Survey and Site Investigation Manual) MARSSIM (NUREG 1575). The NRC staff has concluded that the Final Site Survey (FSS) design and data collected were adequate to characterize the residual radioactivity in the NRC-licensed portions of the Stepan site. The NRC staff also concluded that the data analysis and dose assessments performed are appropriate and that the projected dose from residual radioactivity in these areas is less than the 25 mrem/year dose criterion in 10 CFR 20.1402. Stepan has also submitted a completed NRC Form 314 (''Certificate of Disposition of Materials'') and otherwise met the requirements of 10 CFR 40.42(j), the NRC regulation concerning the final step in the decommissioning process for a 10 CFR part 40 source materials license. For these reasons, the NRC staff has determined that Stepan has demonstrated that the site will meet the radiological criteria for license termination described in 10 CFR 20.1402. Therefore, Source Materials License No. STC–1333 has been terminated.

Dated at Rockville, Maryland, this 18th day of February 2016.

For the Nuclear Regulatory Commission.

**Bruce A. Watson,**

*CHP, Branch Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2016–04019 Filed 2–24–16; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2015–0231]**

### Clarification of Licensee Actions in Support of Enforcement Guidance for Tornado-Generated Missiles

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Interim staff guidance; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG) DSS–ISG–2016–01, ''Clarification of Licensee Actions in Receipt of Enforcement Discretion Per Enforcement Guidance Memorandum EGM 15–002, 'Enforcement Discretion for Tornado-Generated Missile Protection Noncompliance.' '' This ISG provides clarifying guidance for staff understanding of expectations for consistent oversight associated with implementing enforcement discretion for tornado missile protection noncompliance per EGM 15–002 and allows consistent enforcement and regulation of licensees that implement corrective actions outlined in EGM 15–002.

**DATES:** This guidance is effective on February 25, 2016.

**ADDRESSES:** Please refer to Docket ID NRC–2015–0231 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0231. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Interim Staff Guidance DSS–ISG–2016–01, ''Clarification of Licensee Actions in Receipt of Enforcement Discretion Per Enforcement Guidance Memorandum EGM 15–002, 'Enforcement Discretion for Tornado-Generated Missile Protection Noncompliance' '' is available in ADAMS under Accession No. ML15348A202.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Todd Keene, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1994, email: *Todd.Keene@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** Following the issuance of EGM 15–002 (ADAMS Accession No. ML15111A269), the staff received stakeholder comments requesting clarification in complying with NRC expectations for implementing enforcement discretion in accordance with the EGM, specifically the implementation of compensatory measures and guidance on addressing operability status of equipment once the EGM is implemented. The NRC staff has developed ISG DSS–ISG–2016–01, ''Clarification of Licensee Actions in Receipt of Enforcement Discretion Per Enforcement Guidance Memorandum (EGM) 15–002, 'Enforcement Discretion for Tornado-Generated Missile Protection Noncompliance,' '' to provide clarification concerning the implementation of EGM 15–002.

Dated at Rockville, Maryland, this 19th day of February, 2016.

For the Nuclear Regulatory Commission.

**Alex Garmoe,**

*Acting Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2016–04023 Filed 2–24–16; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2016–0033]**

## Nuclear Regulatory Commission Insider Threat Program Policy Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing its Insider Threat Program Policy Statement that establishes the NRC Insider Threat Program in accordance with Executive Order (E.O.) 13587, ''Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information.'' The purpose of the policy statement is to ensure the responsible sharing and safeguards of classified information, including restricted data and safeguards information, by deterring employees, contractors, and detailees holding national security clearances from becoming insider threats, detecting insiders who pose a risk to protected information, and mitigating risks.

**DATES:** The NRC's Insider Threat Program Policy Statement is effective February 25, 2016.

**ADDRESSES:** Please refer to Docket ID NRC–2016–0033 when contacting the NRC about the availability of information for this policy statement. You may access publicly-available information related to this policy statement by any of the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0033. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Denis Brady, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5768; email: *Denis.Brady@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Executive Order 13587, ''Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information,'' directs all executive branch departments and agencies that have access to classified information to implement reforms to ensure responsible sharing and safeguarding of classified information on computer networks, consistent with appropriate protections for privacy and civil liberties (76 FR 63811; October 13, 2011). The E.O. also established the National Insider Threat Task Force, which issued the ''National Insider Threat Policy'' and the ''Minimum Standards for Executive Branch Insider Threat Programs'' on November 21, 2012 (*see https://www.whitehouse.gov/the-press-office/2012/11/21/presidential-memorandum-national-insider-threat-policy-and-minimum-stand,* last visited February 8, 2016). In order to execute its primary mission essential functions, the NRC has access to and possesses classified information, including classified information on computer networks, which it protects through appropriate security procedures. This policy statement establishes the NRC's Insider Threat Program in accordance with E.O. 13587.

### II. Discussion

The purpose of this policy statement is to ensure the responsible sharing and safeguards of classified information, including restricted data and safeguards information, by deterring employees, contractors, and detailees holding national security clearances from becoming insider threats, detecting insiders who pose a risk to protected information, and mitigating risks. The policy statement addresses the background, purpose, applicability, policy components, and references. This policy statement is not applicable to members of the public.

The NRC's Insider Threat Program Policy Statement is published in its entirety in the attachment to this document, and is also available in ADAMS under Accession No. ML16039A282.

### III. Procedural Requirements

*Paperwork Reduction Act Statement*

This policy statement does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Congressional Review Act*

This policy statement is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

Dated at Rockville, Maryland, this 18th day of February, 2016.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

### Attachment—Nuclear Regulatory Commission Insider Threat Program Policy Statement

1. Background. Executive Order (E.O.) 13587, ''Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information,'' directs all executive branch departments and agencies that have access to classified information to implement reforms to ensure responsible sharing and safeguarding of classified information on computer networks that are consistent with appropriate protections for privacy and civil liberties (October 7, 2011). The Executive Order also established the National Insider Threat Task Force, which issued the ''National Insider Threat Policy'' and the ''Minimum Standards for Executive Branch Insider Threat Programs'' on November 21, 2012. In order to execute its primary mission essential functions, the Nuclear Regulatory Commission (NRC) has access to and possesses classified information, including classified information on computer networks, which it protects through appropriate security procedures.

2. Purpose. This document establishes the NRC Insider Threat Program (ITP) Policy in accordance with E.O. 13587 and the Atomic Energy Act of 1954, as amended (AEA). The primary purpose of the ITP is to protect information classified under E.O. 13526 or section 142 of the AEA (restricted data), or that is safeguards information under section 147 of the AEA, as well as any such information on classified networks, by

deterring employees holding national security clearances from becoming insider threats, detecting insiders who pose a risk to the protected information, and mitigating risks. The establishment of an NRC ITP is intended to achieve these goals with respect to all NRC employees, contractors, and detailees with national security clearances and access to information classified under E.O. 13526 or section 142 of the AEA or that is safeguards information under section 147 of the AEA.

3. Applicability. This policy is applicable to all NRC employees, contractors, and detailees to the NRC from other government agencies who have national security clearances and access to information classified under E.O. 13526 or section 142 of the AEA or that is safeguards information under section 147 of the AEA.

4. Policy. It is NRC policy that:

(a) All NRC employees, contractors, and detailees must comply with the requirements of all current and applicable Federal laws, regulations, and policies concerning the responsible sharing and safeguarding of classified information. This includes reporting insider threat information related to potential espionage, violent acts against the Government or the Nation, and unauthorized access to or disclosure of information classified under E.O. 13526 or section 142 of the AEA or that is safeguards information under section 147 of the AEA, and any such information that is available on interconnected U.S. Government computer networks and systems.

(b) Consistent with established law and policy, including the Privacy Act, the ITP uses information made available to it to identify, analyze, and respond to potential insider threats at the NRC. The ITP itself does not maintain or store any personal information. The information is maintained by the program office in which the information resides.

(c) All NRC employees, contractors, and detailees involved in any ITP actions (including, but not limited to, gathering information or conducting inquiries) do so in accordance with all applicable Federal laws, regulations, and policies, including those pertaining to whistleblower protections, civil liberties, civil rights, criminal rights, personnel records, medical records, and privacy rights. The ITP consults with and obtains the concurrence of the NRC's Office of the General Counsel (OGC) on questions concerning these legal protections in insider threat activities, inquiries, assistance in investigations by law enforcement authorities, and other matters.

(d) The ITP refers to the U.S. Federal Bureau of Investigation (FBI) information indicating that classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or an agent of a foreign power, in accordance with 50 U.S.C. 3381(e). Subject to an appropriate inquiry by the ITP, other information indicating unauthorized access to or misuse of classified information, classified networks, or safeguards information is referred to the NRC's Office of Inspector General (OIG). OGC will provide ongoing legal advice to the ITP as appropriate.

5. References.

A. The Atomic Energy Act of 1954, as amended; 42 U.S.C. 2011 *et. seq.*

B. 50 U.S.C. 3381(e).

C. Inspector General Act of 1978, as amended; 5 U.S.C. Appx § 1 *et seq.*

D. Executive Order 10450, ''Security Requirements for Government Employment,'' April 27, 1953 (18 FR 2489; April 29, 1953).

E. Executive Order 12333, ''United States Intelligence Activities,'' dated December 4, 1981 (as amended by Executive Orders 13284 (2003), 13355 (2004), and 13470 (2008) (46 FR 59941; December 8, 1981).

F. Executive Order 12829, ''National Industrial Security Program,'' dated January 6, 1993 (58 FR 3479; January 8, 1993).

G. Executive Order 12968, ''Access to Classified Information,'' dated August 4, 1995 (60 FR 40245; August 7, 1995).

H. Executive Order 13526, ''Classified National Security Information,'' dated December 29, 2009 (75 FR 707; January 5, 2010).

I. Executive Order 13587, ''Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information,'' dated October 7, 2011 (76 FR 63811; October 13, 2011).

J. NRC Management Directive 7.4, ''Reporting Suspected Wrongdoing and Processing of OIG Referrals.''

K. NRC Management Directive, Volume 12, ''Security.''

[FR Doc. 2016–04026 Filed 2–24–16; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* February 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 18, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 187 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2016–79, CP2016–104.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–03970 Filed 2–24–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* February 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 18, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 44 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–82, CP2016–107.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–03976 Filed 2–24–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* February 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 18, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 188 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–80, CP2016–105.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–03967 Filed 2–24–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* February 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 18, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 43 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–81, CP2016–106.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–03973 Filed 2–24–16; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77179; File No. SR–NYSEArca–2016–17]**

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the JPMorgan Diversified Alternative ETF Under NYSE Arca Equities Rule 8.600

February 19, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 5, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): JPMorgan Diversified Alternative ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares[4] on the Exchange[5]: JPMorgan Diversified Alternative ETF (the ''Fund'').[6]

The Fund is a series of J.P. Morgan Exchange-Traded Fund Trust (''Trust''), a Delaware statutory trust. J.P. Morgan Investment Management Inc. (''Adviser'') will be the investment adviser to the Fund. The Adviser is a wholly-owned subsidiary of JPMorgan Asset Management Holdings Inc., which is a wholly-owned subsidiary of JPMorgan Chase & Co. (''JPMorgan Chase''), a bank holding company. JPMorgan Funds Management, Inc. (''Administrator'') will provide administrative services for and will oversee the other service providers of the Fund. SEI Investments Distribution Co. (''Distributor'') will be the distributor of the Fund's Shares.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition,

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[6] The Trust is registered under the 1940 Act. On December 14, 2015, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the 1940 Act relating to the Fund (File Nos. 333–191837 and 811–22903) (the ''Registration Statement''). The Trust filed an Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–13761), initially filed March 10, 2010 and most recently amended on December 23, 2015 (''Exemptive Application''); the Exemptive Application was published for notice in IC Release No. 31956 on January 14, 2016. The Shares will not be listed on the Exchange until an order (''Exemptive Order'') under the 1940 Act has been issued by the Commission with respect to the Exemptive Application. Investments made by the Fund will comply with the conditions set forth in the Exemptive Order. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement and the Exemptive Application.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the

Continued

Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolios.

According to the Registration Statement, the Fund will seek to provide long term, total return. The Fund will seek to achieve its investment objective by allocating assets across several different investment strategies, including traditional and alternative investment strategies, such as those utilized by certain hedged funds.

The strategies identified by the Adviser for the Fund fall into the following broad categories: ''Equity Long/Short'', ''Event Driven'' and ''Global Macro Based'' (including equities, fixed income, currency and commodities) strategies, as described below. Within these broad strategies, the Adviser believes that it has identified a set of return sources present in markets that result from, among other things, assuming a particular risk or taking advantage of a behavioral bias (each a ''return factor'').

According to the Registration Statement, under normal market conditions,[8] the Fund will seek to achieve its investment objective by employing the above-referenced investment strategies to access certain of these return factors. Return factors utilized by the Fund will fall into the following broad categories depending on the strategy: Equity, fixed income, currency and commodities. Each represents a potential source of investment return that results from, among other things, assuming a particular risk or taking advantage of a behavioral bias. For example, the Adviser may gain exposure to a ''momentum return factor'' by employing a strategy that buys securities with strong positive price momentum and shorts securities with strong negative price momentum. This strategy would seek to exploit a behavioral bias present in the market, in which investors tend to purchase securities that have recently performed well, thereby helping to contribute to continued positive price movement, and sell securities that have recently performed poorly, thereby helping to contribute to continued negative price movement. The Adviser believes that, in general, the Fund's investment returns are attributable to the individual contributions of the various return factors. By employing this return factor based approach, the Fund will seek to provide positive total returns over time while maintaining a relatively low correlation with traditional markets. The exposure to individual return factors may vary based on the market opportunity of the individual return factors.

The Fund may employ the following investment strategies:

- Equity Long/Short: [9] Equity Long/Short strategies involve simultaneous investing in equities (investing long) that the Adviser expects to increase in value and selling equities (*i.e.,* selling short) that the adviser expects to decrease in value. Equity Long/Short seeks to profit by exploiting pricing inefficiencies between related equity securities by maintaining long and short positions.
- Event Driven: [10] Event Driven strategies seek to profit from investing in securities of companies on the basis that a specific event or catalyst will affect future pricing. For example, merger arbitrage strategies seek to capitalize on price discrepancies and returns generated by a corporate transaction. For example, the Fund may purchase the common stock of the company being acquired and short the common stock of the acquirer in expectation of profiting from the price differential between the purchase price of the securities and the value received for the securities as a result of or in expectation of the consummation of the merger.
- Global Macro Based Strategies: [11] Macro based strategies aim to exploit macro economic imbalances across the globe. The macro based strategies may be implemented through a broad range of asset classes including, but not limited to, equities, fixed income, currency and commodities. For example, this strategy will invest in the long-end of the government bond markets with the highest inflation adjusted yields and sell short the long-end of the government bond markets with the lowest inflation adjusted yields. As an alternative example, the strategy will seek to exploit supply and demand imbalances that occur in a given commodity market by utilizing long and short exposures achieved through different derivative instruments.

*See* ''Principal Investments'' and ''Other Investments'' below for a description of all the investments that may be used within the Fund.

According to the Registration Statement, the Fund will invest its assets globally (including in emerging

Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, cyber attacks, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] In the Equity Long/Short strategies, the Fund may hold equity securities, primarily common stock, long and sell equity securities short or achieve the long and short positions through the use of a swap. The Fund may also utilize futures in these strategies.

[10] In the Event Driven strategies, the Fund may hold equity securities, primarily common stock, long and sell equity securities short or achieve the long and short positions through the use of a swap. The Fund may also utilize futures in these strategies. In the future, the Fund may utilize long and short positions in debt securities (as described below) through the use of both physical securities or swaps.

[11] The Global Macro Based strategies may be implemented through equity securities, debt securities (including through investment in another fund), currency futures and forward contracts and commodities (through its investment in its Subsidiary, as described below).

markets) to gain exposure to equity securities (across market capitalizations), debt securities,[12] commodities (through its subsidiary as described below) and currencies. The Fund may use both long and short positions (achieved primarily through the use of derivative instruments, as described below). At all times, the Fund will maintain a total net long market exposure. However, the Fund may have net long or net short exposure to one or more industry sectors, individual markets and/or currencies.

According to the Registration Statement, the Adviser will make use of derivatives as described below,[13] in implementing its strategies. Under normal market conditions, the Adviser currently expects that a significant portion of the Fund's exposure will be attained through the use of derivatives in addition to its exposure through direct investment. The derivatives usage will occur in both the Fund and in the Diversified Alternative Fund CS Ltd., a wholly owned subsidiary of the Fund organized under the laws of the Cayman Islands (the ''Subsidiary'').[14] For example, in implementing Equity Long/Short strategies and Global Macro Based strategies, the Fund may use a total return swap to establish both long and short positions in order to gain the desired exposure rather than physically purchasing and selling short each instrument. Derivatives may also be used to increase gain, to effectively gain targeted equity exposure from its cash positions, to hedge various investments and/or for risk management. As a result of the Fund's and the Subsidiary's use of derivatives and to serve as collateral, the Fund or the Subsidiary may hold significant amounts of U.S. Treasury obligations, including Treasury bills, bonds and notes and other obligations issued or guaranteed by the U.S. Treasury, and other short-term investments, including money market funds and foreign currencies in which certain derivatives are denominated.

According to the Registration Statement, the amount that may be invested in any one instrument will vary and generally depend on the investment strategies and return factors employed by the Adviser at that time. However, with the exception of specified investment limitations for certain assets described below, there are no stated percentage limitations on the amount that can be invested in any one type of instrument, and the Adviser may, at times, invest in a smaller number of instruments. Moreover, the Fund will generally be unconstrained by any particular capitalization, style or sector and may invest in any region or country, including emerging markets.

The Fund will purchase a particular instrument when the Adviser believes that such instrument will allow the Fund to gain the desired exposure to a return factor. Conversely, the Fund will consider selling a particular instrument when it no longer provides the desired exposure to a return factor. In addition, investment decisions will take into account a return factor's contribution to the Fund's overall volatility.

*Principal Investments*

According to the Registration Statement, under normal market conditions, the Fund will invest principally (*i.e.,* more than 50% of the Fund's assets) in the securities and financial instruments described below, which may be represented by derivatives, as discussed below.

The Fund may invest in exchange-listed-and-traded common stocks, preferred stocks,[15] warrants and rights [16] of U.S. and foreign corporations,[17] (including emerging market securities); and U.S. and non-U.S. REITs.[18] Exchange-listed-and-traded common stocks, preferred stocks, warrants and rights of U.S. corporations and U.S. REITs will be traded on U.S. national securities exchanges.

The Fund may invest in exchange-listed and over-the-counter (''OTC'') Depositary Receipts.[19]

The Fund may invest in the following cash and cash equivalents: investments in money market funds (for which the Adviser and/or its affiliates serve as investment adviser or administrator), bank obligations,[20] commercial paper,[21] repurchase agreements and short-term funding agreements.[22]

The Fund may invest in corporate debt.[23] These could include emerging market securities.

The Fund may purchase and sell futures contracts on currencies and fixed income securities, and futures contracts on indexes of securities.

The Fund may invest in OTC and exchange-traded call and put options on

[12] For purposes of this filing, the term ''debt securities'' shall mean the following, as described further below: Corporate debt, bank obligations, commercial paper, repurchase agreements and short-term funding agreements, U.S. Government obligations, inflation-linked debt securities, U.S. government sponsored mortgage-backed securities, Brady Bonds, convertible securities, obligations of supranational agencies, reverse repurchase agreements, sovereign obligations, U.S. government agency securities, and restricted securities (144A securities).

[13] *See* the description of derivatives in ''Principal Investments'' and ''The Fund's and the Subsidiary's, Use of Derivatives'', *infra.*

[14] As described below, the Subsidiary will invest only in commodity futures.

[15] Preferred stock is a class of stock that generally pays a dividend at a specified rate and has preference over common stock in the payment of dividends and in liquidation (U.S. and non-U.S., including emerging markets).

[16] Rights are securities, typically issued with preferred stock or bonds, that give the holder the right to buy a proportionate amount of common stock at a specified price (U.S. and non-U.S., including emerging markets).

[17] For purposes of this filing, common stocks, preferred stocks, warrants and rights of foreign corporations; non-U.S. real estate investment trusts (''REITs'') (as referenced below); and Depositary Receipts (as described below) (excluding Depositary Receipts that are registered under the Act) are referred to collectively as ''non-U.S. equity securities''. Under normal circumstances, the non-U.S. equity securities in the Fund's portfolio will meet the following criteria at time of purchase: (1) Non-U.S. equity securities each shall have a minimum market value of at least $100 million; (2) non-U.S. equity securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (3) the most heavily weighted non-U.S. equity security shall not exceed 25% of the weight of the Fund's entire portfolio, and, to the extent applicable, the five most heavily weighted non-U.S. equity securities shall not exceed 60% of the weight of the Fund's entire portfolio; and (4) each non-U.S. equity security shall be listed and traded on an exchange that has last-sale reporting.

[18] REITs are pooled investment vehicles which invest primarily in income producing real estate or real estate related loans or interest.

[19] Depositary Receipts include American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs'') and European Depositary Receipts (''EDRs''). ADRs are receipts typically issued by an American bank or trust company that evidence ownership of underlying securities issued by a foreign corporation. EDRs are receipts issued by a European bank or trust company evidencing ownership of securities issued by a foreign corporation. GDRs are receipts issued throughout the world that evidence a similar arrangement. ADRs, EDRs and GDRs may trade in foreign currencies that differ from the currency the underlying security for each ADR, EDR or GDR principally trades in. Generally, ADRs, in registered form, are designed for use in the U.S. securities markets. EDRs, in registered form, are used to access European markets. GDRs, in registered form, are tradable both in the United States and in Europe and are designed for use throughout the world. No more than 10% of the net assets of the Fund will be invested in ADRs that are not exchange-listed.

[20] Bank obligations include the following: Bankers' acceptances, certificates of deposit and time deposits. Bankers' acceptances are bills of exchange or time drafts drawn on and accepted by a commercial bank. Maturities are generally six months or less. Certificates of deposit are negotiable certificates issued by a bank for a specified period of time and earning a specified return. Time deposits are non-negotiable receipts issued by a bank in exchange for the deposit of funds.

[21] Commercial paper consists of secured and unsecured short-term promissory notes issued by corporations and other entities. Maturities generally vary from a few days to nine months.

[22] Short-term funding agreements are agreements issued by banks and highly rated U.S. insurance companies such as Guaranteed Investment Contracts (''GICs'') and Bank Investment Contracts (''BICs'').

[23] The Adviser expects that, under normal market conditions, the Fund generally will seek to invest at least 75% of its corporate debt assets in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries.

equities, fixed income securities and currencies or options on indexes of equities, fixed income securities and currencies.

In addition to money market funds referenced above, the Fund may invest in shares of non-exchange-traded investment company securities including investment company securities for which the Adviser and/or its affiliates may serve as investment adviser or administrator, to the extent permitted by Section 12(d)(1)[24] of the 1940 Act and the rules thereunder.

The Fund may invest in exchange traded funds (''ETFs'').[25]

The Fund may invest in swaps as follows: credit default swaps (''CDSs''), interest rate swaps, currency swaps, total return swaps on equity securities and equity index swaps.

The Fund may invest in forward and spot currency transactions. Such investments consist of non-deliverable forwards (''NDFs''), foreign forward currency contracts,[26] and spot currency transactions.

The Fund may invest in U.S. Government obligations, which may include direct obligations of the U.S. Treasury, including Treasury bills, notes and bonds, all of which are backed as to principal and interest payments by the full faith and credit of the United States, and separately traded principal and interest component parts of such obligations that are transferable through the Federal book-entry system known as Separate Trading of Registered Interest and Principal of Securities (STRIPS) and Coupons Under Book Entry Safekeeping (''CUBES'').

The Fund may invest in U.S. government sponsored mortgage-backed securities.

*Other Investments*

While the Fund, under normal market conditions, will invest at least fifty percent (50%) of its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund will gain exposure to commodity markets indirectly by investing up to 15% of its total assets in the Subsidiary. The Subsidiary also will be advised by the Adviser. The Subsidiary will only invest in commodity futures contracts and will also hold any necessary cash or other short-term investments as collateral. The Fund will not invest in such commodity futures contracts directly.

The Fund may invest in Brady Bonds, which are securities created through the exchange of existing commercial bank loans to public and private entities in certain emerging markets for new bonds in connection with debt restructurings.

The Fund may invest in U.S. and non-U.S. convertible securities, which are bonds or preferred stock that can convert to common stock. The Fund may invest in inflation-linked debt securities, which include fixed and floating rate debt securities of varying maturities issued by the U.S. government and foreign governments.

The Fund may invest in obligations of supranational agencies, which are chartered to promote economic development and are supported by various governments and governmental agencies.

The Fund may invest in reverse repurchase agreements.

The Fund may invest in sovereign obligations, which are investments in debt obligations issued or guaranteed by a foreign sovereign government or its agencies, authorities or political subdivisions.

The Fund may invest in U.S. Government agency securities (excluding U.S. government sponsored mortgage-backed securities, referenced above), which are securities issued or guaranteed by agencies and instrumentalities of the U.S. government. These include all types of securities issued by the Government National Mortgage Association (''Ginnie Mae''), the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac''), including funding notes, subordinated benchmark notes, collateralized mortgage obligations (''CMOs'') and real estate mortgage investment conduits (''REMICs'').

The Fund may invest in equity and debt securities that are restricted securities (Rule 144A securities).

Under normal market conditions, the Fund may invest no more than 5% of its assets in OTC common stocks, preferred stocks, warrants, rights and contingent value rights (''CVRs'') of U.S. and foreign corporations (including emerging market securities).

*Other Restrictions*

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[27]

The Fund may invest in other investment companies to the extent permitted by Section12(d)(1) of the 1940 Act and rules thereunder and/or any applicable exemption or exemptive order under the 1940 Act with respect to such investments.

The Fund may invest in securities denominated in U.S. dollars, major reserve currencies, and currencies of other countries in which the Fund may invest.

The Fund may investment in both investment grade and high yield debt securities.

The Fund intends to qualify for and to elect treatment as a separate regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.[28] Furthermore, the Fund may not concentrate investments in a particular industry or group of industries, as

[24] 15 U.S.C. 80a–12(d)(1).

[25] The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

[26] A foreign currency forward contract is a negotiated agreement between the contracting parties to exchange a specified amount of currency at a specified future time at a specified rate. The rate can be higher or lower than the spot rate between the currencies that are the subject of the contract.

[27] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[28] 26 U.S.C. 851 *et seq.*

concentration is defined under the 1940 Act, the rules or regulations thereunder or any exemption therefrom, as such statute, rules or regulations may be amended or interpreted from time to time.[29]

The Fund is a diversified series of the Trust. The Fund intends to meet the diversification requirements of the 1940 Act.[30]

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's (and the Subsidiary's) investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[31]

*The Fund's and the Subsidiary's Use of Derivatives*

The Fund proposes to seek certain exposures through transactions in the specific derivative instruments described above. The derivatives usage may occur in the Fund or the Subsidiary (provided that the Subsidiary will invest only in commodity futures). The derivatives to be used are futures, swaps, NDFs, foreign forward currency contracts, and call and put options. Derivatives, which are instruments that have a value based on another instrument, exchange rate or index, may also be used as substitutes for securities in which the Fund can invest. The Fund may use these derivative instruments to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments and/or for risk management.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the ''Board'') and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.[32] Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

*Creation and Redemption of Shares*

According to the Registration Statement, the consideration for a purchase of Creation Units will generally be cash, but may consist of an in-kind deposit of a designated portfolio of equity securities and other investments (the ''Deposit Instruments'') and an amount of cash computed as described below (the ''Cash Amount'') under some circumstances. The Cash Amount together with the Deposit Instruments, as applicable, are referred to as the ''Portfolio Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

In the event the Fund requires Deposit Instruments and a Cash Amount in consideration for purchasing a Creation Unit, the function of the Cash Amount is to compensate for any differences between the NAV per Creation Unit and the Deposit Amount (as defined below). The Cash Amount would be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which is an amount equal to the aggregate market value of the Deposit Instruments. If the Cash Amount is a positive number (the NAV per Creation Unit exceeds the Deposit Amount), the Authorized Participant will deliver the Cash Amount. If the Cash Amount is a negative number (the NAV per Creation Unit is less than the Deposit Amount), the Authorized Participant will receive the Cash Amount. The Administrator, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time (''E.T.'')), the list of the names and the required number of shares of each Deposit Instrument to be included in the current Portfolio Deposit (based on information at the end of the previous business day), as well as information regarding the Cash Amount for the Fund. Such Portfolio Deposit is applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of the Deposit Instruments and Cash Amount required for the Portfolio Deposit for the Fund changes as rebalancing adjustments and corporate action events are reflected from time to time by the Adviser with a view to the investment objective of the Fund. In addition, the Trust reserves the right to accept a basket of securities or cash that differs from Deposit Instruments or to permit the substitution of an amount of cash (*i.e.,* a ''cash in lieu'' amount) to be added to the Cash Amount to replace any Deposit Instrument which may, among other reasons, not be available in sufficient quantity for delivery, not be permitted to be re-registered in the name of the Trust as a result of an in-kind creation order pursuant to local law or market convention or for other reasons as described in the Registration Statement, or which may not be eligible for trading by a Participating Party (defined below). In light of the foregoing, in order to seek to replicate

[29] The Registration Statement states that, for purposes of the Fund's fundamental investment policy regarding industry concentration, ''to concentrate'' generally means to invest more than 25% of the Fund's total assets, taken at market value at the time of investment. For the Fund this restriction does not apply to securities issued or guaranteed by the U.S. government, any state or territory of the U.S., its agencies, instrumentalities, or political subdivisions, or repurchase agreements secured thereby, and futures and options transactions issued or guaranteed by any of the foregoing. For purposes of fundamental investment policies involving industry concentration, ''group of industries'' means a group of related industries, as determined in good faith by the Adviser, based on published classifications or other sources. For purposes of fundamental investment policies regarding industry concentration, the Adviser may classify issuers by industry in accordance with classifications set forth in the Directory of Companies Filing Annual Reports with the SEC or other sources. In the absence of such classification or if the Adviser determines in good faith based on its own information that the economic characteristics affecting a particular issuer make it more appropriate to be considered engaged in a different industry, the Adviser may classify an issuer accordingly. Accordingly, the composition of an industry or group of industries may change from time to time. For purposes of fundamental investment policies involving industry concentration, ''group of industries'' means a group of related industries, as determined in good faith by the Adviser based on published classifications or other sources.

[30] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[31] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[32] To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

the in-kind creation order process, the Trust expects to purchase the Deposit Instruments represented by the cash in lieu amount in the secondary market.

In addition to the list of names and numbers of securities constituting the current Deposit Instruments of a Portfolio Deposit, the Administrator, through the NSCC, also will make available on each business day, the estimated Cash Component adjusted through the close of the trading day.

*Procedures for Creation of Creation Units*

To be eligible to place orders with the Distributor to create Creation Units of the Fund, an entity or person either must be (1) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC; or (2) a Depositary Trust Company (''DTC'') Participant, which, in either case, must have executed an agreement with the Distributor (as it may be amended from time to time in accordance with its terms) (''Participant Agreement'') (discussed below). A Participating Party and DTC Participant are collectively referred to as an ''Authorized Participant.'' All orders to create Creation Units must be received by the Distributor no later than the closing time of the regular trading session on the Exchange (''Closing Time'') (ordinarily 4:00 p.m. E.T.), in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the Fund as determined on such date.

*Redemption of Creation Units*

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor, only on a business day and only through a Participating Party or DTC Participant who has executed a Participant Agreement. The Trust will not redeem Shares in amounts less than Creation Units.

Although the Fund will generally pay redemption proceeds in cash, there may be instances when it will make redemptions in-kind. In these instances, the Administrator, through NSCC, makes available immediately prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.) on each day that the Exchange is open for business, the identity of the Fund's assets and/or an amount of cash that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Unless cash redemptions are permitted or required for the Fund, the redemption proceeds for a Creation Unit generally consist of Redemption Instruments as announced by the Administrator on the business day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Redemption Instruments, less the redemption transaction fee and variable fees described below.

Should the Redemption Instruments have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the Trust equal to the differential plus the applicable redemption transaction fee will be required to be arranged for by or on behalf of the redeeming shareholder. The Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Redemption Instruments.[33]

*Valuation Methodology for Purposes of Determining Net Asset Value*

The NAV of Shares, under normal market conditions, will be calculated each business day as of the close of the Exchange, which is typically 4:00 p.m. E.T. On occasion, the Exchange will close before 4:00 p.m. E.T. When that happens, NAV will be calculated as of the time the Exchange closes. The price at which a purchase of a Creation Unit is effected is based on the next calculation of NAV after the order is received in proper form.

Securities for which market quotations are readily available will generally be valued at their current market value. Other securities and assets, including securities for which market quotations are not readily available or market quotations are determined not to be reliable; or, if their value has been materially affected by events occurring after the close of trading on the exchange or market on which the security is principally traded but before the Fund's NAV is calculated, may be valued at fair value in accordance with policies and procedures adopted by the Trust's Board of Trustees. Fair value represents a good faith determination of the value of a security or other asset based upon specifically applied procedures. Fair valuation may require subjective determinations.

U.S. exchange-traded common stocks, preferred stocks, warrants, rights, REITs, and Depositary Receipts will be valued at the last sale price or official market closing price on the primary exchange on which such security trades. Exchange-traded non-U.S. equity securities will be valued at the last sale price or official market closing price on the primary exchange on which such security trades.

OTC equity securities will be priced utilizing market quotations provided by approved pricing services or by broker quotation. For OTC warrants, rights and CVRs, if no pricing service or broker quotation is available, then the warrant, right or CVR will be valued intrinsically based on the terms of issuance.

Shares of non-exchange-traded open-end investment companies will be valued at their current day NAV published by the relevant fund. ETFs will be valued at the last sale price or official market closing price on the primary exchange on which such ETF trades.

CDS, interest rate swaps, currency swaps, total return swaps, index swaps, and commodity swaps will be priced utilizing market quotations provided by approved pricing services.

Forward and spot currency transactions will be valued based on foreign exchange rates obtained from an approved pricing service, using spot and forward rates available at the time net asset value of the Fund is calculated.

Commercial paper will be valued at prices supplied by approved pricing services which is generally based on bid-side quotations.

Options traded on U.S. exchanges shall be valued at the composite mean price, using the National Best Bid and Offer quotes (''NBBO'') on the valuation date. NBBO consists of the highest bid price and lowest ask price across any of the exchanges on which an option is quoted.

Options traded on foreign exchanges are valued at the settled price on the valuation date, or if no settled price is available, at the last sale price available prior to the calculation of the Fund's net asset value.

Futures traded on U.S. and foreign exchanges are valued at the settled price, or if no settled price is available, at the last sale price as of the close of the exchanges on the valuation date.

OTC derivatives are priced utilizing market quotations provided by approved pricing services.

In addition, non-Western Hemisphere equity securities or derivatives involving non-Western Hemisphere equity reference obligations are normally subject to adjustment (fair value) each day by applying a fair value factor provided by approved pricing

[33] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

services to the values obtained as described above.

Convertible securities will be valued at prices supplied by approved pricing services which is generally based on bid-side quotations.

Corporate debt securities will be valued at prices supplied by approved pricing services which is generally based on bid-side quotations.

Inflation-linked debt securities, mortgage-backed securities, bank obligations, Brady Bonds, short-term funding agreements, repurchase agreements, reverse repurchase agreements, U.S. Government agency securities, U.S. Government obligations, sovereign obligations, obligations of supranational agencies and Rule 144A securities will be valued at prices supplied by approved pricing services which is generally based on bid-side quotations.

*Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value*

On each business day, before commencement of trading in Fund Shares on NYSE Arca, the Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.

In order to provide additional information regarding the intra-day value of Shares of the Fund, the NYSE Arca or a market data vendor will disseminate every 15 seconds through the facilities of the Consolidated Tape Association or other widely disseminated means an updated Intra-day Indicative Value (''IIV'') for the Fund as calculated by a third party market data provider.

A third party market data provider will calculate the IIV for the Fund. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- NDFs and foreign forward currency contracts may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps and cross-currency swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- Credit default swaps may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

*Disclosed Portfolio*

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

*Impact on Arbitrage Mechanism*

The Adviser believes there will be minimal impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when the Fund processes purchases or redemptions of creation units in-kind.

*Availability of Information*

The Fund's Web site (*www.jpmorganfunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV or mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[34] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on the Fund's Web site the Disclosed Portfolio for the Fund as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[35]

The Fund's portfolio holdings (including those of the Subsidiary) will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are

[34] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[35] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.*

Quotation and last sale information for the Shares and for portfolio holdings of the Fund that are U.S. exchange listed, including common stocks, preferred stocks, warrants, rights, ETFs, REITs, and U.S. exchange-traded ADRs will be available via the Consolidated Tape Association (''CTA'') high speed line. Quotation and last sale information for such U.S. exchange-listed securities, as well as futures will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Quotation and last sale information for non-U.S. equity securities will be available from the exchanges on which they trade and from major market data vendors, as applicable. Price information for OTC common stocks, preferred stocks, warrants, rights and CVRs will be available from the Fund's Web site or from major market data vendors.

Quotation information for OTC options, cash equivalents, swaps, Brady Bonds, inflation-linked debt instruments, obligations of supranational agencies, money market funds, non-exchange-listed investment company securities (other than money market funds), Rule 144A securities, U.S. Government obligations, U.S. Government agency obligations, sovereign obligations, corporate debt, inflation-linked debt securities, and reverse repurchase agreements may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services. Forwards and spot currency price information will be available from major market data vendors.

In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[36] The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the approximate value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

*Trading Halts*

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[37] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares of the Fund inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

*Trading Rules*

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [38] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

*Surveillance*

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by regulatory staff of the Exchange, or the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[39] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The regulatory staff of the Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-listed equity securities, certain futures, and certain exchange-traded options with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the regulatory staff of the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[40]

[36] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from the CTA or other data feeds.

[37] *See* NYSE Arca Equities Rule 7.12.

[38] 17 CFR 240 10A–3.

[39] FINRA surveils certain trading activity on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[40] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Under normal circumstances, the non-U.S. equity securities in the Fund's portfolio will meet the following criteria at time of purchase: (1) Non-U.S. equity securities each shall have a minimum market value of at least $100 million; (2) non-U.S. equity securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (3) the most heavily weighted non-U.S. equity security shall not exceed 25% of the weight of the Fund's entire portfolio, and, to the extent applicable, the five most heavily weighted non-U.S. equity securities shall not exceed 60% of the weight of the Fund's entire portfolio; and (4) each non-U.S. equity security shall be listed and traded on an exchange that has last-sale reporting.

Not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options shall consist of futures contracts or options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

*Information Bulletin*

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of the Fund will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[41] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by regulatory staff of the Exchange or FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The regulatory staff of the Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-listed equity securities, certain futures, and certain exchange-traded options with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the regulatory staff of the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. Under normal circumstances, the non-U.S. equity securities in the Fund's portfolio will meet the following criteria at time of purchase: (1) Non-U.S. equity securities each shall have a minimum market value of at least $100 million; (2) non-U.S. equity securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (3) the most heavily weighted non-U.S. equity security shall not exceed 25% of the weight of the Fund's entire portfolio, and, to the extent applicable, the five most heavily weighted non-U.S. equity securities shall not exceed 60% of the weight of the Fund's entire portfolio; and (4) each non-U.S. equity security shall be listed and traded on an exchange that has last-sale reporting. Not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options shall consist of futures contracts or options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The PIV, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share will be calculated daily and that

[41] 15 U.S.C. 78f(b)(5).

the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the respective Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. On a daily basis, the Fund will disclose on its Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Quotation and last sale information for the Shares and for portfolio holdings of the Fund that are U.S. exchange listed, including common stocks, preferred stocks, warrants, rights, ETFs, REITs, and U.S. exchange-traded ADRs will be available via the CTA high speed line. Quotation and last sale information for such U.S. exchange-listed securities, as well as futures will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Quotation and last sale information for non-U.S. equity securities will be available from the exchanges on which they trade and from major market data vendors.

Quotation information for OTC options, cash equivalents, swaps, Brady Bonds, inflation-linked debt instruments, obligations of supranational agencies, money market funds, Rule 144A securities, U.S. Government obligations, U.S. Government agency obligations, sovereign obligations, corporate debt, and reverse repurchase agreements may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services. Forwards and spot currency price information will be available from major market data vendors.

The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares of the Fund and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio for the Fund, and quotation and last sale information for the Shares of the Fund.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that holds fixed income and equity securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–SR–NYSEArca–2016–17 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–17 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03940 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[42] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77186; File No. SR–Phlx–2016–20]**

## Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Partnerships

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 16, 2016, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete these Rules: 903 entitled, ''Fixed Interest of Partner'';'' 904 entitled, ''Use of a Partnership Name;'' 905 entitled, ''Special or Limited Partners;'' and 906 entitled, ''Notice of Change in Partnership.'' The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to delete certain Phlx membership rules in order to harmonize and modernize the Exchange's Rulebook. Specifically, Exchange proposes to delete Rule 903 entitled, ''Fixed Interest of Partner;'' Rule 904 entitled, ''Use of a Partnership Name;'' Rule 905 entitled, ''Special or Limited Partners;'' and Rule 906 entitled, ''Notice of Change in Partnership.'' Specifically, each proposed rule change is as a result of the demutualization of the Exchange in 2004 and no longer applicable to the business today. The proposed changes related to the former need for the exchange to more acutely understand the ownership structure of the membership and are discussed in greater detail below.

These rules were applicable when Phlx offered seats, prior to demutualization. Before demutualization, Phlx seats conveyed ownership which created a greater obligation on Phlx to gather information on the members corporate structure. Specifically, Phlx was obligated to maintain a heighted vigilance on the makeup, ownership, and changes of individuals in a partnership in order to ensure the financial integrity of its ownership structure. Today, permits are issued to Exchange members and member organizations. The Exchange no longer needs to differentiate ownership because the permit structure conveys no ownership to the membership. These membership rules related to partnerships are no longer applicable today. The distinctions regarding the admission of member as a partnership, as compared to a corporation, are no longer relevant. The Exchange proposes to remove these outdated Rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) of the Act [4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78(f)(b)(5).

and a national market system and, in general, to protect investors and the public interest. The Exchange believes that Rules 903–906 are burdensome and unnecessary. These rules regarding partnership interests, use of names, privileges, and changes to the partnership serve no modern purpose to the Exchange. The former ownership structure required the Exchange to be vigilant of the ownership structure of its members in case of financial distress or bankruptcy as the seat structure was vital to the financial condition of the Exchange. Before demutualization, members had ownership interest in the Exchange. Today, permits convey no ownership and therefore such vigilance as to the ownership structure of members is not warranted. The rules have not been changed since demutualization, but for 904 and 906 which were edited in 2009 in order to replace the term ''Membership Committee'' with ''Membership Department'' which was done in conjunction with other changes to the standing committees and corporate governance processes in order to make the Exchange more similar to the other Nasdaq SRO's.

The removal of Rules 903–906 will promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities by removing burdensome requirements so that members may properly focus on other relevant requirements which benefit the marketplace.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed amendments seek to delete certain unnecessary rules which today burden partnerships over corporation. The deletions of Rules 903–906 will remove a current burden on competition which requires members and member organizations that are partnerships to disclose unnecessary information as compared to other corporate entities not structured as a partnership.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–20 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2016–20 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03946 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78s(b)(3)(a)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77184; File No. SR–NYSEArca–2015–125]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade of Shares of RiverFront Dynamic Unconstrained Income ETF and RiverFront Dynamic Core Income ETF Under NYSE Arca Equities Rule 8.600

February 19, 2016.

On December 15, 2015, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600: RiverFront Dynamic Unconstrained Income ETF and RiverFront Dynamic Core Income ETF. The Commission published notice of the proposed rule change in the **Federal Register** on January 6, 2016.[3] On January 19, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change, and on January 29, 2016, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates April 5, 2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2015–125), as modified by Amendment Nos. 1 and 2.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03945 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[3] *See* Securities Exchange Act Release No. 34–76798 (December 30, 2015), 81 FR 526 (January 6, 2016) (NYSEArca–2015–125).

[4] Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nysearca-2015-125/nysearca2015125-1.pdf.* Amendment No. 2 replaced and superseded the original filing, as modified by Amendment No. 1, in its entirety. Amendment No. 2 is available at *https://www.sec.gov/comments/sr-nysearca-2015-125/nysearca2015125-2.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77194; File No. SR–C2–2016–002]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 8.2

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2016, C2 Options Exchange, Incorporated (''C2'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend C2 Rule 8.2 relating to the Market-Maker registration cost for all option classes. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

* * * * *

**C2 Options Exchange, Incorporated Rules**

* * * * *

**Rule 8.2. Continuing Market-Maker Registration**

(a)–(c) No change.

(d) Market-Maker Option Class Registration. Absent an exemption by the Exchange, an option class registration of a Market-Maker confers the right to quote in that product. A Market-Maker may change its registered classes upon advance notification to the Exchange in a form and manner prescribed by the Exchange.

Each Trading Permit held by a Market-Maker has a registration credit of 1.0. A Market-Maker may select for each Trading Permit the Market-Maker holds any combination of option classes, whose aggregate registration cost does not exceed 1.0. Option class ''registration costs'' are set forth below:

| Option class | Registration cost |
|---|---|
| All options ..... | [.001].*0001* |

(e) No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule change is to amend C2 Rule 8.2 relating to the Market-Maker registration cost for all option classes. All option classes on C2 currently have a registration cost of .001. C2 proposes to reduce the registration cost to .0001, effective February 22, 2016, which would apply to all existing classes that currently trade on C2 and to all classes listed in the future.

In support of this filing, the Exchange states it intends to add an additional 2,000 option classes beginning the week of February 22, 2016. By reducing the registration cost for existing classes, Market-Makers could utilize the excess registration capacity of their current trading permits to quote in these additional option classes when they begin trading without having to obtain any additional trading permits, which promotes competition and efficiency.

The Exchange will announce its plan to reduce the registration cost for all option classes via Regulatory Circular at least one business day before February 22, 2016, which the Exchange believes provides Market-Makers with sufficient notice.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[4] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that reducing the registration cost for all option classes will foster competition and efficiency by enabling Market-Makers to use the excess registration capacity to quote in additional option classes. The Exchange believes this may result in more liquidity and competitive pricing, which ultimately benefits investors. Additionally, the proposed rule change does not result in unfair discrimination, as the reduced registration cost will apply to all Market-Makers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will apply to all Market-Makers (it is applicable only to Market-Makers, since only Market-Makers can register to quote in classes). C2 does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change only applies to the C2 Market-Maker registration process. C2 believes that the proposed rule change will enhance competition among market participants and benefit investors and the marketplace because Market-Makers will be able to use the excess registration capacity to quote in additional option classes and increase overall liquidity on the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has stated that it intends to add an additional 2,000 option classes on February 22, 2016. The Exchange has argued that waiving the operative delay would allow it to reduce the registration cost for all option classes on that date, which would allow Market-Makers to utilize their excess registration capacity to quote and provide liquidity in these additional option classes on their first trading day without having to obtain additional trading permits. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would provide Market-Makers with the ability to quote and provide liquidity in the new option classes that C2 seeks to list without necessarily requiring Market Makers to purchase an additional trading permit to do so. Market Makers could thus be incentivized to begin making markets in the new classes without delay, which could enhance liquidity in these new classes to the potential benefit of investors. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2016–002 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2016–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] *Id.*

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2016–002, and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03959 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77183; File No. SR–NYSEArca–2016–28]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of RiverFront Dynamic US Dividend Advantage ETF and RiverFront Dynamic US Flex-Cap ETF Under NYSE Arca Equities Rule 8.600

February 19, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 5, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): RiverFront Dynamic US Dividend Advantage ETF and RiverFront Dynamic US Flex-Cap ETF. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares: [5] RiverFront Dynamic US Dividend Advantage ETF and RiverFront Dynamic US Flex-Cap ETF, each referred to as a ''Fund'' and collectively as the ''Funds.'' The Funds are each a series of ALPS ETF Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] The Funds will be managed by ALPS Advisors, Inc. (''ALPS Advisors'' or the ''Adviser''). RiverFront Investment Group, LLC (''RiverFront'') is the investment sub-adviser for the Funds (the ''Sub-Adviser'').

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition,

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On December 4, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the 1940 Act relating to the Funds (File Nos. 333–148826 and 811–22175) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust and the Adviser (as defined below) under the 1940 Act. *See* Investment Company Act Release No. 30553 (June 11, 2013) (File No. 812–13884) (''Exemptive Order''). The Funds will be offered in reliance upon the Exemptive Order issued to the Trust and the Adviser.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. The Exchange represents that the Adviser and Sub-Adviser, and their respective related personnel, are subject to Investment Advisers Act Rule 204A–1. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Each of ALPS Advisors and RiverFront is not registered as a broker-dealer but is affiliated with a broker-dealer. Each of ALPS Advisors and RiverFront has implemented and will maintain a fire wall with respect to its affiliated broker-dealer(s) regarding access to information concerning the composition and/or changes to a Fund portfolio. In the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

RiverFront Dynamic US Dividend Advantage ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund will be to seek to provide capital appreciation and dividend income. Under normal market conditions,[8] the Fund will seek to achieve its investment objective by investing at least at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in securities of U.S. issuers,[9] with at least 65% of its assets in a portfolio of equity securities of publicly traded U.S. companies with the potential for dividend growth. The equity securities the Fund may invest in as part of its principal investments are common stocks and common or preferred shares of real estate investment trusts (''REITs'').[10]

In selecting the Fund's portfolio securities, the Sub-Adviser assembles a portfolio of eligible securities based on several core attributes such as value, quality and momentum. The Sub-Adviser will consider multiple proprietary factors within each core attribute, such as the price-to-book value of a security when determining value, a company's cash as a percentage of the company's market capitalization when determining quality and a security's three month relative price change when determining momentum. Additionally, within a given sector, security selection will emphasize companies offering a meaningful dividend yield premium over alternative investments within that sector. This dividend yield emphasis is subject to quality screens intended to limit exposure to companies whose financial characteristics suggest the potential for dividend cuts. The Sub-Adviser then assigns each qualifying security a score based on its core attributes, including its dividend growth score, and selects the individual securities with the highest scores for investment. In doing so, the Sub-Adviser will utilize its proprietary optimization process to maximize the percentage of high-scoring securities included in the portfolio. The Sub-Adviser will also consider the market capitalization of the companies in which the Fund may invest, the potential for dividend income, and the trading volume of a company's shares in the secondary market.

The Fund may invest in small, mid and large capitalization companies. The Fund may also invest in other exchange-traded funds (''ETFs'') [11] and/or exchange-traded closed-end funds (''CEFs'') which invest in equity securities.

RiverFront Dynamic US Flex-Cap ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund will be to seek to provide capital appreciation. Under normal market conditions,[12] the Fund will seek to achieve its investment objective by investing at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in securities of U.S. issuers,[13] with at least 65% of its assets in a portfolio of equity securities of publicly traded U.S. companies. The equity securities the Fund may invest in as part of its principal investments are common stocks and common or preferred shares of REITs.

In selecting the Fund's portfolio securities, the Sub-Adviser assembles a portfolio of eligible securities based on several core attributes such as value, quality and momentum. The Sub-Adviser will consider multiple proprietary factors within each core attribute, such as the price-to-book value of a security when determining value, a company's cash as a percentage of the company's market capitalization when determining quality and a security's three month relative price change when determining momentum. The Sub-Adviser then assigns each qualifying security a score based on its core attributes and selects the individual securities with the highest scores for investment. In doing so, the Sub-Adviser utilizes its proprietary optimization process to maximize the percentage of high-scoring securities included in the portfolio. The Sub-Adviser will also consider the market capitalization of the companies in which the Fund may invest, and the trading volume of a company's shares in the secondary market.

The Fund may invest in small, mid and large capitalization companies. The Fund may also invest in other ETFs [14] and/or CEFs which invest in equity securities.

Non-Principal Investments

While each Fund will, under normal market conditions, principally invest its assets in the securities and financial instruments as described above, each Fund may invest its remaining assets in the securities and financial instruments described below.

A Fund may invest in the following other types of equity securities: Non-

[8] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which a Fund's investments are made for temporary defensive purposes; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] The Fund considers a ''U.S. issuer'' to be one (i) domiciled or with a principal place of business or primary securities trading market in the United States, or (ii) that derives a substantial portion of its total revenues or profits from the United States.

[10] REITs are financial vehicles that pool investors' capital to purchase or finance real estate. REITs are generally classified as equity REITs, mortgage REITs or a combination of equity and mortgage REITs. Equity REITs invest the majority of their assets directly in real property and derive income primarily from the collection of rents. Equity REITs can also realize capital gains by selling properties that have appreciated in value. Mortgage REITs invest the majority of their assets in real estate mortgages and derive income from the collection of interest payments. REITs are not taxed on income distributed to shareholders provided they comply with the applicable tax requirements.

[11] For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100; and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Funds will not invest in leveraged or leveraged inverse ETFs.

[12] *See* note 7, *supra.*

[13] *See* note 8, *supra.*

[14] *See* note 10, *supra.*

REIT preferred stock, convertible securities,[15] master limited partnerships (''MLPs'') [16] and business development companies (''BDCs'').[17]

According to the Registration Statement, a Fund may invest in equity securities of non-U.S. companies, including issuers in emerging market countries.[18]

According to the Registration Statement, a Fund may also invest in the following short-term instruments on an ongoing basis to provide liquidity or for other reasons: Money market instruments, cash and cash equivalents. Cash equivalents include the following: (i) Short-term obligations issued by the U.S. Government; (ii) negotiable certificates of deposit (''CDs''),[19] fixed time deposits [20] and bankers' acceptances of U.S. and foreign banks and similar institutions; [21] (iii) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's or, if unrated, of comparable quality as determined by the Adviser or Sub-Adviser; [22] (iv) repurchase agreements; [23] and (v) money market mutual funds.

In addition, according to the Registration Statement, a Fund may use derivative instruments. Specifically, a Fund may use options, futures, swaps and forwards, for hedging or risk management purposes or as part of its investment practices.[24]

According to the Registration Statement, a Fund may enter into the following derivatives: Futures on securities, indices, and currencies and options on such futures; exchange-traded and OTC options on securities, indices, and currencies; exchange-traded and OTC interest rate swaps, cross-currency swaps, total return swaps, inflation swaps and credit default swaps; and options on such swaps (''swaptions'').[25] The swaps in which a Fund will invest may be cleared swaps or non-cleared. A Fund may enter into derivatives traded in the U.S. or in non-U.S. countries. A Fund will collateralize its obligations with liquid assets consistent with the 1940 Act and interpretations thereunder.

According to the Registration Statement, a Fund may invest in forward currency contracts.[26] Currency forward contracts may be used to increase or reduce exposure to currency price movements. At the discretion of the Adviser or Sub-Adviser, the Funds may enter into forward currency exchange contracts for hedging purposes to help reduce the risks and volatility caused by changes in foreign currency exchange rates.

A Fund may gain exposure to foreign securities by purchasing U.S. exchange-listed and traded American Depositary Receipts (''ADRs''), exchange-traded European Depositary Receipts (''EDRs'') and Global Depositary Receipts (''GDRs'', together with ADRs and EDRs, ''Depositary Receipts'').[27]

According to the Registration Statement, the Funds may invest in Rule 144A restricted securities.[28]

Investment Restrictions

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities that are offered pursuant to Rule 144A under the Securities Act deemed illiquid by the Adviser or Sub-Adviser.[29] Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of

[15] Convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted or exchanged (by the holder or by the issuer) into shares of the underlying common stock (or cash or securities of equivalent value) at a stated exchange ratio.

[16] MLPs are limited partnerships in which the ownership units are publicly traded. Most MLPs operate in oil and gas related businesses including energy processing and distribution. The remaining MLPs operate in a variety of businesses including coal, timber, other minerals, real estate, and some miscellaneous businesses.

[17] A BDC is an exchange-traded closed-end investment company that more closely resembles an operating company than a typical investment company.

[18] According to the Registration Statement, the Funds consider an ''emerging market country'' to be any country whose issuers are included in the Morgan Stanley Capital International Emerging Markets Index and/or those countries considered to be developing by the World Bank, the International Finance Corporation or the United Nations. The Funds consider an ''emerging market issuer'' to be one (i) domiciled or with a principal place of business or primary securities trading market in an emerging market country, or (ii) that derives a substantial portion of its total revenues or profits from emerging market countries.

[19] CDs are interest-bearing instruments with a specific maturity issued by banks and savings and loan institutions in exchange for the deposit of funds.

[20] Time deposits are non-negotiable receipts issued by a bank in exchange for the deposit of funds.

[21] Bankers' acceptances are bills of exchange or time drafts drawn on and accepted by a commercial bank. Corporations use bankers' acceptances to finance the shipment and storage of goods and to furnish dollar exchange. Maturities are generally six months or less.

[22] Commercial paper consists of short-term, promissory notes issued by banks, corporations and other entities to finance short-term credit needs. These securities generally are discounted but sometimes may be interest bearing. Commercial paper consists of short-term promissory notes issued primarily by corporations. Commercial paper may be traded in the secondary market after its issuance. As of September 30, 2015, the amount of commercial paper outstanding (seasonally adjusted) was approximately $1024.1 billion. *See http://www.federalreserve.gov/releases/CP/default.htm.*

[23] A repurchase agreement is an agreement under which a Fund acquires a financial instrument (*e.g.,* a security issued by the U.S. government or an agency thereof, a banker's acceptance or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day). A repurchase agreement may be considered a loan collateralized by securities. The resale price reflects an agreed upon interest rate effective for the period the instrument is held by a Fund and is unrelated to the interest rate on the underlying instrument. These agreements may be made with respect to any of the portfolio securities in which the Funds are authorized to invest.

[24] Derivative instruments are contracts whose value depends on, or is derived from, the value of an underlying asset, reference rate or index. These underlying assets, reference rates or indices may be any one of the following: Stocks, interest rates, currency exchange rates and stock indices.

The Funds will only enter into transactions in derivative instruments with counterparties that the Adviser or Sub-Adviser reasonably believes are capable of performing under the contract and will post collateral as required by the counterparty. The Funds will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser or Sub-Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser or Sub-Adviser will review approved counterparties using various factors, which may include the counterparty's reputation, the Adviser's or Sub-Adviser's past experience with the counterparty and the price/market actions of debt of the counterparty.

[25] Options on swaps are traded OTC. In the event that there are exchange-traded options on swaps, a Fund may invest in these instruments.

[26] A forward currency contract is an obligation to buy or sell a specified quantity of currency at a specified date in the future at a specified price which may be any fixed number of days from the date of the contract agreed upon by the parties, at a price set at the time of the contract.

[27] Depositary Receipts are receipts, typically issued by a bank or trust issuer, which evidence ownership of underlying securities issued by a non-U.S. issuer. Generally, ADRs, in registered form, are denominated in U.S. dollars and are designed for use in the U.S. securities markets. GDRs, in bearer form, are issued and designed for use outside the United States and EDRs, in bearer form, may be denominated in other currencies and are designed for use in European securities markets. ADRs are receipts typically issued by a U.S. bank or trust company evidencing ownership of the underlying securities. EDRs are European receipts evidencing a similar arrangement. GDRs are receipts typically issued by non-United States banks and trust companies that evidence ownership of either foreign or domestic securities. Non-exchange-listed ADRs will not exceed 10% of a Fund's net assets.

[28] Restricted securities are securities that are not registered under the Securities Act, but which can be offered and sold to ''qualified institutional buyers'' under Rule 144A under the Securities Act.

[29] Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A. According to the Registration Statement, Rule 144A permits certain qualified institutional buyers, such as a Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act.

liquidity is being maintained,[30] and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[31]

The Funds intend to qualify for and to elect to be treated as separate regulated investment companies (''RICs'') under Subchapter M of the Internal Revenue Code.[32]

A Fund's investments will be consistent with a Fund's investment objective and will not be used to enhance leverage. That is, while a Fund will be permitted to borrow as permitted under the 1940 Act, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of a Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[33]

Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or party to a comprehensive surveillance sharing agreement (''CSSA'') with the Exchange.[34] Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') per Share of each Fund will be computed by dividing the value of the net assets of each Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management fees, will be accrued daily and taken into account for purposes of determining NAV.

The NAV per Share will be calculated by each Fund's custodian and determined as of the close of the regular trading session on the New York Stock Exchange (''NYSE'') (ordinarily 4:00 p.m., Eastern Time) on each day that such exchange is open. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more major banks or dealers that makes a two-way market in such currencies (or a data service provider based on quotations received from such banks or dealers). Information that becomes known to a Fund or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day. Each Fund reserves the right to change the time its NAV is calculated if the Fund closes earlier, or as permitted by the Commission.

According to the Registration Statement, the values of each Fund's portfolio securities holdings will be based on market prices. Price information for exchange-traded equity securities, including equity securities of domestic and foreign companies, such as common stock, ETFs and Depositary Receipts (excluding ADRs traded OTC), and preferred securities, will be taken from the exchange where the security or asset is primarily traded. Each Fund's securities holdings that are traded on a national securities exchange will be valued based on their last sale price or, in the case of the NASDAQ, at the NASDAQ official closing price. Securities regularly traded in an over-the-counter market will be valued at the latest quoted sale price in such market. Other portfolio securities and assets for which market quotations are not readily available will be valued based on fair value as determined in good faith in accordance with procedures adopted by the Board, as discussed below.

Price information for money market instruments will be available from major market data vendors.

In the absence of a last reported sales price for an exchange-traded security or asset, if no sales were reported, if a market quotation for a security or asset is not readily available or the Adviser or Sub-Adviser believes it does not otherwise accurately reflect the market value of the security or asset at the time a Fund calculates its NAV, the security or asset will be valued based on fair value as determined in good faith by the Adviser or Sub-Adviser in accordance with the Trust's valuation policies and procedures approved by the Board and in accordance with the 1940 Act. A Fund may also use fair value pricing in a variety of circumstances, including but not limited to, trading in a security or asset has been suspended or halted. Fair value pricing involves subjective judgments and it is possible that a fair value determination for a security or asset may be materially different than the value that could be realized upon the sale of the security or asset.

Values may be based on quotes obtained from a quotation reporting system, established market makers or by an outside independent pricing service. Prices obtained by an outside independent pricing service will use information provided by market makers or estimates of market values obtained from data related to investments or securities with similar characteristics and may use a computerized grid matrix of securities and its evaluations in determining what it believes is the fair value of the portfolio securities.

Derivatives for which market quotes are readily available will be valued at market value. Local closing prices will be used for all instrument valuation purposes. Futures will be valued at the last reported sale or settlement price on the day of valuation. Swaps traded on exchanges such as the Chicago Mercantile Exchange (''CME'') or the Intercontinental Exchange (''ICE–US'') will use the applicable exchange closing price where available. Foreign currency-denominated derivatives will generally be valued as of the respective local region's market close.

With respect to specific derivatives:

[30] In reaching liquidity decisions with respect to Rule 144A securities, the Adviser or Sub-Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers willing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[31] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[32] 26 U.S.C. 851.

[33] A Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following a Fund's first full calendar year of performance.

[34] *See* notes 48–49, *infra.*

• Currency spot and forward rates from major market data vendors [35] will generally be determined as of the NYSE Close.

• Futures on securities, indices, and currencies will generally be valued at the settlement price of the relevant exchange.

• A total return swap on an index will be valued at the publicly available index price. The index price, in turn, is determined by the applicable index calculation agent, which generally values the securities underlying the index at the last reported sale price.

• Exchange-traded non-equity options (for example, options on bonds, Eurodollar options and U.S. Treasury options), index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available.

• OTC foreign currency (FX) options will generally be valued by pricing vendors.

• All other swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, and CDX/CDS will generally be valued by pricing services.

Intra-Day Indicative Value

The approximate value of a Fund's investments on a per-Share basis, the Indicative Intra-Day Value (''IIV''), will be disseminated every 15 seconds during the Exchange Core Trading Session. The IIV should not be viewed as a ''realtime'' update of NAV because the IIV will be calculated by an independent third party and may not be calculated in the exact same manner as NAV, which will be computed daily. For the purposes of determining the IIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

• Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.

• Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.

• Interest rate swaps and cross-currency swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.

• Index credit default swaps (such as, CDX/CDS) may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.

• Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.

• Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.

• OTC options on securities, indices, and currencies and swaptions may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange-traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

Disclosed Portfolio

The Funds' disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Adviser or Sub-Adviser will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. The Web site information will be publicly available at no charge.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of a Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when a Fund processes purchases or redemptions of creation units in-kind.

Creation and Redemption of Shares

Shares may be created and redeemed in ''Creation Unit'' size aggregations of at least 50,000 Shares. The size of a Creation Unit is subject to change. In order to purchase Creation Units of a Fund, an investor must generally deposit a designated portfolio of securities (the ''Deposit Securities'') (and/or an amount in cash in lieu of some or all of the Deposit Securities) and generally make a cash payment referred to as the ''Cash Component.'' The list of the names and the amounts of the Deposit Securities is made available by the Funds' custodian through the facilities of the NSCC immediately prior to the opening of business each day of the NYSE Arca. The Cash Component represents the difference between the NAV of a Creation Unit and the market value of the Deposit Securities. Creations and redemptions of Shares may only be made through an Authorized Participant, as described in the Registration Statement.

Shares may be redeemed only in Creation Units at their NAV and only on a day the NYSE Arca is open for business. The Funds' custodian will make available immediately prior to the opening of business each day of the NYSE Arca, through the facilities of the NSCC, the list of the names and the amounts of each Fund's portfolio securities that will be applicable that day to redemption requests in proper form (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities, which are applicable to purchases of Creation Units.

Unless cash redemptions or partial cash redemptions are available or specified for a Fund, the redemption proceeds will consist of the Fund Securities, plus cash in an amount equal to the difference between the NAV of Shares being redeemed as next determined after receipt by the transfer agent of a redemption request in proper

[35] Major market data vendors may include, but are not limited to: Thomson Reuters, JPMorgan Chase PricingDirect Inc., Markit Group Limited, Bloomberg, Interactive Data Corporation or other major data vendors.

form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less the applicable redemption fee and, if applicable, any transfer taxes.[36]

Availability of Information

The Funds' Web site (*www.alpsetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[37] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for a Fund's calculation of NAV at the end of the business day.[38]

In addition, a basket composition file, which will include the security names and share quantities required to be delivered in exchange for each Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the applicable Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Funds' Shareholder Reports, and Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares, U.S. exchange-traded common stocks, as well as depositary receipts (excluding ADRs traded OTC and GDRs), REITs, BDCs, preferred securities, CEFs and ETFs (collectively, ''Exchange Traded Equities'') will be available via the Consolidated Tape Association (''CTA'') high-speed line and from the securities exchange on which they are listed. Price information for OTC REITs and OTC common stocks will be available from major market data vendors.

Quotation and last sale information for GDRs will be available from the securities exchange on which they are listed. Information relating to futures and options on futures also will be available from the exchange on which such instruments are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority.

Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC and non-exchange-traded derivatives, including forwards, swaps and certain options. Pricing information regarding each asset class in which the Funds will invest is generally available through nationally recognized data services providers through subscription agreements.

In addition, the IIV, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[39] The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[40] Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca

[36] Each Fund may, in certain circumstances, allow cash creations or partial cash creations but not redemptions (or vice versa) if the Adviser or Sub-Adviser believes it will allow a Fund to adjust its portfolio in a manner which is more efficient for shareholders. Each Fund may allow creations or redemptions to be conducted partially in cash only where certain instruments are (i) in the case of the purchase of a Creation Unit, not available in sufficient quantity for delivery; (ii) not eligible for transfer through either the NSCC or DTC; or (iii) not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances. To the extent each Fund allows creations or redemptions to be conducted wholly or partially in cash, such transactions will be effected in the same manner for all Authorized Participants on a given day except where: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available to a particular Authorized Participant in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind. According to the Registration Statement, an additional variable charge for cash or partial cash creations, and cash or partial cash redemptions, may also be imposed to compensate a Fund for the costs associated with buying the applicable securities.

[37] The Bid/Ask Price of each Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by a Fund and its service providers.

[38] Under accounting procedures to be followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[39] Currently, the Exchange understands that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

[40] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 [41] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio of each Fund will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange or the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[42]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, Exchange Traded Equities, and certain exchange-traded options and futures with other markets and other entities that are members of the ISG,[43] and the Exchange, or FINRA on behalf of the Exchange, may obtain trading information regarding trading in the Shares, Exchange Traded Equities, and certain exchange-traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Exchange Traded Equities, and certain exchange-traded options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.[44]

Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or party to a CSSA with the Exchange. Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [45] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that each of the Adviser and the Sub-Adviser each is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate(s) regarding access to information concerning the composition and/or changes to the portfolio. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying Exchange Traded Equities, and certain exchange-traded options and futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, underlying Exchange Traded Equities, and certain exchange-traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares,

[41] 17 CFR 240.10A–3.

[42] FINRA conducts cross market surveillances of trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[43] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

[44] Certain of the exchange-traded equity instruments in which a Fund may invest may trade in markets that are not members of ISG.

[45] 15 U.S.C. 78f(b)(5).

underlying Exchange Traded Equities, and certain exchange-traded options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.

Each Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Funds will disclose on a Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. Price information for the equity securities held by a Fund will be available through major market data vendors and on the applicable securities exchanges on which such securities are listed and traded. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for a Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Funds will include a form of the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or party to a CSSA with the Exchange. Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that primarily hold equity securities and will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–28 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–28 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03944 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77182; File No. SR–BATS–2016–08]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rules 8.15, Imposition of Fines for Minor Violation(s) of Rules, and 25.3, Penalty for Minor Rule Violations, To Amend the Minor Rule Violation Plan

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2016, BATS Exchange, Inc. (''BZX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rules 8.15 and 25.3 to amend the Exchange's Minor Rule Violation Plan. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[3]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 8.15 applicable to the Exchange's equity platform (''BZX Equities'') to remove the $2,500 penalty limitation contained in Rule 8.15(a) in order to modify the permissible penalties for minor rule violations with respect to Rule 25.3 applicable to the BZX options platform (''BZX Options'') and to allow the Exchange the discretion to impose penalties in excess of $2,500 under both the BZX Equities and BZX Options Minor Rule Violation Plans. The proposal further provides that only fines that do not exceed $2,500 will not be reported. Fines that exceed $2,500 will continue to be publicly reported by the Exchange[4] and reported as final in compliance with SEC Rule 19d–1(c).[5]

Further, the Exchange proposes to amend the BZX Options Minor Rule Violation Plan penalty schedule contained in Rule 25.3(d)—for violations of Rule 22.6(d) regarding Market Makers maintaining continuous bids and offers—to aggregate violations of Rule 22.6(d) that occur in a single month of a rolling 24-month period and sanction such aggregated violations as a single offense. The proposed amended penalty schedule is substantially similar to International Securities Exchange (''ISE'') Rule 1614(d)(11) Minor Rule Violation Plan penalties for continuous options quotation violations.

*Removal of Penalty Limitation*

Rule 25.3 states that the Exchange may proceed under the Minor Rule Violation Plan pursuant to the procedures set forth in Rule 8.15 applicable to BZX Equities. Currently, Rule 8.15(a) states that the Exchange may impose a fine ''not to exceed $2,500'' for a minor rule violation. Because existing Rule 25.3 recommends the imposition of penalties in excess of $2,500 in certain circumstances, the Exchange believes the penalty limitation in 8.15(a) is obsolete, inappropriate, and unnecessarily confusing. Moreover, abiding by the terms of the penalty limitation contained in 8.15(a) for purposes of the BZX Options Minor Rule Violation Plan deprives Rule 25.3 of much of its meaning and effectiveness. Further, it is the Exchange's position that the penalty limitation currently contained in Rule 8.15(a) is also unnecessary because the Exchange must exercise its discretion to opt to proceed under the Minor Rule Violation Plan rather than under its default process, the formal disciplinary process. As a practical matter, if an individual or entity exceeds the prescribed Minor Rule Violation Plan fine threshold of $2,500, it will oftentimes be appropriate for the Exchange to decline to exercise its discretion to proceed under the Minor Rule Violation Plan and to instead proceed under the formal disciplinary process. The Exchange, however, believes it should have the discretion to elect to proceed under the Minor Rule Violation Plan for a minor rule violation that would otherwise cumulatively exceed $2,500. Accordingly, the Exchange proposes to eliminate the penalty limitation in Rule 8.15(a).

The Exchange recognizes, however, a fine exceeding $2,500 must be reported as final in accordance with SEC Rule 19d–1(c),[6] regardless of whether or not it is imposed under the Minor Rule Violation Plan. The Exchange provides, therefore, that only fines that do not exceed $2,500 will not be reported. Fines that exceed $2,500 will continue to be reported as final in compliance with SEC Rule 19d–1(c).[7]

[46] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)(iii).

[4] As set forth in Interpretation and Policy .01 to Rule 8.11, except as provided in Rule 8.15(a), the staff shall cause details regarding all formal disciplinary actions where a final decision has been issued to be published on a Web site maintained by the Exchange.

[5] 17 CFR 240.19d–1(c).

[6] 17 CFR 240.19d–1(c).

[7] *Id.*

*Amendment to MRVP for Continuous Quoting Violations*

The Exchange proposes to amend Rule 25.3(d) to impose fines for violations of Rule 22.6(d)—regarding a Market Maker's failure to maintain continuous bids and offers—under the Minor Rule Violation Plan by aggregating the violations that occur in a month and sanctioning the violations as a single offense. The Exchange proposes to continue its current recommendation of issuing a letter of caution for the first offense in a rolling 24-month period. For the second violation in the period, the Exchange proposes to issue a $1,000 penalty; for the third a $2,500 penalty; for the fourth a $5,000 penalty. Finally, if there occurs a fifth violation within a rolling 24-month period, the Exchange believes that such a violation is inappropriate for disposition under the Minor Rule Violation Plan, and the proposed amendment to Rule 25.3(d) directs that the violation be enforced in a formal disciplinary action. The Exchange believes it is appropriate to recommend higher penalties than recommended in current Rule 25.3(d) because the Exchange is aggregating violations that occur in a month and sanctioning the violations as a single offense.

As with other violations covered under the Exchange's Minor Rule Violation Plan, the Exchange may elect to forgo the Minor Rule Violation Plan and enforce any egregious violations of its rules under the Exchange's formal disciplinary process.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] Specifically, the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires exchange rules to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[10] which requires that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act such that it can enforce compliance with the Act by persons registered with the Exchange. The Exchange also believes the proposed rule change furthers the objectives of Section 6(b)(6)[11] of the Act, which requires that the rules of an exchange provide that its members and persons associated with its members be appropriately disciplined for violation of the provisions of the Act, the rules and regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. Finally, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,[12] in particular, in that it provides fair procedures for the disciplining of members and persons associated with members.

The Exchange believes the proposed rule change for Rule 8.15(a) fulfills the requirements set forth above because it modifies the procedures for the Exchange to discipline minor BZX Options rule violations by removing the $2,500 penalty limitation from the BZX Equities and BZX Options Minor Rule Violation Plan. The proposed rule change further provides that the Exchange will not report fines that do not exceed $2,500 under the Minor Rule Violation Plan except as required under SEC Rule 19d–1(c).[13]

The Exchange believes the proposed rule change for Rule 25.3(d) fulfills the requirements set forth above because it permits the Exchange to levy progressively larger fines against a repeat-offender and prescribes that after five violations in a rolling 24-month period, the conduct is outside the purview of the Minor Rule Violation Plan, and formal disciplinary action is appropriate. Further, the Exchange believes the proposed rule change for Rule 25.3(d) fulfills the requirements set forth above because it clearly defines when and how a Market Maker may be disciplined under the Minor Rule Violation Plan. The Exchange also notes that the proposed rule change for Rule 25.3(d) is based on and substantially similar to ISE Rule 1614(d)(11).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[14] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change merely amends the procedures the Exchange intends to follow with regard to minor BZX Options Rule 22.6(d) violations and removes an obsolete and unnecessary penalty limitation. Thus, the Exchange does not believe the proposed rule change will have any effect on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and paragraph (f)(6) of Rule 19b-4 thereunder,[16] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78f(b)(6).

[12] 15 U.S.C. 78f(b)(7).

[13] 17 CFR 240.19d–1(c).

[14] 15 U.S.C. 78f(b)(8).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4.

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2016–08 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2016–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2016–08, and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03943 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77180; File No. SR–FINRA–2016–006]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 7410 (Definitions) and 7440 (Recording of Order Information)

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rules 7410 and 7440 to require FINRA members to identify on their Order Audit Trail System (''OATS'') reports the identity of certain broker-dealers that are not FINRA members when the member has received an order from such a broker-dealer.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES**

* * * * *

**7400. ORDER AUDIT TRAIL SYSTEM**

* * * * *

**7410. Definitions**

(a) through (o) No Change.

(p) *''SRO-assigned identifier'' shall mean a unique identifier assigned to a broker or dealer by a national securities exchange or national securities association for use by such broker or dealer when accessing the exchange or a facility of the association.*

* * * * *

**7440. Recording of Order Information**

(a) No Change.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

(1) through (17) No Change.

(18) the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted; [and]

(19) *when the Reporting Member receives an order from a U.S.-registered broker-dealer that is not a member, or from a non-U.S.-registered broker-dealer that is not a member but has received an SRO-assigned identifier for purposes of accessing a FINRA facility pursuant to Rule 7220A or 7320, identification of such broker-dealer by providing an SRO-assigned identifier assigned to the broker-dealer or the number assigned to the broker-dealer in the Central Registration Depository system; and*

*(20)* if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.

(c) through (d) No Change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA is proposing an amendment to Rule 7440 of the OATS rules to require FINRA members subject to the OATS rules (''Reporting Members'') to specifically identify two types of non-FINRA-member broker-dealers (''Non-Member Firms'') as part of the OATS report when they receive orders from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

these firms.[3] Under the proposed rule change, Reporting Members receiving an order from either a U.S.-registered broker-dealer that is not a FINRA member or a broker-dealer that is not registered in the U.S. but has received an SRO-assigned identifier [4] in order to access certain FINRA trade reporting facilities (each a ''Reportable Non-Member'') must identify the broker-dealer when reporting receipt of the order to OATS.[5] Pursuant to the proposed rule change, and as described below, Reporting Members receiving an order from or routing an order to a Non-Member Firm would therefore report one of the following: The Non-Member Firm's Central Registration Depository (''CRD®'') number; an SRO-assigned identifier assigned to the Non-Member Firm; or, for a Non-Member Firm that does not have a CRD number or SRO-assigned identifier (*e.g.,* a foreign broker-dealer), a value indicating that the Non-Member Firm has no CRD number or SRO-assigned identifier. Reporting this information will allow FINRA to obtain the identity of Reportable Non-Members directly from the OATS report.

A Reporting Member receiving an order from a Reportable Non-Member would include on its OATS report either the SRO-assigned identifier (*e.g.,* a market participant identifier (''MPID'') assigned by a national securities exchange) or the Reportable Non-Member's CRD number.[6] The proposed rule change does not mandate which identifier Reporting Members must use; thus, Reporting Members may use either an existing SRO-assigned identifier or a CRD number on their OATS reports to identify the Reportable Non-Member. If a Reportable Non-Member does not have an SRO-assigned identifier that is available to FINRA, the Reporting Member receiving the order would be required to report the CRD number of the Reportable Non-Member.[7] Similarly, for a non-U.S.-registered broker-dealer that has an SRO-assigned identifier in order to access a FINRA trade reporting facility pursuant to Rule 7220A or 7320 but does not have a CRD number, the Reporting Member receiving the order would be required to report the SRO-assigned identifier for the broker-dealer.

FINRA is filing the proposed rule change to enhance its market surveillance efforts, both under its own SRO license and pursuant to its Regulatory Service Agreements (''RSAs'') with multiple national securities exchanges, by being able to identify more Non-Member Firm trading activity across exchanges and in the over-the-counter market through trades that are reported to a FINRA trade reporting facility.[8] Through OATS, FINRA is currently able to identify in detail the order and trading activity of FINRA member broker-dealers across market centers. Using data provided by the exchanges as well as CRD numbers, FINRA is also able to identify in detail the trading activities of Non-Member Firms and aggregate these firms' activities across RSA client exchanges.[9] Although Reporting Members report orders they receive from, or route to, Non-Member Firms, these reports do not always contain the identity of the Non-Member Firm from whom the order was received, or to whom it was routed.[10] FINRA cannot, therefore, currently identify in detail Non-Member Firm activity in the over-the-counter market, or Non-Member Firm sponsored access activity, since Reporting Members are not required to report to OATS the identity of Non-Member Firms. Consequently, FINRA is not able to consistently identify Non-Member Firm activity and does not have a complete view of such activities across all exchanges and over-the-counter market centers. As the Commission recently noted when it proposed amendments to SEA Rule 15b9–1,[11] ''FINRA's ability to perform comprehensive market surveillance, especially for violations of Commission rules, as well as its ability to understand and reconstruct activity in the off-exchange market generally, is limited because [Non-Member Firms] are not consistently identified in trade reports to the TRFs or the ADF, and their order activity is not captured by OATS.'' [12]

In addition to amending Rule 7440 to require the identification of Reportable Non-Members from which an order is received, FINRA is also planning to update the *OATS Reporting Technical Specifications* to require that OATS reports specifically identify a Reportable Non-Member to which an order is routed. Rule 7440(c)(6)(I) requires that, for orders routed from a member to a non-FINRA-member, including both non-FINRA-member broker-dealers and national securities exchanges, the identity of the non-FINRA member to which the order was routed be reported. Although the *OATS Reporting Technical Specifications* currently require that OATS reports include a specific identifier for each national securities exchange to which an order is routed, only a generic identifier for Non-Member Firms is required.[13] Consequently, the identity of the specific Non-Member Firm to which an order is routed is not required under the current *OATS Reporting Technical Specifications.* To address this gap and to conform the reporting of orders received from and orders routed to Non-Member Firms, in addition to the proposed rule change, FINRA intends to update the *OATS Reporting Technical Specifications* to require that Reporting Members provide either an SRO-assigned identifier or CRD number

[3] FINRA Rule 7410(o) defines a Reporting Member as ''a member that receives or originates an order and has an obligation to report information under Rules 7440 and 7450.'' The rule also contains exceptions from the rule. *See* FINRA Rule 7410(o)(1) and (2).

[4] FINRA is proposing to define an ''SRO-assigned identifier'' in Rule 7410 as ''a unique identifier assigned to a broker or dealer by a national securities exchange or national securities association for use by such broker or dealer when accessing the exchange or a facility of the association.'' For purposes of the definition, the identifier is ''unique'' provided the identifier assigned by the exchange or association is used to identify only a single broker-dealer.

[5] Certain broker-dealers registered in Canada, but not in the U.S., have SRO-assigned identifiers so that they can access FINRA trade reporting facilities pursuant to FINRA Rule 7220A or 7320.

[6] To register as a broker-dealer and have a CRD number, firms are required to file a Form BD with CRD. *See* 17 CFR 240.15b1–1(b). Consequently, all U.S.-registered broker-dealers have a CRD number. Currently, all U.S.-registered broker-dealers also have at least one SRO-assigned identifier that is available to FINRA.

[7] Because non-U.S. broker-dealers generally do not have SRO-assigned identifiers or CRD numbers, the proposed rule change would not require specific identification of non-U.S. broker-dealers when those firms do not have SRO-assigned identifiers or CRD numbers. In these cases, FINRA intends to permit a value whereby the Reporting Member would indicate the order was received from a non-U.S. broker-dealer without a CRD number or SRO-assigned identifier.

[8] FINRA obtains exchange data pursuant to RSAs it has signed with certain client exchanges. Under the current RSAs with national securities exchanges, FINRA conducts comprehensive surveillance across more than 99% of the market for U.S. listed equities by share and trade volume.

[9] This is accomplished by using exchange-assigned identifiers that are mapped to the firm's CRD number. FINRA has access to all SRO-assigned equity identifiers with the exception of those assigned by the Chicago Stock Exchange. Under the proposed rule change, FINRA would thus be able to use any of these SRO-assigned identifiers or a CRD number to obtain the identity of the Non-Member Firm on OATS reports. A FINRA member that provides sponsored access to a Non-Member Firm has an OATS reporting obligation for each order sent to a national securities exchange pursuant to any such agreement. In this scenario, the FINRA member must report a New Order and a Route Report to the applicable exchange reflecting that the order was received from a Non-Member Firm. *See* OATS FAQ C77.

[10] Although some Reporting Members voluntarily provide the MPID of a Non-Member Firm if one exists, the OATS rules do not require that the identity of the Non-Member Firm be reported.

[11] 17 CFR 240.15b9–1.

[12] *See* Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036, 18043 (April 2, 2015).

[13] *See OATS Reporting Technical Specifications,* at 4–4, and A–4 to A–5 (October 12, 2015 ed.).

when routing an order to a Reportable Non-Member.[14]

The proposed rule change, along with the changes to the *OATS Reporting Technical Specifications,* will significantly improve FINRA's ability to support cross-market surveillance and monitor over-the-counter trading activity. Reporting Members receive a substantial amount of order flow from Non-Member Firms, particularly in connection with alternative trading system (''ATS'') activity, and this proposed rule change will enable FINRA to identify the activities of Reportable Non-Members, thereby increasing its cross-market surveillance capabilities.[15]

FINRA notes that although the data required by the proposed rule change may ultimately be captured as part of the Consolidated Audit Trail (''CAT''), the implementation of the CAT is likely several years away, as the national market system plan filed by the SROs still must be published by the Commission for public notice and comment, approved by the SEC, and, if approved, ultimately implemented pursuant to a multi-year timeline.[16] FINRA strongly believes that gaps in OATS data must be addressed in the near-term, after weighing the burdens to firms and the necessity of the change, to ensure an effective audit trail. FINRA believes the specific identification of Reportable Non-Members is critical to enhance FINRA's cross-market surveillance and monitoring of the over-the-counter market and believes these changes to the OATS requirements should not be delayed due to the potential future implementation of the CAT.[17]

In addition to the CAT, the proposed rule change could also be affected by any amendments to SEA Rule 15b9–1.[18] Section 15(b)(8) of the Act requires that a registered broker-dealer be a member of a national securities association unless the broker-dealer effects transactions in securities solely on a national securities exchange of which it is a member.[19] SEA Rule 15b9–1 provides an exemption to the membership requirement in Section 15(b)(8) if a broker-dealer (i) is a member of a national securities exchange, (ii) carries no customer accounts, and (iii) has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than $1,000.[20]

On March 25, 2015, the SEC proposed amendments to SEA Rule 15b9–1 that would significantly narrow the exemption from association membership by replacing the $1,000 gross income provision in the rule with a provision that exempts from association membership exchange member broker-dealers that operate on the floor of an exchange to the extent they effect transactions off-exchange solely for the purpose of hedging the risks of their floor-based activities.[21] If adopted, the amendments generally would require a proprietary trading firm (*i.e.,* a firm that carries no customer accounts and, instead, trades solely for its own account(s)) relying on the current exemption to become a FINRA member if the firm continues to engage in over-the-counter trading or trading on an exchange of which it is not a member.

If this, or a substantially similar, amendment to SEA Rule 15b9–1 were adopted by the SEC, it is likely that many firms that are not currently FINRA members would become FINRA members and, as a result, would be identified on OATS reports in addition to submitting OATS reports themselves. Even if amendments to SEA Rule 15b9–1 are adopted, there would likely still be some firms that do not become FINRA members, and the timeline for compliance with any potential amendments to SEA Rule 15b9–1, could be substantial. Consequently, FINRA believes that the proposed rule change is necessary regardless of the pending proposed amendments to SEA Rule 15b9–1 and would remain necessary even if amendments are subsequently adopted by the SEC.

Although this proposed rule change will require Reporting Members to submit an additional data field when submitting an OATS report for an order received from a Reportable Non-Member, FINRA does not believe that the proposed rule change will have a significant operational impact on Reporting Members or their reporting practices.[22] Because identifiers already have been assigned to Reportable Non-Members, are generally readily ascertainable by Reporting Members, and OATS will accept submission of any of these identifiers already in use, FINRA anticipates that the expense associated with reporting this additional data will be minimal. FINRA also notes that some Reporting Members already provide identifiers on their OATS reports for orders received from Non-Member Firms.[23] Finally, if a Reportable Non-Member is a member of multiple SROs or has multiple SRO-assigned identifiers, the Reporting Member could use any of those identifiers to fulfill its reporting obligation in addition to a CRD number. As noted below, FINRA also intends to provide a list of Reportable Non-Members' CRD numbers for Reporting Members to use to aid in implementing the proposed rule change.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule no later than 60 days following Commission approval. The effective date will be no later than 120 days following Commission approval.

[14] As noted above, in the case of a non-U.S. broker-dealer that does not have a CRD number or an SRO-assigned identifier, FINRA will provide an indicator for ''non-U.S. broker-dealer'' for use in the destination code field (for routes to a non-member broker-dealer) and as a member type code (for orders received from a non-member broker-dealer).

[15] For example, in the fourth quarter of 2014, over 33% of orders reported to OATS were reported as being received from a Non-Member Firm. Of particular note, over 45% of ATS orders were received from a Non-Member Firm. In addition, during that quarter approximately 13% of sponsored access orders were received from a Non-Member Firm.

[16] SEC Rule 613, which sets forth the requirements for the CAT, does not require all broker-dealers to report order information to the CAT until three years after the CAT plan is approved. *See* 17 CFR 242.613(a)(vi). The SROs charged with submitting the CAT plan filed an initial plan with the Commission on September 30, 2014, an amended and restated plan on February 27, 2015, and further amendments on December 23, 2015; however, the Commission has not yet published the CAT plan in the **Federal Register** for public comment. Pursuant to the plan submitted by the SROs, once the CAT is fully implemented, FINRA intends to sunset the OATS rules.

[17] FINRA notes that, under SEC Rule 613, all U.S.-registered broker-dealers are subject to the CAT reporting requirements. *See* 17 CFR 242.613(c)(2). Consequently, if the CAT plan submitted by the SROs is approved, firms will need to specifically identify each broker-dealer from which an order is received or to which an order is routed.

[18] 17 CFR 240.15b9–1.

[19] 15 U.S.C. 78*o*(b)(8). FINRA is currently the only registered national securities association.

[20] 17 CFR 240.15b9–1. The $1,000 gross income limitation does not apply to income derived from transactions for the dealer's own account with or through another registered broker or dealer. Thus, for example, income derived from over-the-counter trades through an alternative trading system does not count toward the $1,000 threshold.

[21] *See* Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036, 18045–46 (April 2, 2015).

[22] FINRA also does not anticipate that the change to the *OATS Reporting Technical Specifications* to require that Reporting Members report a unique identifier when routing an order to a Non-Member Firm will significantly impact Reporting Members' reporting practices, as only a relatively small amount of order flow is typically routed from members to Non-Member Firms. In the fourth quarter of 2014, only 1.16% of all routes reported to OATS were reported as being routed to a Non-Member Firm.

[23] In the fourth quarter of 2014, ATSs reported the SRO-assigned identifiers of seventeen Non-Member Firms that submitted approximately 12.45 billion orders to those ATSs.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[24] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will enable FINRA to better identify a Reportable Non-Member's trading activity across exchanges and in the over-the-counter market through trades that are reported to a FINRA facility, which will significantly enhance FINRA's cross-market surveillance efforts pursuant to its RSAs with multiple national securities exchanges and carry out its surveillance obligations for the over-the-counter market under its own SRO license. As noted above, FINRA members receive a substantial amount of order flow from Non-Member Firms, particularly in connection with ATS and sponsored access activity, and the proposed rule change will enable FINRA to identify the activities of Reportable Non-Members, thereby increasing its cross-market surveillance capabilities. Improved surveillance capabilities help detect and deter fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*Economic Impact Assessment*

1. Regulatory Need

As discussed above, under the current rules, Reporting Members report orders they receive from, or route to, Non-Member Firms but these reports do not always contain the identity of the Non-Member Firm. As a result, FINRA cannot consistently identify Non-Member Firm activity and cannot see a complete view of such activities across all exchanges and over-the-counter market centers. The proposed rule change will address these current gaps in order reporting by requiring Reporting Members to identify Reportable Non-Members in their OATS reports. Reporting this information will allow FINRA to obtain the identity of the Reportable Non-Member directly from the OATS data, thereby improving FINRA's ability to perform comprehensive market surveillance and increasing investor protection.

2. Economic Impacts

The proposed rule change would impact Reporting Members that report orders received from, or routed to, Reportable Non-Members. As a baseline, FINRA estimates that, in the fourth quarter of 2014, approximately 175 Reporting Members received orders from Non-Member Firms and approximately 215 Reporting Members routed orders to Non-Member Firms. As discussed above, FINRA estimates that over 33% of the total OATS orders in the fourth quarter of 2014 were reported as being received from a Non-Member Firm. Non-Member Firm orders accounted for a higher proportion (over 45%) of ATS orders. In addition, during that quarter approximately 13% of sponsored access orders were received from a Non-Member Firm. Reporting Members currently report orders received from or routed to Non-Member Firms but are not required to specifically identify these firms in their OATS reports. The proposed rule change would require the Reporting Members to identify Reportable Non-Members and submit an SRO-assigned identifier or the CRD number of these firms.

(i) Anticipated Benefits

The proposed rule change would enhance FINRA's cross-market and over-the-counter surveillance efforts by allowing FINRA to identify more Non-Member Firm trading activity across exchanges and the over-the-counter market. As discussed above, FINRA members receive a substantial amount of order flow from Non-Member Firms, particularly in connection with ATS activity. The proposed rule change will enable FINRA to identify these activities from Reportable Non-Members, thereby significantly improving FINRA's ability to support cross-market surveillance and monitor over-the-counter trading activity.

(ii) Anticipated Costs

As a result of the proposed rule change, Reporting Members that are not already identifying Reportable Non-Members in their OATS reports will incur certain implementation costs and on-going compliance costs associated with identifying Reportable Non-Members and submitting identifiers on their OATS reports.

FINRA anticipates that the costs associated with identifying Reportable Non-Members will likely be minimal because identifiers have already been assigned to Reportable Non-Members and these identifiers are generally readily available to the Reporting Member that is receiving orders from or routing orders to Reportable Non-Members. In addition, the proposed rule change would provide Reporting Members with the option to report either the CRD number or the SRO assigned identifier, thereby allowing them to submit the identifiers that are already in use.[25] Moreover, FINRA intends to provide a list of CRD numbers to assist further in implementing the new requirements for those firms that are not already identifying Reportable Non-Members on their OATS reports, thereby further reducing the burden to ascertain appropriate identifiers for Reportable Non-Members.

FINRA recognizes that some Reporting Members may need to update their reporting systems and would incur certain costs associated with system analysis, coding, and testing in order to submit the required identifiers on their OATS reports. However, based on the provision of the list of identifiers by FINRA, the current volume of OATS Reports already submitted with Non-Member Firm information, and the Staff's experience with previous changes to the OATS requirements requiring similar modification to OATS reporting (*i.e.,* modifications requiring new values for existing fields), FINRA believes that significant coding and development would not be required and that the costs referenced above would likely be minimal. Based on OATS data for the fourth quarter of 2014, FINRA estimates that approximately 23% of Reporting Members that receive orders from Non-Member Firms already identify these firms on their OATS reports and approximately 12% of Reporting Members that route orders to Non-Member Firms identify these firms on their OATS reports.[26]

3. Alternatives

In considering the best way to meet its regulatory objectives, FINRA considered certain alternatives to particular features

[24] 15 U.S.C. 78*o*–3(b)(6).

[25] Reporting Members would, therefore, have flexibility in determining which identifiers to submit, which is intended to reduce costs for these firms by allowing them to choose the most cost effective option.

[26] FINRA notes that a number of these Reporting Members identify Non-Member Firms on some, but not all, orders whereas others do so on all orders. For example, in the fourth quarter of 2014, of the 39 Reporting Members that receive orders from Non-Member Firms and identify them on their OATS report, 28 identify Non-Member Firms on some and 11 identify them on all orders.

of this proposal, including alternative identifiers that could be used to identify Reportable Non-Members. For example, one FINRA committee member suggested that FINRA consider leveraging use of a Legal Entity Identifier (''LEI'') for identifying Reportable Non-Members. FINRA does not believe that use of a LEI would be feasible at this time considering that the LEI is not universally in use. As a result, FINRA did not propose the use of LEI in the OATS reports for identifying Reportable Non-Members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The proposed rule change, in addition to another proposal involving ATS order reporting, was published for comment in *Regulatory Notice* 14–51 (November 2014).[27] Five comments were received in response to the *Regulatory Notice;*[28] however, only four of the comment letters addressed the proposed rule change.[29] A copy of *Regulatory Notice* 14–51 is attached as Exhibit 2a.[30] A list of comment letters received in response to *Regulatory Notice* 14–51 is attached as Exhibit 2b, and copies of the four comment letters that addressed the proposed rule change are attached as Exhibit 2c. Of the four comment letters received that addressed the proposed rule change, KCG and SIFMA were in favor of the proposed rule change, Liquidnet did not support or oppose the proposed rule change but asked for interpretive guidance on the application of the proposed rule change to non-U.S. broker-dealers, and FIF was generally opposed.

Liquidnet and SIFMA requested that FINRA provide guidance on the application of the proposed rule change to non-U.S. broker-dealers that do not have either SRO-assigned identifiers or CRD numbers.

As noted above, FINRA has amended the proposed rule language from that in *Regulatory Notice* 14–51 to clarify that the specific identification of Non-Member Firms applies only to U.S.-registered broker-dealers that have SRO-assigned identifiers or CRD numbers as well as Canadian broker-dealers who have been assigned SRO identifiers for purposes of accessing a FINRA trade reporting facility pursuant to Rule 7220A or 7320. FINRA will provide an indicator for ''non-U.S. broker-dealer'' for use in the destination code field (for routes to a non-member broker-dealer) and as a member type code (for orders received from a non-member broker-dealer) so that Reporting Members can reflect routes to or from a non-U.S. broker-dealer that does not have a CRD number or an SRO-assigned identifier.

FIF noted that using SRO-assigned identifiers would be preferable to using CRD numbers and suggested that FINRA provide a list of allowable identifiers. KCG requested that FINRA develop a list of identifiers that OATS reporting firms could rely upon to identify non-member broker-dealers and suggested that only those identifiers appearing on the list be required to be reported when dealing with non-member broker-dealers.

In response to these comments, FINRA intends to develop and publish on its Web site a list of acceptable CRD numbers for Reporting Members to use to meet their OATS reporting obligations. FINRA does not, however, intend that only those identifiers appearing on the list would be acceptable values. For example, Canadian broker-dealers that have been issued MPIDs to access FINRA trade reporting facilities pursuant to Rule 7220A or Rule 7320 do not have CRD numbers; thus, Reporting Members receiving orders from or routing orders to such firms would be required to use the Canadian firm's MPID on their OATS reports. Finally, FIF noted that the issue of identifying Non-Member Firms will be addressed upon the implementation of the CAT and suggested that FINRA not take interim measures to improve OATS but ''work diligently with the other SROs towards driving CAT forward.''

FINRA does not view these undertakings as mutually exclusive. While FINRA is working diligently with other SROs to develop and implement the CAT, FINRA also believes that reasonable changes to OATS should still be made to ensure existing audit trails can be enhanced. As noted above, the full implementation of the CAT is likely still years away. FINRA strongly believes that gaps in OATS data must be addressed in the near-term, after weighing the burdens to firms and the necessity of the change, to ensure an effective audit trail. As set forth above, FINRA has concluded that the identification of Reportable Non-Members is important to enhance FINRA's cross-market surveillance and believes these modest changes to the OATS requirements should not be delayed due to the potential future implementation of the CAT. Although this proposed rule change will require some Reporting Members to submit more specific data when submitting an OATS report for an order received from a Reportable Non-Member, FINRA does not believe that this change will have a significant operational impact on Reporting Members or their reporting practices because identifiers already have been assigned to the Reportable Non-Members, are generally readily ascertainable by the Reporting Member that is receiving orders from or routing orders to the Reportable Non-Member, and OATS will accept submission of any of these identifiers already in use. As noted above, FINRA intends to provide a list of CRD numbers to assist further in implementing the new requirements for those Reporting Members that are not already identifying Reportable Non-Members on their OATS reports.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[27] The ATS order reporting proposal described in *Regulatory Notice* 14–51 is not reflected in the current proposed rule change; consequently, comments on that proposal are not addressed.

[28] *See* Letter from Manisha Kimmel, Managing Director, Financial Information Forum, to Marcia E. Asquith, Secretary, FINRA, dated February 20, 2015 (''FIF''); Letter from John A. McCarthy, General Counsel, KCG Holdings, Inc., to Marcia E. Asquith, Secretary, FINRA, dated February. 20, 2015 (''KCG''); Letter from Howard Meyerson, General Counsel, Liquidnet Inc., to Marcia E. Asquith, Secretary, FINRA, dated February 20, 2015 (''Liquidnet''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Secretary, FINRA, dated February 24, 2015 (''SIFMA''); and Letter from Mark Holder, Managing Director, UBS Securities LLC, to Marcia E. Asquith, Secretary, FINRA, dated February 26, 2015 (''UBS'').

[29] The UBS Letter addressed only the ATS order reporting proposal in the *Regulatory Notice* and did not address the proposed rule change.

[30] The Commission notes that the exhibits referred to (2a, 2b, and 2c) are exhibits to the proposed rule change, not to this Notice.

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2016–006 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–006 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03941 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[31] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77196; File No. SR–FINRA–2016–005]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Reduce the Synchronization Tolerance for Computer Clocks That Are Used To Record Events in NMS Securities and OTC Equity Securities

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to reduce the synchronization tolerance for members' computer clocks that are used to record events in NMS securities, including standardized options, and OTC Equity Securities. This proposal would not change the current clock synchronization requirement for members' mechanical time stamping devices or computer clocks that are used to record events for securities other than NMS securities or OTC Equity Securities.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Current FINRA rules require that firms synchronize their business clocks in conformity with procedures prescribed by FINRA. Specifically, FINRA Rule 7430 requires that firms synchronize their business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the FINRA By-Laws or other FINRA rules (*e.g.*, the time a trade was executed or the time an order was received or routed), with reference to a time source as designated by FINRA. As specified in the current OATS technical specifications, all computer system clocks and mechanical time stamping devices must be synchronized to within one second of the NIST atomic clock.[3] To maintain clock synchronization, clocks should be checked against the NIST atomic clock and re-synchronized, if necessary, at pre-determined intervals throughout the day.[4] FINRA understands that currently, some firms synchronize their clocks continuously throughout the day, while others do so at various times during the day and still others do so only once a day.[5]

Given the increasing speed of trading in today's automated markets, FINRA believes the current one second tolerance is no longer appropriate for computer system clocks recording

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Any time provider may be used for synchronization; however, all clocks and time stamping devices must remain accurate within a one-second tolerance of the NIST clock. This tolerance includes (1) the difference between the NIST standard and a time provider's clock, (2) transmission delay from the source and (3) the amount of drift of the member firm's clock. The OATS technical specifications further specify that computer system and mechanical clocks must be synchronized every business day before market open to ensure that recorded order event timestamps are accurate.

[4] The OATS technical specifications also provide that member firms must document and maintain their clock synchronization procedures. In addition, the technical specifications state that member firms should keep a log of the times when they synchronize their clocks and the results of the synchronization process, including notice of any time a member's clock drifts more than the one second standard. The technical specifications further provide that such logs should be maintained for the period of time and accessibility specified in SEC Rule 17a–4(b), and maintained and preserved for the required time period in paper format or in a format permitted under SEC Rule 17a–4(f).

[5] FINRA generally believes that the firms that synchronize once daily are firms that accept manual orders.

events in NMS securities [6] and OTC Equity Securities [7] under FINRA rules. Automated systems have evolved to the point where order placement and trading decisions in these asset classes are made on a millisecond basis, if not finer. Moreover, in many cases firms report events to FINRA's equity trade reporting and audit trail facilities in milliseconds.[8]

Accordingly, FINRA is proposing to tighten the synchronization requirement for computer system clocks that record events in NMS securities and OTC Equity Securities. The proposal would reduce the drift tolerance for computer clocks that record events in these securities from one second to 50 milliseconds. The proposal would not change the current one second standard for securities other than NMS securities or OTC Equity Securities and would not change the current one second standard for events recorded by mechanical clocks or time stamping devices, as opposed to computer clocks.

As a technical matter, the proposal would codify the existing OATS technical specifications cited above, along with the new proposed 50 millisecond standard, in FINRA's Rule 4500 Series (Books, Records and Reports). The purpose of this technical change is to relocate the clock synchronization requirements from OATS rules to a rule set where it is clear the requirements apply to the recording of the date and time of any event that must be recorded under FINRA By-Laws or rules. As noted above, under a combination of Rule 7430 and the OATS technical specifications, the current one second synchronization standard already applies to the recording of the date and time of any event that must be recorded under FINRA By-Laws or rules. Under this proposal, FINRA would consolidate and codify the clock synchronization requirements in new Rule 4590 for clarity and ease of reference. This consolidation would include the current provision in the OATS technical specifications that conveys guidance on recordkeeping to demonstrate compliance with the synchronization standard, which would be codified without material change as Supplementary Material .01 to Rule 4590.

In arriving at this proposal, FINRA solicited and received feedback from its industry advisory committees, as well as through a public request for comment. After thoroughly evaluating all of the feedback received, FINRA has determined that the proposed 50 millisecond standard is the best approach given existing technology and FINRA's regulatory needs. In addition, as described in more detail below, FINRA further determined that it should proceed with the proposal now, rather than wait for approval and implementation of the clock synchronization requirements proposed in the National Market System Plan governing the Consolidated Audit Trail (''CAT NMS Plan'').[9]

As an initial step, FINRA staff solicited industry input from several of its industry advisory committees prior to publishing the proposal for comment in a *Regulatory Notice.* These committees were generally supportive. To the extent the committees raised concerns, they focused on the proposal's potential impact on small firms, particularly firms that do not rely on highly automated systems. In response to these concerns, and similar concerns raised in the comment letters discussed below, FINRA modified the proposal to allow for phased implementation which would grant less automated firms up to 18 months to comply with the proposed 50 millisecond standard. In addition, the proposal retains the current one second standard for events recorded by mechanical clocks or time stamping devices, which FINRA believes are more likely to be used by small firms.

Next, in November 2014, FINRA published *Regulatory Notice* 14–47 to request written comments on the proposal. FINRA received eight comment letters in response.[10] In general, five of the eight commenters supported tightening current clock synchronization requirements, at least to some extent.[11] Two of the eight commenters opposed the proposal to some extent, questioning either the proposed 50 millisecond standard or the need for FINRA to amend its clock synchronization requirement at this time, before the CAT NMS Plan is approved and implemented.[12]

Of the five commenters that supported tightening clock synchronization requirements at least to some extent, all agreed that a millisecond standard is necessary given the speed of trading in today's markets. For example, according to FSMLabs, FINRA's proposal is ''timely and necessary'' because ''[w]ide use of electronic trading systems and proliferation of trading venues make it impossible to understand market operation or to manage risks without precise and reliable time information.'' [13] Similarly, IEX stated its belief that ''the proposal represents an important and beneficial advance over the current [one second] standard.'' [14]

The commenters that supported the proposal generally took the view that the proposed 50 millisecond standard would not be overly burdensome to adopt, even for smaller firms. FSMLabs stated that a 50 millisecond standard ''can be met with low cost off-the-shelf software only.'' [15] According to KOR, ''the technology to perform such high-resolution synchronization is low-cost and has been available for years.'' [16] Sync-n-Scale took the view that the proposed 50 millisecond standard ''is highly likely not an onerous imposition on market participants in any of the relevant dimensions: financially, technologically and operationally.'' [17]

Several of these commenters proposed tightening the clock synchronization standard even further, to below 50

[6] The term ''NMS security'' is defined in Rule 600 of Regulation NMS to mean ''any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. 17 CFR 242.600(b)(46). As Commission staff has noted, the term NMS security generally ''refers to exchange-listed equity securities and standardized options, but does not include exchange-listed debt securities, securities futures, or open-end mutual funds, which are not currently reported pursuant to an effective transaction reporting plan.'' *See* Division of Trading and Markets Staff's Responses to Frequently Asked Questions Concerning Large Trader Reporting, question 1.1, available at *https://www.sec.gov/divisions/marketreg/large-trader-faqs.htm.*

[7] The term ''OTC Equity Security'' is defined in FINRA Rule 6420(f) to mean ''any equity security that is not an 'NMS stock' as that term is defined in Rule 600(b)(47) of Regulation NMS; provided, however, that the term 'OTC Equity Security' shall not include any Restricted Equity Security.''

[8] *See* Securities Exchange Act Release No. 71623 (February 27, 2014), 79 FR 12558 (March 4, 2014) (order approving SR–FINRA–2014–050, FINRA's proposal to require firms to report order and trade information to the FINRA TRFs, ADF, ORF, and OATS in milliseconds, if the firms' systems capture time in milliseconds). *See also Regulatory Notice 14–21* (May 2014) (announcing the effective date of millisecond reporting changes); *Regulatory Notice 14–47* (November 2014) at page 7, n. 7 (describing the extended implementation schedule for millisecond reporting changes).

[9] The CAT NMS Plan, which was submitted by the national securities exchanges and FINRA on February 27, 2015, is available at *catnmsplan.com.*

[10] *See* Letters from Crews & Associates, January 5, 2015 (''Crews Letter''); FSMLabs, dated January 7, 2015 (''FSMLabs Letter''); Quincy Data, LLC, dated January 9, 2015 (''Quincy Data Letter''); Wiley Bros. Aintree Capital, dated January 9, 2015 (''Wiley Bros. Aintree Capital Letter''); IEX Services LLC, February 12, 2015 (''IEX Letter''); Financial Information Forum, dated February 20, 2015 (''FIF Letter''); Sync-n-Scale, dated February 20, 2015 (''Sync-n-Scale Letter''); and KOR Group LLC, dated February 20, 2015 (''KOR Letter'').

[11] *See* FSMLabs Letter, Quincy Data Letter, IEX Letter, Sync-n-Scale Letter, and KOR Letter.

[12] *See* Crews Letter and FIF Letter.

[13] *See* FSMLabs Letter at 6–7.

[14] *See* IEX Letter at 2.

[15] *See* FSMLabs Letter at 1.

[16] *See* KOR Letter at 2.

[17] *See* Sync-n-Scale Letter at 1.

milliseconds. For example, FSMLabs said that a one millisecond standard would not impose significant additional costs, while even a one microsecond standard could be practical with low-cost off-the-shelf technology.[18] KOR agreed that reducing the standard to one millisecond ''would not impose significant additional costs to market participants over a 50 millisecond requirement.'' [19] And according to IEX, ''the permitted variance could be further reduced consistent with the systems capabilities of most member firms.'' [20]

Two commenters took different views and opposed the proposal. Crews & Associates stated that any standard less than 200 milliseconds is not feasible at any cost, based on the time it takes to receive data packets with updated time information from NIST servers.[21] The Financial Information Forum (''FIF''), which conducted an industry survey on current synchronization practices and the anticipated costs of tighter synchronization standards, did not take issue with the proposed 50 millisecond standard itself. In fact, FIF supported a 50 millisecond standard; however, FIF suggested that FINRA ''work through the CAT NMS Plan process to achieve [its] clock synchronization objectives and avoid redundant, and potentially conflicting, rule-making.'' [22]

Finally, several of the commenters argued that FINRA should consider different standards for different types of market participants. KOR suggested that highly automated firms—*i.e.*, firms that co-locate their equipment at an exchange datacenter or in a data center with modern clock synchronization technology—should be held to a one millisecond standard, while all other firms should be subject to a 50 millisecond standard.[23] Crews & Associates said that there should be a separate rule for firms that engage in high frequency trading, although this commenter did not offer a detailed recommendation on how the standards should differ for firms that do and do not engage in HFT.[24]

FINRA carefully considered the committee views and written comments. After analyzing this feedback, FINRA believes it is necessary and appropriate to proceed with the proposed 50 millisecond standard for NMS securities and OTC Equity Securities, with a phased implementation that allows less automated firms more time to adjust their systems. FINRA believes that 50 milliseconds is the right standard at this time, given prevailing technology for trading systems and clock synchronization, because it strikes an acceptable balance between audit trail integrity and the costs of compliance. FINRA also believes it is important to apply the same standard to all computer-recorded events, regardless of firm size or activity type. Audit trail integrity relies on the ability to accurately sequence events for a given period of time, including events generated by firms that do not engage in HFT.[25]

FINRA's decision to pursue the proposed 50 millisecond standard is informed in part by the CAT NMS Plan filed in February, 2015. The CAT NMS Plan was required by SEC Rule 613, which directed FINRA and the national securities exchanges to submit a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository.[26] Rule 613 further contains specific provisions that require the CAT NMS Plan to adopt a clock synchronization standard ''consistent with industry standards.'' [27] Guided by these provisions, the CAT NMS Plan contains detailed discussion of current clock synchronization practices, as well as the potential costs that broker-dealers would incur under various synchronization standards ranging from 1 second to 100 microseconds.[28] As part of its cost analysis, the CAT NMS Plan refers to the same FIF survey that accompanied the FIF's comment letter to FINRA on this proposal.[29]

Ultimately, the CAT NMS Plan concluded ''that a clock offset of 50ms represents an aggressive, but achievable, industry standard.'' [30] FINRA agrees that, at present, while a 50 millisecond standard may impose some costs on firms, it is nevertheless achievable with existing technology, and that it would allow FINRA significantly greater regulatory and surveillance capabilities. Moreover, FINRA recognizes that proposing a standard different from the CAT NMS Plan could create additional and potentially burdensome costs for firms.[31]

But while FINRA believes it is appropriate to propose the same 50 millisecond clock synchronization standard advanced by the CAT NMS Plan, FINRA does not agree with the comment that FINRA should forego this proposal and wait for the CAT NMS Plan to become effective. It may be some time before the clock synchronization requirements of the CAT NMS Plan take effect.[32] Meanwhile, as the Commission has recognized, a sub-one second clock synchronization standard is an important element of market data reliability.[33] And FINRA, as a national securities association, relies on the accuracy of market data to fulfill its regulatory obligations. Accordingly, FINRA believes it has a current need to tighten the clock synchronization standard for events that must be recorded pursuant to the FINRA By-Laws or other FINRA rules.

FINRA acknowledges that a tightened clock synchronization standard could impose costs, particularly on small or

[18] *See* FSMLabs Letter at 1.

[19] *See* KOR Letter at 2.

[20] *See* IEX Letter at 2. Additionally, another commenter submitted its own proposal, which it said could ''replace CAT requirements.'' Under this commenter's proposal, all matching engines would be time synchronized to an accuracy that is within 10 microseconds of the global time standard, and manual trades would be time stamped within an accuracy of 1 minute. *See* Quincy Data Letter at 1.

[21] *See* Crews & Associates Letter at 1.

[22] *See* FIF Letter at 3. As noted elsewhere in this filing, FIF cautioned that its survey did not necessarily reflect small firms, which it thought would be more likely to have trouble meeting the proposed clock synchronization standard.

[23] *See* KOR Letter at 2.

[24] *See* Crews & Associates Letter at 2.

[25] While FINRA does not believe it is practicable to adopt different standards for firms that engage in HFT and those that do not, as some commenters suggested, it is proposing to provide less automated firms with more time to adjust their systems to the new proposed standard, as discussed more below.

[26] 17 C.F.R § 242.613(a).

[27] 17 CFR § 242.613(d)(1).

[28] *See* CAT NMS Plan, available at catnmsplan.com, at Appendix C–125.

[29] *See* CAT NMS Plan at Appendix C–125 to C–126 (citing the FIF Clock Offset Survey, which FIF also attached to its comment letter on this proposal).

[30] *See id.*

[31] The FIF comment letter supported the view that FINRA should not adopt a standard that is different from what was proposed in the CAT NMS Plan, even if that standard were more lenient and less costly to implement now than the CAT NMS Plan standard. *See* FIF Letter at 2 (noting that respondents to the FIF Clock Offset Survey ''questioned the benefits of an interim tolerance citing that any changes to the current clock offset would require modifications to systems and processes'').

[32] The CAT NMS Plan was filed pursuant to Rule 608 of Regulation NMS, which provides the general procedure for national market system plans. Under Rule 608(b)(2), the Commission has 120 days from the date it publishes a national market system plan, or up to 180 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the sponsors of the plan consent, to approve the plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate. As proposed, the CAT NMS Plan would become effective upon approval by the Commission and execution by all of the participants that submitted the plan (*see* CAT NMS Plan, Section 2.1), and the clock synchronization requirements would apply within four months of the effective date (*see* CAT NMS Plan, Section 6.7(a)(ii)).

[33] *See* Securities Exchange Act Release No. 67457 (July 17, 2012), 77 FR 45722, 45774 (August 1, 2012) (''Consolidated Audit Trail Adopting Release'') (''The Commission believes that the current industry standard for conducting securities business is more rigorous than one second.'').

less automated firms. As a result, FINRA has revised the proposal in response to comments in two ways, in order to minimize the burden associated with the proposed rule and ease implementation. First, FINRA has narrowed the scope of the proposal so that the 50 millisecond standard proposed in this filing would apply only to NMS securities and OTC Equity Securities, and not to fixed income securities. FINRA believes this modification is warranted because fixed income products generally are not traded with the same level of automation as equity or option securities. Moreover, the revised scope would parallel the current scope of the CAT NMS Plan, which, as filed, would apply to NMS securities and OTC Equity Securities, but not debt securities.[34] FINRA notes that the CAT NMS Plan contemplates whether debt securities may become subject to CAT reporting in the future, and FINRA will continue to consider the appropriate clock synchronization standard for systems that record events in debt securities.

FINRA proposes to adopt a phased implementation for the proposed 50 millisecond standard. If the Commission approves the filing, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. FINRA would then require firms with systems that capture time in milliseconds to comply with the new 50 millisecond standard within six months of the effective date; remaining firms that do not have systems which capture time in milliseconds would have 18 months from the effective date to comply with the 50 millisecond standard.[35]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[36] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will bolster FINRA's ability to meet its regulatory obligations as a national securities association. As the Commission has noted, time drift away from a universal, synchronized standard is an important issue to address to enhance the integrity of audit trail data.[37] FINRA therefore believes it is important to pursue a 50 millisecond standard at this time, for the reasons explained above, so that it can compile more accurate audit trail data and conduct surveillance with more precise time-sequenced data. By doing so, the proposal would facilitate FINRA's efforts to detect and prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Economic Impact Assessment

A. Regulatory Need

FINRA's current rules require members to synchronize their business clocks to within one second of the NIST atomic clock. Considering the speed of trading in today's automated equity and options markets, FINRA believes that the current one second tolerance is no longer appropriate for computer system clocks recording time for events in these securities under FINRA rules. For example, the wide use of automated trading systems entails order placement and trading decisions made on a millisecond, or finer, basis. In such a fast-paced environment, the one second tolerance is insufficient for audit trail and surveillance purposes. Accordingly, FINRA is proposing a tighter synchronization standard for NMS securities and OTC Equity Securities that will give FINRA the capability to better determine the order in which reportable events occur, thereby bolstering its surveillance of the markets and enhancing investor protection.

B. Economic Impacts

The proposed rule change would impact member firms that receive or route orders or execute trades directly in NMS securities and OTC Equity Securities. As a baseline, FINRA estimates that there are approximately 1,720 firms that would be subject to the proposal.[38] These firms would be required to synchronize their computer clocks that are used to record applicable events in equity and options securities to within 50 millisecond of the NIST atomic clock.

FINRA understands that some firms already synchronize their computer clocks within 50 milliseconds, and as a result, will not experience any material direct economic impacts as a result of this rule. Additionally, the proposed rule change would not alter the current clock synchronization requirement for members' mechanical time stamping devices. As a result, members solely using mechanical time stamping would not be impacted. Based on FINRA staff's experience, FINRA estimates that only a small fraction of firms use mechanical time stamping devices for trading in NMS securities and OTC Equity Securities.

The proposal would be implemented in phases that would allow less automated firms more time to comply with the 50 millisecond clock synchronization standard. Specifically, FINRA would require firms with systems that capture time in milliseconds to comply with the new 50 millisecond standard within six months of the effective date. Of firms that report to OATS, FINRA estimates that there are 736 firms that report some or all of their order events in milliseconds, accounting for 76 percent of OATS-reporting firms and 95 percent of OATS reportable order events (ROE). FINRA further estimates that there are roughly 237 less automated OATS-reporting firms,

[34] *See, e.g.*, CAT NMS Plan at Appendix C–127 (discussing the Plan's applicability to OTC Equity Securities in addition to NMS securities, and whether debt securities may be subject to the CAT NMS Plan in the future). Because the scope of this proposal would align with the scope of the current proposed CAT NMS Plan, FINRA believes that costs incurred by firms to meet the proposed FINRA clock synchronization standard would support the changes needed to meet any future requirement imposed under CAT and, therefore, should not result in duplicative efforts.

[35] FINRA recognizes that a phased implementation does not necessarily on its own reduce the costs of the proposal. However, a phased implementation could allow firms, particularly smaller or less automated firms, a greater time period over which they can identify and implement the most cost effective clock synchronization solution that meets the standard required by this proposal. FINRA notes that the FIF Clock Offset Survey recommended a delayed implementation and noted that ''[w]hile additional time may not reduce costs, it may ease implementation as firms manage this effort in conjunction with other compliance initiatives.'' *See* FIF Letter and attached FIF Clock Offset Survey.

[36] 15 U.S.C. 78*o*–3(b)(6).

[37] *See* Consolidated Audit Trail Adopting Release, 77 FR at 45774.

[38] This baseline estimate is intended to capture the total number of firms that received orders in any security subject to OATS reporting, as reflected by the number of unique routing firm market participant identifiers from a recent calendar quarter.

accounting for 24 percent of OATS-reporting firms and five percent of ROE, that are not currently reporting order events in milliseconds; these firms would have 18 months from the effective date to comply with the proposed standard. For the remainder of firms that would be subject to the proposal but do not currently report to OATS, FINRA believes that the majority rely on systems provided by their clearing firm or are not likely to have systems that capture time in milliseconds, and they would therefore also have 18 months to comply.

(i) Anticipated Benefits

The proposed rule change would allow FINRA to more accurately determine, with respect to NMS securities and OTC Equity Securities, the sequence of order, quote and trade events across market participants and market centers. By doing so, the proposal would improve FINRA's surveillance program, and as a result, support FINRA's compliance with its regulatory obligations set forth in Section 15A(b)(6) of the Act. In particular, the proposal would enhance FINRA's ability to monitor for manipulative trading practices, including spoofing or layering, and to evaluate best execution and compliance with SEC Regulation NMS, among other things. For example, potentially manipulative trading practices often involve large numbers of orders placed in short periods of time, such that more granular and precise order event sequencing would enhance FINRA's market surveillance abilities. As a result, the proposal would facilitate FINRA's efforts to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

(ii) Anticipated Costs

Member firms that receive or route orders or execute trades directly in NMS securities and OTC Equity Securities would likely incur costs associated with updating their systems and procedures to comply with a tightened clock synchronization standard. These costs may include costs to develop and maintain software programs that allow and monitor for synchronization within 50 milliseconds. FINRA notes that there are third party software products that could help firms maintain the proposed 50 millisecond standard. Firms may find these software products to be more cost effective than developing and maintaining their own programs. Some firms may also need to update their technology hardware, including servers and event logging platforms, or implement other networking enhancements to achieve the 50 millisecond drift standard. These costs will likely vary across firms depending on their current technology systems and procedures, their business models and the frequency with which they synchronize their clocks, as well as their current drift standards.

FINRA's analysis of current practices and potential costs is informed in part by the industry survey that FIF performed and submitted along with its comment on this proposal. The FIF Clock Offset Survey, which is discussed in detail in the CAT NMS Plan, collected information on existing synchronization systems, current clock management costs, and anticipated costs of meeting tighter synchronization standards from 28 firms, including 23 broker-dealers and 5 service bureaus.[39] The survey found that 39% of responding firms do not already synchronize their clocks to at least a 50 millisecond standard, suggesting that many firms may already have the capacity to meet the proposed standard.

The FIF survey estimates an average cost of adopting a 50 millisecond standard would be roughly $550,000 per firm.[40] FINRA notes, however, that the FIF survey seems to estimate the costs of implementing a synchronization standard with the assumption that synchronization logs would be required to be maintained for more than three years.[41] Since this FINRA proposal would require synchronization logs to be stored for only three years, FINRA believes the FIF cost estimate may overstate the implementation costs of this aspect of the proposal. FINRA notes further that the FIF survey estimates did not include data from smaller firms and therefore may not be informative as to what small firm implementation costs may be.

Implementation costs would likely vary across firms based on their current clock synchronization systems and procedures, their business models and trading activity. Firms that already synchronize their clocks to the 50 millisecond standard would likely incur much lower implementation costs, whereas other firms with less tight synchronization standards may incur relatively higher costs. As noted above, FINRA is aware of third party clock synchronization software products that could help firms, in particular smaller firms, reduce costs relative to developing and maintaining their own programs.

The survey results indicate that the average annual costs of maintaining a 50 millisecond standard are anticipated to be approximately $313,000 per firm and this represents a 31% increase over current annual clock management costs. Based on these survey results, FINRA estimates current annual clock management costs to be approximately $239,000 per firm. Hence the anticipated increase in the annual cost from the current standard to the proposed 50 millisecond synchronization standard is expected to be approximately $74,000 per firm. FINRA notes again, however, that to the extent the FIF survey assumed a more than 3 year log retention period, its maintenance cost estimates may be greater than the maintenance costs of this proposal, which requires that synchronization logs be retained for three years.

According to the FIF survey, implementation and maintenance costs would increase significantly for synchronization standards below 50 milliseconds. For instance, survey respondents indicated that a 1 millisecond standard, recommended by some of the commenters on this proposal, would cost over $1.1 million to implement and more than $530,000 to annually maintain.[42]

Based on its evaluation of the FIF Clock Offset Survey, as well as the CAT NMS Plan's economic analysis of potential clock synchronization requirements, FINRA believes that a 50 millisecond standard is the best achievable standard at this time. Furthermore, to minimize undue cost burdens, particularly for small or less automated firms, FINRA modified the proposal as described above—specifically, FINRA narrowed the scope of the proposal to apply only to NMS securities and OTC Equity Securities, and FINRA is proposing a phased implementation that would allow less automated firms up to 18 months to come into compliance. In addition,

[39] *See* FIF Letter and attached FIF Clock Offset Survey.

FINRA notes that the respondents primarily comprised of firms with a significant amount of reportable order events (ROE) in OATS. For example, 64% of the respondents reported 3 million or more ROE/month. Smaller firms with low ROE/month tiers did not generally respond to the survey. As a result, these survey results may not be representative of the views of smaller firms with less trading activity. The FIF survey notes that an effort is underway to solicit feedback from smaller firms. *See* the attached FIF Clock Offset Survey.

[40] *See id.*

[41] *See id.* at Survey page 12 (noting survey respondent comments about the costs of implementing larger storage requirements to log synchronization events) and 23 (recommending a requirement to log only exceptions for a period of three years to reduce costs).

[42] *See id.*

FINRA notes that the scope of this proposal would align with the scope of the CAT NMS Plan that has been filed with the Commission. As such, in the presence of an adopted CAT NMS plan, the costs associated with this proposal are only associated with the timing of the obligation to meet the proposed clock synchronization standard. Accordingly, FINRA believes that costs incurred by firms to meet the proposed FINRA clock synchronization would support the changes needed to meet any future requirement imposed under CAT and therefore, should not result in duplicative efforts.

C. Alternatives

In considering how to best meet its regulatory objectives, FINRA considered several alternatives to particular features of this proposed rule change. For example, FINRA considered whether to impose less costly 100 or 200 millisecond standards. For the reasons referenced in part above, FINRA chose not to pursue these alternatives.

FINRA's decision not to pursue these alternatives is based in part on its own observations. The range of variance among market participants' clocks may be up to twice the permitted synchronization standard; for example, one participant's clocks may drift ahead of the NIST clock by 50 milliseconds, while another's may drift behind by 50 milliseconds, meaning their clocks would be 100 milliseconds apart. FINRA studied OATS data for a single trading day and found a large number of events that occur within any single 100 millisecond window of time. However, FINRA observed that the number of events within 200 or 400 millisecond windows—twice the possible alternative 100 and 200 millisecond standards—increased significantly. Departing from the 50 millisecond standard would therefore cause significantly greater numbers of events to be recorded with less certainty and accuracy.

In addition, FINRA notes that the FIF Clock Offset Survey supported the proposed 50 millisecond standard, as opposed to a 100 or 200 millisecond standard. The survey asked respondents about possible reduced burdens if FINRA were to adopt one of these alternative standards in advance of tighter tolerances imposed as part of the CAT NMS Plan. In response, survey respondents ''questioned the benefits of an interim tolerance citing that any changes to the current clock offset would require modifications to systems and processes.'' [43]

In developing this proposal, FINRA also considered suggestions by commenters regarding different clock synchronization standards depending on the type of market participants (*e.g.* tighter standard for highly automated or HFT firms and less strict standard for other firms). FINRA believes it is important to apply the same standard to all computer-recorded events, regardless of firm size or activity type, since the integrity of the audit trail relies on the ability to accurately sequence all events for a given period of time, including events generated by firms that do not engage in HFT. As discussed above, FINRA believes that in light of the prevailing technology for trading systems and clock synchronization, 50 milliseconds is the right standard for all participants, and strikes a reasonable balance between audit trail integrity and the costs of compliance.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The proposed rule change was published for comment in *Regulatory Notice* 14–47 (November 2014). Eight comments were received in response to the *Regulatory Notice.* A copy of the *Regulatory Notice* is attached as Exhibit 2a.[44] Copies of the comment letters received in response to the *Regulatory Notice* are attached as Exhibit 2c.[45] The comments are summarized above in Item A.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2016–005 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–005 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03960 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[43] *See* FIF Letter at 2.

[44] The Commission notes that all references to Exhibit 2a refer to Exhibit 2a to the proposed rule change.

[45] The Commission notes that all references to Exhibit 2c refer to Exhibit 2c to the proposed rule change.

[46] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77187; File No. SR–BYX–2016–04]**

## Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.13(b)(3)(H), Order Execution and Routing, To Amend the Operation of Non-Displayed Orders and Reserve Orders

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2016, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the operation of Non-Displayed Orders[5] and Reserve Orders[6] when they are to be routed away from the Exchange pursuant to the Post to Away routing option set forth in Rule 11.13(b)(3)(H).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

A Non-Displayed Order is an order that is not displayed on the Exchange.[7] A Reserve Order is a limit order with a portion of the quantity displayed (''Display Quantity'') and with a reserve portion of the quantity (''Reserve Quantity'') that is not displayed.[8] Both the Display Quantity and the Reserve Quantity are available for execution against incoming orders. Under the Post to Away routing option, the remainder of an order that was previously routed away and returned to the Exchange may be re-routed to and post on the order book of a destination on the System routing table[9] as specified by the User.[10]

Currently, Non-Displayed Orders and Reserve Orders that are routed to an away Trading Center pursuant to the Post to Away routing option are routed as fully displayed orders. The Exchange proposes to identify Non-Displayed Orders and Reserve Orders as such when routed to an away Trading Center. The Exchange believes doing so is consistent with the original intent of the order, to be not displayed or to include a Reserve Quantity.[11]

The Exchange, therefore, proposes to amend the definition of Non-Displayed Orders under Exchange Rule 11.9(c)(11) to state that a Non-Displayed Order that is to be re-routed pursuant to the Post to Away routing option set forth in Rule 11.13(b)(3)(H) will be identified as a Non-Displayed Order when routed to an away Trading Center. Similarly, the Exchange proposes to amend the definition of a Reserve Order under Exchange Rule 11.9(c)(1) to state that a Reserve Order that is to be re-routed pursuant to the Post to Away routing option set forth in Rule 11.13(b)(3)(H) will be identified as a Reserve Order when routed to an away Trading Center.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal promotes just and equitable principles of trade by enabling Members to continue to identify their order as a Non-Displayed Order or Reserve Order when they are routed to an away Trading Center. The proposal also removes impediments to and perfects the mechanism of a free and open market and a national market system by providing Users the flexibility with regard to the handling of their orders by ensuring that the order is not altered and retains its original instructions from order entry when it is routed to an away Trading Center. Doing so ensures that such orders that are routed pursuant to the Post to Away routing option may be posted to the away Trading Center's order book consistent with the order's original instructions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal would enhance competition by attracting additional order flow to the Exchange because it allows Users to ensure that their order is not altered and retains its original instructions from order entry when it is routed to an away Trading Center.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 11.9(c)(11).

[6] *See* Exchange Rule 11.9(c)(1).

[7] *See* Exchange Rule 11.9(c)(11).

[8] *See* Exchange Rule 11.9(c)(1).

[9] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Exchange Rule 11.13(b)(3).

[10] *See* Exchange Rule 11.13(b)(3)(H). The Post to Away routing option can be combined with the following routing options: ROUT, ROUX, ROUZ, INET, RDOT, RDOX, IOCM and ICMT. *Id.* An order subject to the ROUT, ROUX, ROUZ, INET, RDOT, RDOX, IOCM and ICMT routing options will not be posted to the order book of the Trading Center to which it is routed. The User may elect that the order be cancelled or post to the BATS Book [sic] upon its initial return to the Exchange. *Id.* Alternatively, if the User had selected the Post to Away routing option, the order would be currently routed to the away Trading Center as a Displayed Order.

[11] Routable Non-Displayed and Reserve Orders would be handled in accordance with the rules of the Trading Center to which they are routed.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and paragraph (f)(6) of Rule 19b–4 thereunder.[15] The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2016–04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2016–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2016–04 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03947 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77193; File No. SR–BOX–2016–09]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Eliminate Certain Fees Which Relate to the Series 56 Examination and To Include Certain Fees Which Relate to Series 57 Examination and Continuing Education

February 19, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2016, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to delete the Continuing Education Fees and the Qualification Examination Fee which relate to the Series 56 registration category under the Regulatory Fees section of the BOX Fee Schedule on the BOX Market LLC (''BOX'') options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to delete the Continuing Education Fees and the Qualification Examination Fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

which relate to the Series 56 registration category under the Regulatory Fees section of the BOX Fee Schedule. The Financial Industry Regulatory Authority (''FINRA'') is retiring the Proprietary Traders Qualification Examination (Series 56) and the S501 Proprietary Traders Continuing Education Program and replacing them with the Securities Trader Qualification Examination (Series 57) and the S101 Continuing Education Program.[5]

Specifically, the Exchange proposes to delete the (i) $60.00 S501 Continuing Education Fee for Series 56 and (ii) the $195.00 Series 56 Examination Fee. The Exchange further proposes to add a (i) $55.00 S101 Continuing Education Fee and (ii) a $120.00 Series 57 Examination Fee.

BOX is proposing such Fee Schedule amendments in consultation with FINRA and the other exchanges, and anticipates that the other exchanges will make corresponding changes to their respective fee schedules.[6]

Background

BOX has amended its rules to establish the Securities Trader and Securities Trader Principal registration categories to establish the Series 57 examination as the appropriate qualification examination for Securities Traders and retire the Series 56 examination for Proprietary Traders, and to establish S101 as the appropriate continuing education program for Securities Traders and retire the S501 continuing education program for Proprietary Traders starting January 4, 2016.[7]

In accordance with BOX's amended rules relating to the new Securities Trader registration category, individual Participants and associated persons of Participants engaged in proprietary trading or the direct supervision of proprietary trading will be required to register with the Exchange as Securities Traders and be qualified by passing the new Securities Trader qualification examination (Series 57) being implemented by FINRA, unless grandfathered as provided for in the Rules. In addition, the Series 57 examination replaces the Series 56 examination for those exchange registration categories, such as the Proprietary Trader Principal registration category, where the Series 56 examination was the acceptable prerequisite.[8]

The Exchange has further amended its Rules, in consultation with FINRA and the other exchanges, to provide for the Continuing Education Regulatory Element for registered persons. The personalized S101 Continuing Education Program will be the required Continuing Education Program for all registered persons including Securities Traders.

Proposal

The Exchange proposes to amend its Fee Schedule to delete the (i) $60.00 Continuing Education Fee for Series 56 [sic] and the (ii) $195.00 Series 56 Examination Fee. The Exchange further proposes to add a $120.00 Series 57 Examination Fee which will be applicable with respect to the new Securities Trader Qualification Examination (Series 57).

The $100.00 fee charged for administration of the S101 Continuing Education program applicable to registrants required to take examinations other than the Series 56 will remain in effect, and become applicable to all registrants, if a continuing education session is conducted at a testing center from January 4, 2016 through no later than six months thereafter when the Continuing Education program will no longer be offered at testing centers. A new $55.00 fee will be applicable to all registrants from and after January 4, 2016 for the S101 Continuing Education program. The $195.00 fee currently charged for the Series 56 examination will be replaced with a $120.00 fee for the Series 57 examination starting January 4, 2016. Therefore, the Exchange is proposing to add the $55.00 S101 Continuing Education fee and the $120.00 Series 57 examination fee to the current BOX Fee Schedule. Additionally, the $60.00 fee currently charged for the administration of the S501 Continuing Education Program applicable to Series 56 is being retired starting January 4, 2016. Therefore, the Exchange is proposing to delete both the Series 56 examination fee and the $60.00 S501 Continuing Education fee from the current BOX Fee Schedule.

Since the Series 57 and the S101 Continuing Education Program will fall within FINRA's jurisdiction, the related fees will be billed directly through FINRA commencing as of January 4, 2016.[9]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act, in general, and section 6(b)(4) and 6(b)(5)of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposal is fair, equitable and not unreasonably discriminatory because the fee change applies equally to all Participants and persons associated with Participants. The proposed deletion of the S501 Continuing Education Fees and Series 56 Qualification Examination Fee is further reasonable because such Continuing Education program and exam will be replaced by the S101 Continuing Education Program and Series 57 Qualification Examination Program. In addition, the Exchange believes that the fees added to the BOX Fee Schedule are equitably allocated and not unfairly discriminatory as they will apply uniformly to all Participants and persons associated with Participants who choose to take the Series 57 examination and participate in the continuing education program through FINRA.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange further believes that the proposal does not impose any burden on competition because it believes that the other exchanges will also be making the same changes to their fee schedules.[11]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

[5] *See* Securities Exchange Act Release Nos. 75783 (August 28, 2015), 80 FR 53369 (September 3, 2015) (approving SR–FINRA–2015–017) and 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (approving SR–FINRA–2015–015) collectively referred to herein as the ''FINRA Amendments''. According to the approval orders, FINRA's expected effective date for the FINRA Amendments is [sic] January 4, 2016.

[6] *See* Securities Exchange Act Release Nos. 76391 (November 9, 2015), 80 FR 70862 (November 16, 2015) (SR–FINRA–2015–044) and 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (SR–FINRA–2015–015).

[7] See Securities Exchange Act Release No. 76732 (December 22, 2015), 80 FR 81390 (December 29, 2015) (SR–BOX–2015–38).

[8] *See supra* note 7. These amended rule [sic] are effective as of January 4, 2016.

[9] *See supra* note 6.

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See supra* notes 5 and 6.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Exchange Act [12] and Rule 19b–4(f)(2) thereunder,[13] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–09 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–09, and should be submitted on or beforeMarch 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03953 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77191; File No. SR–NASDAQ–2016–025]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 5940 To Adopt Entry and Annual Fees for NextShares

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2016, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend certain fees in Nasdaq Rule 5940 in connection with listing a type of open-end management investment company registered under the Investment Company Act of 1940, as amended (''1940 Act''), called an exchange-traded managed fund (''NextShares''). The shares are collectively referred to herein as ''NextShares.''

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com* at Nasdaq principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend certain fees in Nasdaq Rule 5940 (entitled ''Exchange Traded Products'') associated with the listing of NextShares.[3] At the time of the Commission's approval of Nasdaq Rule 5745, Nasdaq did not specify fees applicable to NextShares. The Exchange now proposes to amend Nasdaq Rule 5940 to adopt both the entry fees and annual fees for NextShares.

Specifically, the proposed entry fee for when a company submits an application for listing a series [4] of NextShares under Nasdaq Rule 5745 will be $20,000 for the first series of NextShares (which will include a $1,000 non-refundable application fee) and an additional entry fee of $7,500 for each subsequent series of NextShares (which will include a $1,000 non-refundable application fee).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 34–73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR–NASDAQ–2014–020).

[4] A series refers to each individual NextShares. For example, assume an issuer launches four NextShares (*e.g.,* a Large Cap NextShares, a Large Cap Value NextShares, a Large Cap Growth NextShares and a Small Cap NextShares). Under Nasdaq Rule 5940(a)(2) as it is proposed to be amended, the issuer would pay a one-time initial listing fee of $20,000 for the Large Cap NextShares since it is the first series listed, and pay a separate $7,500 initial listing fee for each of the Large Cap Value NextShares, Large Cap Growth NextShares and Small Cap NextShares since they each would be considered a subsequent series of NextShares.

The proposed annual fee for the issuer of a series of NextShares will be paid for each individual series of NextShares and calculated on total shares outstanding for that specific series of NextShares. The annual fee, which can vary from year to year based on the NextShares' total shares outstanding, will be $6,500 for a series of NextShares with up to 25 million shares; $15,000 for over 25 million to 100 million shares; and $25,000 for over 100 million shares.

The Exchange intends to treat each series of NextShares independently and in connection with the calculation of the proposed annual fee, the Exchange will not aggregate the total shares outstanding across different series [5] from the same issuer or sponsor.

NextShares will have a distinct fee schedule for both entry and annual fees because the costs Nasdaq incurs in support of NextShares is greater than the costs the Exchange incurs with other exchange-traded products (''ETPs''). The increased Nasdaq costs for NextShares, as compared with other ETPs, that the higher entry fees are intended to address, include the technological changes and the platform needed to support the initial listing, launch, and trading of NextShares. The Exchange also anticipates greater costs associated with the necessary regulatory review and extra legal work associated with the launch of each NextShares, which may include the preparation of filings under Section 19(b) of the Exchange Act and initial work with each NextShares licensee.

The increased Nasdaq costs for NextShares, as compared with other ETPs, that the higher annual fees are intended to address, include the ongoing trading and continued support of NextShares by the Exchange. This will require Nasdaq to expend greater resources than it currently expends on other ETPs. Specifically, the Exchange believes that as a result of supporting intra-day NAV-based trading, NextShares' will require additional daily support that is more than what is currently provided for traditional ETPs.

Each series of NextShares has a different investment strategy and strikes a unique net asset value (''NAV'') at the end of each trading day and will require the calculation of a final exchange trading price each day after the NAV is calculated. This involves supplementary operational procedures that are specific to NextShares (*e.g.,* generating two daily trade confirmations, converting intra-day proxy price [6] share trades that are recorded and stored intra-day by Nasdaq to the NextShares' end-of-day NAV, and the determination of final trade pricing). Nasdaq also anticipates an increase in time, effort and expense in responding to trading and data inquiries from third party vendors/counterparties, as compared with what it expends on other ETPs. The Exchange also anticipates greater costs associated with the necessary regulatory review and extra legal work associated with the ongoing support of each NextShares.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(4) and (5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the addition of an initial entry fee and an annual fee in connection with each series of NextShares under proposed Nasdaq Rule 5940 is consistent with Section 6(b)(4) of the Act [9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls.

Specifically, Nasdaq believes that although the proposed entry fee of $20,000 for the first series [10] of NextShares (which includes a $1,000 non-refundable application fee) and the additional entry fees of $7,500 for each subsequent series of NextShares (which includes a $1,000 non-refundable application fee) are higher than the entry fee of $5,000 (which includes a $1,000 non-refundable application fee) for other ETPs, the proposed entry fees for NextShares are reasonable because they will help offset the higher costs Nasdaq incurs in support of NextShares as compared with the costs it incurs for other ETPs. These higher costs include the technological changes and the platform needed to support the initial listing, launch, and trading of NextShares, as well as the greater costs that the Exchange anticipates that will be associated with the necessary regulatory review and extra legal work associated with the launch of each NextShares, which may include the preparation of SEC filings and initial work with each NextShares licensee.

The Exchange also believes that the proposed entry fees are equitable and not unfairly discriminatory because the Exchange assesses the same entry fees uniformly and for all series of NextShares. Additionally, Nasdaq believes that although the proposed entry fees are higher than those for other ETPs for the reasons explained above, they are equitable and not unfairly discriminatory.

Nasdaq also believes that the proposed annual fee for the issuer of a series of NextShares that will be paid for each individual series and calculated on total shares outstanding for that specific NextShares is reasonable because it will help offset the higher ongoing costs, including regulatory, legal, surveillance, and operational costs to monitor the listing of NextShares and that these costs are greater than what is currently provided for other ETPs.

These costs include the ongoing trading and continued support of NextShares by the Exchange and will require Nasdaq to expend greater resources than it currently expends on other ETPs. Specifically, the Exchange believes that as a result of supporting intra-day NAV-based trading, NextShares' will require additional daily support that is more than what is currently provided for traditional ETPs. Additionally, each series of NextShares has a different investment strategy and strikes a unique NAV at the end of each trading day and will require the calculation of a final exchange trading price each day after the NAV is calculated. This involves supplementary operational procedures that are specific to NextShares (*e.g.,* generating two daily trade confirmations, converting intra-day proxy price [11] share trades that are recorded and stored intra-day by Nasdaq to the NextShares' end-of-day NAV and the determination of final trade pricing).

Nasdaq also anticipates an increase in time, effort and expense in responding to trading and data inquiries from third party vendors/counterparties, as compared with what it expends on other ETPs. The Exchange also anticipates greater costs associated with the necessary regulatory review and extra legal work associated with the ongoing support of each NextShares.

The Exchange will not aggregate the total shares outstanding across different series of NextShares for purposes of the

[5] *Id.*

[6] A NextShares next-determined NAV will be represented at the beginning of each trading day by a proxy price of 100.00.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* footnote 4 above.

[11] A NextShares next-determined NAV will be represented at the beginning of each trading day by a proxy price of 100.00.

proposed annual fee. This differs with the methodology used to calculate the total shares outstanding for other ETPs, including Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, or other security listed under the Rule 5700 Series where no other fee schedule is specifically applicable listed on The Nasdaq Global Market. The Exchange believes that although the proposed annual fees are higher for NextShares than for other ETPs, for the reasons discussed above, these fees are equitable and not unfairly discriminatory.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Sections 6(b)(4) and 6(b)(5) of the Act.[12]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed fees for this new exchange-traded product will promote competition to the benefit of the markets and investors by making NextShares available to investors at a reasonable cost across a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of exchange-traded funds. In order to remain competitive with other exchanges that also develop and market new ETPs, Nasdaq scrutinizes its fees closely before adopting such entry and annual fees.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–025 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–025, and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03951 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR § 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. SIPA–174; File No. SIPC–2016–01]**

## Securities Investor Protection Corporation

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of the determination of the Board of Directors of the Securities Investor Protection Corporation (''SIPC'') regarding the standard maximum cash advance amount, beginning January 1, 2017.

**SUMMARY:** Pursuant to Section 3(e)(2) of the Securities Investor Protection Act of 1970 (''SIPA''),[1] notice is hereby given that the Board of Directors of SIPC (the ''Board'') filed with the Securities and Exchange Commission (''Commission'') on February 17, 2016 notification that the Board has determined, beginning January 1, 2017, and for the five year period immediately thereafter, that the standard maximum cash advance amount available to satisfy customer claims for cash in a SIPA liquidation proceeding will remain at $250,000. The Commission is publishing this notice to solicit comments on Board's determination from interested parties.

**DATES:** Comments are to be received on or before March 11, 2016.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments concerning the foregoing by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SIPC–2016–01 on the subject line.

*Paper Comments*

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All comments should refer to File Number SIPC–2016–01. To help the Commission process and review your comments more efficiently, please use

[1] 15 U.S.C. 78ccc(e)(2).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to this Notice that are filed with the Commission, and all written communications relating to the Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Deputy Associate Director, at (202) 551–5522; Timothy C. Fox, Branch Chief, at (202) 551–5687; or Rose Russo Wells, Senior Counsel, at (202) 551–5527; Office of Financial Responsibility, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

## I. SIPC'S Statement of the Purpose of and Statuory Basis of the Determination of the Board of Directors of SIPC Not To Adjust the Standard Maximum Cash Advance Amount for Inflation

In its filing with the Commission, SIPC included statements concerning the purpose of and statutory basis of the SIPC Board's determination. The text of these statements may be examined at the places specified above, and appear in the text, below.

* * * * *

''Under the Securities Investor Protection Act, 15 U.S.C. Section 78aaa *et seq.* (''SIPA''), the Board of SIPC must decide, every five years beginning no earlier and no later than January 1, 2011, whether to adjust for inflation the standard maximum amount that SIPC can advance to satisfy customer claims for cash under SIPA. *See* SIPA § 78fff–3(e)(1).[2] The Board considered the question at its Meeting on June 18, 2015, and on July 16, 2015, after further deliberation, the Board reached its determination. The Board's determination is subject to the approval of the Commission as provided under SIPA Section 78ccc(e)(2).[3] If approved, any adjustment to the standard cash maximum advance would take effect on January 1, 2017. *See* SIPA 78fff–3(e)(4). Under SIPA Section 78fff–3(e)(3)(A), the SEC is required to publish in the **Federal Register** notice of the maximum amount.

Per our notice to the Commission by letter dated August 18, 2015, this will re-affirm to the Commission that effective January 1, 2017, and for the five years immediately thereafter, the Board has determined that the maximum amount of the advance to satisfy a claim for cash will remain at the current level of $250,000 per customer.

*Consideration of the Statutory Criteria*

In deciding whether to adjust the maximum cash advance amount, the Board is to consider the following criteria under SIPA Section 78fff–3(e)(5):

(A) The overall state of the fund and the economic conditions affecting members of SIPC;

(B) the potential problems affecting members of SIPC; and

(C) such other factors as the Board of Directors of SIPC may determine appropriate.

In furtherance of the Board's consideration of the above factors, the SIPC staff solicited and received comments and/or data from the staffs of FINRA, SIFMA, the SEC, and the FDIC. The data related to member firms' aggregate leverage, liquidity, and default risk, and to aggregate customer free credit balances. The information was presented to the Board by the SIPC staff, as part of an analysis by the staff of the state of the SIPC Fund and its projected growth. The staff's analysis focused on SIPC's historical experience and examined (1) SIPC advances in past and present liquidation proceedings; (2) amounts generated from assessments on member broker-dealers; and (3) projected returns on SIPC investments. The analysis also considered a 2013 study by consultants engaged by SIPC to examine the potential impact on the SIPC Fund of an increase in the cash advance limit to $500,000. The conclusions reached by the staff in their analysis were corroborated by the data received from the aforementioned authorities and by the 2013 consultants' study, namely, that the SIPC Fund is positioned to remain on a steady growth path for the foreseeable future, barring any unforeseen catastrophic event.

The Board also reviewed the number of claims for cash exceeding the limit of protection in past and present liquidation proceedings. This data suggests that an inflation adjustment may not be necessary to further SIPC's purposes, but that if an inflation adjustment is made, its impact on the SIPC Fund may not be significant.

Of the more than 625,000 allowed claims in completed or substantially completed liquidation proceedings as of December 31, 2014, the unsatisfied portion of cash claims amounted to $25 million. More than half of that amount related to only three claims that were submitted when the limit of protection for cash claims was less than the current $250,000. In the six SIPA proceedings initiated since 2010, SIPC has advanced, net, funds for only one cash claim in excess of $250,000.

The Board also noted that customer credit balances at brokerage firms had decreased at the end of 2013 and 2014, and that due to broker-dealers' offer of overnight ''sweep'' programs, customer free credit balances were being moved to bank accounts, with the protection of such accounts thereby transferred to the FDIC.

With regard to FDIC deposit insurance, increases to the limit of protection for cash claims under SIPA historically have been in lockstep with increases in FDIC deposit insurance under the Federal Deposit Insurance Act, 12 U.S.C. 1821 *et seq.* (''FDIA'').[4] In 2008, and again, in 2010, parity with deposit insurance was the primary reason for SIPC's request to Congress to increase the SIPA limit of protection for cash claims. FDIC coverage is currently $250,000. While the Federal Deposit Insurance Act includes similar language to SIPA related to adjusting for inflation, the adjustment is based upon a $100,000 coverage level, and the FDIC has not

[2] For convenience, references herein to provisions of SIPA shall be to the United States Code, and shall omit ''15 U.S.C.''

[3] SIPA Section 78ccc(e)(2) establishes procedures governing proposed changes to SIPC's rules.

[4] The below compares the limits of protection for cash under SIPA and the FDIA:

*SIPA:* $20,000 (Pub. L. 91–598, § 6(f)(1)(A), 84 Stat. 1636, 1651 (1970))

*FDIA:* $20,000 (Pub. L. 91–151, § 7, 83 Stat. 371, 375 (1969))

*SIPA:* $40,000 (Pub. L. 95–283, § 9, 92 Stat. 249, 265 (1978))

*FDIA:* $40,000 (Pub. L. 93–495, § 102(a), 88 Stat. 1500, 1502 (1974))

*SIPA:* $100,000 (Pub. L. 96–433, § 1, 94 Stat. 1855 (1980))

*FDIA:* $100,000 (Pub. L. 96–221, § 308, 94 Stat. 132, 147 (1980))

*SIPA:* $250,000 (Pub. L. 111–203, § 929H, 124 Stat. 1376, 1865 (2010))

*FDIA:* $250,000 ((temporary until 12/31/2009) Public Law No. 110–343, § 136, 122 Stat. 3765, 3799 (2008); (permanent) Public Law 111–203, § 335, 124 Stat. 1376, 1540 (2010)).

increased coverage under the inflation provision.[5]

The Board expressed concern that a unilateral increase to the SIPA limit could have unintended consequences, particularly in light of the issue not having been widely studied or discussed. For example, increasing the SIPA limit above the deposit insurance limit could incentivize the movement of funds to brokerage accounts as a savings vehicle, an outcome not consistent with the intent of SIPA.

Finally, the Board considered the amount by which the limit of protection for allowed cash claims would change if adjusted for inflation. Under SIPA Section 78fff–3(e)(1)(B), if the Board determines that an adjustment is appropriate, then $250,000 is to be multiplied by

> [t]he ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year in which this subsection was enacted.

15 U.S.C. 78fff–3(e)(1)(B).[6] Although the amount of the inflation adjustment need only be considered if the Board determines to adjust the $250,000 for inflation, *see* SIPA Section 78fff–3(e)(1), that determination would be meaningless if the adjustment resulted in no change. This was the case on January 1, 2011, when application of the formula would have increased the limit to the adjusted amount of $254,449.52.[7] However, under SIPA Section 78fff–3(e)(2), because the adjusted amount must be rounded down to the nearest $10,000 if it is not a multiple of $10,000, the limit would have remained at $250,000. Even if it had determined to do so, the Board could not have adjusted the amount.

*Conclusion*

A present-day application of the formula would increase the limit by $20,000.[8] The Board weighed the relevant factors against a potential adjustment of $20,000. The Board concluded that, on balance, in light of the unprecedented break with the FDIC limit that would result, with possibly harmful consequences, and the absence of evidence that an appreciable number of investors would be benefitted, an adjustment to the limit of protection for cash claims was not appropriate. Accordingly, the Board determined that the standard maximum cash advance amount should remain at $250,000 per customer.''

* * * * *

## II. Date of Effectiveness and Timing for Commission Action

Within thirty-five days of the date of publication of this notice of the SIPC Board's determination in the **Federal Register**, or within such longer period (i) as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SIPC consents, the Commission shall:

(A) By order approve such determination or

(B) Institute proceedings to determine whether such determination should be disapproved.

## III. Notice of the Determination of the SIPC Board Not To Adjust the Standard Maximum Cash Advance Amount for Inflation

Effective January 1, 2016, the Board of Directors of the Securities Investor Protection Corporation determined that an inflation adjustment to the standard maximum cash advance amount, as defined in section 9(d) of the Securities Investor Protection Act, 15 U.S.C. 78fff–3(d), would not be appropriate for the five-year period beginning on January 1, 2017. Accordingly, the Board determined that the standard maximum cash advance amount should remain at $250,000 per customer, effective January 1, 2017 and for the five years immediately thereafter.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Dated: February 22, 2016.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–04022 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 12 U.S.C. 1821(a)(1)(F)(i)(I). *See* Deposit Insurance Regulations; Permanent Increase in Standard Coverage Amount; Advertisement of Membership; International Banking; Foreign Banks, 75 FR 49363 n.6 (Aug. 13, 2010).

[6] Under SIPA Sections 78fff–3(d) and 78fff–3(e)(1), the Board was required to adjust the maximum cash advance, if at all, *after* December 31, 2010, *but no later than* January 1, 2011, and then, could do so every 5 years thereafter. Thus, the five-year period after January 1, 2011, would occur in 2016. Under SIPA Section 78fff–3(e)(4), any adjustment to the amount of the cash advance would take effect on January 1 of the year immediately after the year in which the adjustment was made.

[7] The calculation would be as follows: $250,000 multiplied by 1.017798—the ratio of 111.112 (the annual value of the Price Index published by the Department of Commerce for 2010, the calendar year preceding the year in which the determination was to be made), to 109.169 (the published annual value of such index for 2009, the calendar year preceding the year in which the subsection was enacted)—equals $254,449.52.

[8] The $20,000 is arrived at as follows: $250,000 multiplied by 1.08763 which is the ratio of 108.763 (the annual value of the Price Index published by the Department of Commerce for calendar year 2014), to 100.000 (the published annual value of the index for 2009, the calendar year preceding the year in which subsection 78fff–3(e)(1)(B) was enacted) which equals $271,907.50. Rounded down to $270,000, the adjusted limit reflects an increase of $20,000 from the $250,000 limit. Because the determination is to be made for the calendar year 2016, the annual value of the Price Index to be used is for the ''calendar year preceding the year in which such determination is made,'' namely, the year 2015. However, the 2015 annual value was not available until after the end of the year. This calculation therefore was conditioned on the assumption of no unexpected dramatic rise in inflation in calendar year 2015. *See http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&904=2009&903=64&906=a&905=2015&910=x&911=0.*

[9] 17 CFR 200.30–3(f)(3).

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77198; File No. SR–NYSE–2016–12]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Listed Company Manual To Adopt a Requirement That Listed Foreign Private Issuers Must, at a Minimum, Submit a Form 6–K to the Securities and Exchange Commission Containing Semi-Annual Unaudited Financial Information

February 19, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 5, 2016, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Listed Company Manual (the ''Manual'') to adopt a requirement that listed foreign private issuers must, at a minimum, submit a Form 6–K to the Securities and Exchange Commission (''SEC'') containing semi-annual

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

unaudited financial information.[4] The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Manual to adopt a requirement that listed foreign private issuers must, at a minimum, submit a Form 6–K to the SEC containing semi-annual unaudited financial information.

Any listed company that is a domestic issuer is required by SEC rules to file a quarterly report on Form 10–Q within a specified period after the end of each of the company's first, second and third fiscal quarters. The Form 10–Q contains unaudited financial information with respect to the most recently completed fiscal quarter. However, listed companies that are foreign private issuers [5] are not subject to any comparable SEC requirement with respect to interim financial reporting.[6] The Exchange understands that financial reporting practices in other countries may differ from those in the United States and that it is often not the case that foreign companies issue interim financial information on a quarterly basis. However, it is the Exchange's experience that almost all listed foreign private issuers issue interim financial information on at least a semi-annual basis. The Exchange believes that this practice is essential for the protection of investors, as annual financial disclosure is too infrequent to enable investors to make informed investment decisions, especially as that information ages in the latter part of the disclosure cycle.

Given the importance of the practice of foreign private issuer listed companies reporting mid-year results, the Exchange believes that it is desirable to make this practice mandatory. Doing so will ensure that the practice is uniform among all listed foreign private issuers and also enables the Exchange to apply its compliance procedures for companies that are late in their periodic reporting to listed foreign private issuers that fail to disclose semi-annual financial information on a timely basis.

Consequently, the Exchange proposes to adopt new Section 203.03 of the Manual which would provide that each listed foreign private issuer must, at a minimum, submit to the SEC a Form 6–K that includes (i) an interim balance sheet as of the end of its second fiscal quarter and (ii) a semi-annual income statement that covers its first two fiscal quarters. This Form 6–K would be required to be submitted no later than six months following the end of the company's second fiscal quarter. The financial information included in the Form 6–K would be required to be presented in English, but would not be required to be reconciled to U.S. GAAP. The Exchange's intention in adopting proposed Section 203.03 is solely to establish a minimum interim reporting regime applicable to all listed foreign private issuers. The Exchange is not seeking to discourage companies from providing more expansive or more frequent interim financial information and proposed Section 203.03 would not relieve companies of the obligation to comply with any reporting obligations they may have under the requirements of Form 6–K or home country law or regulation. In addition, the Exchange proposes to amend Section 802.01E of the Manual to subject listed foreign private issuers that have not timely filed the required Form 6–K to the same compliance procedures as are applied to listed companies that are late in filing their annual report or Form 10–Q. A failure to file the required Form 6–K within the period specified by proposed Section 203.03 would constitute a Late Filing Delinquency under Section 802.01E. As with any other Late Filing Delinquency under that rule, a company that was delayed in filing its Form 6–K would have an initial six months compliance period within which to file the Form 6–K and any subsequently due Form 20–F or Form 6–K. If the company did not file all required filings during that initial six month period, Exchange staff would have the discretion to provide an additional compliance period of up to six months. Any company that failed to become timely with its filing obligations within the compliance periods provided under the rule (including, in the case of a company that receives the maximum 12-month cure period, the Form 6–K including the semi-annual data for the first six months of the subsequent fiscal year) would be subject to delisting.

The Exchange proposes to make Section 203.03 effective beginning with any fiscal year beginning on or after July 1, 2015. This means that the earliest semi-annual period with respect to which a company would be required to furnish a Form 6–K under the proposed rule would have ended on December 31, 2015.[7]

The Exchange also proposes to amend Section 103.00 of the Manual to clarify that, notwithstanding the provision in that section that allows listed foreign private issuers to follow home country

[4] *See* footnote 6 below for a description of information that foreign private issuers are currently required to furnish to the SEC on a Form 6–K under the provisions of General Instruction B to Form 6–K.

[5] Exchange Act Rule 3b–4 defines a foreign private issuer as any issuer incorporated or organized under the laws of a foreign country, except an issuer meeting both of the following conditions: (i) More than 50 percent of the outstanding voting securities of the issuer are directly or indirectly held of record by residents of the United States; and (ii) any one of the following: (a) the majority of the executive officers or directors of the issuer are United States citizens or residents; or (b) more than 50 percent of the assets of the issuer are located in the United States; or (c) the business of the issuer is administered principally in the United States.

[6] The Exchange notes that General Instruction B to Form 6–K requires foreign private issuers to furnish on a Form 6–K whatever information, not required to be furnished on Form 40–F or previously furnished, such issuer (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, or (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange, or (iii) distributes or is required to distribute to its security holders. The information required to be furnished pursuant to (i), (ii) or (iii) above is that which is material with respect to the issuer and its subsidiaries concerning: Changes in business; changes in management or control; acquisitions or dispositions of assets; bankruptcy or receivership; changes in registrant's certifying accountants; the financial condition and results of operations; material legal proceedings; changes in securities or in the security for registered securities; defaults upon senior securities; material increases or decreases in the amount outstanding of securities or indebtedness; the results of the submission of matters to a vote of security holders; transactions with directors, officers or principal security holders; the granting of options or payment of other compensation to directors or officers; and any other information which the registrant deems of material importance to security holders. As a result of (i) through (iii) above, foreign private issuers could be required to provide the information required under proposed Section 203.03 of the Manual more frequently than semi-annually.

[7] The Commission notes that this means that the any listed company would have at least until June 30, 2016 to file the Form 6–K, with the required semi-annual data, under the new rule.

practice in lieu of complying with the Exchange's interim reporting requirements applicable to domestic companies, all listed foreign private issuers will be required to disclose interim financial information in a Form 6–K on a semi-annual basis in compliance with proposed Section 203.03.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because it is designed to ensure that listed companies provide timely financial information that is necessary to enable investors to make informed investment decisions. The Exchange believes that the proposed amendment does not unfairly discriminate among issuers, as, while it establishes a semi-annual reporting requirement for foreign private issuers that is different from the quarterly reporting to which domestic issuers are subject, this difference is consistent with the differential requirements imposed by the SEC. In addition, while a small number of companies will have less than six months from the date of effectiveness of the proposed rule to submit their first required semi-annual report, the Exchange does not believe that this is unfairly discriminatory as the period available to those companies will not be significantly less than six months and will be adequate to enable them to meet the proposed [sic].

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The proposed rule change is designed to mandate that foreign private issuer listed companies must, at a minimum, provide semi-annual financial information. As almost all NYSE-listed foreign private issuers already provide this information and Nasdaq listed companies are already subject to a comparable rule, the Exchange does not expect the rule change to have any significant impact on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that requiring semi-annual reporting of summary financial information by listed foreign private issuers is consistent with the protection of investors and the public interest since it will ensure that investors have access to information that is necessary for them to make informed decisions about investments in those companies. The Commission believes that the proposed rule change will not be unduely burdensome on foreign private issuers as the Exchange states in its filing that most, if not all, effected companies already provide such information on a voluntary basis. Therefore, the Commission believes that the new rule should help to ensure that investors will have, or continue to have, the necessary information to make informed investments decisions for all listed foreign private issuers. In addition, concerning the proposed changes on continued listing for filing delinquencies under Section 802.01E of the Manual, treating Exchange listed foreign private issuers that fail to timely file semi-annual reports under the new rule similarly to listed domestic issuers that fail to file timely interim reports will help to ensure that investors have information necessary to assess the company and support continued trading on the Exchange.[14] Based on the above, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* NYSE Listed Company Manual Section 802.01E.

[15] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–12 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–12 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03962 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77181; File No. SR–EDGX–2016–03]**

## Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rules 8.15, Imposition of Fines for Minor Violation(s) of Rules, and 25.3, Penalty for Minor Rule Violations, Amending the Exchange's Minor Rule Violation Plan

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2016, EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rules 8.15 and 25.3 to amend the Exchange's Minor Rule Violation Plan.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 8.15 applicable to the Exchange's equity platform (''EDGX Equities'') to remove the $2,500 penalty limitation contained in Rule 8.15(a) in order to modify the permissible penalties for minor rule violations with respect to Rule 25.3 applicable to the EDGX options platform (''EDGX Options'') and to allow the Exchange the discretion to impose penalties in excess of $2,500 under both the EDGX Equities and EDGX Options Minor Rule Violation Plans. The proposal further provides that only fines that do not exceed $2,500 will not be reported. Fines that exceed $2,500 will continue to be publicly reported by the Exchange [3] and reported as final in compliance with SEC Rule 19d–1(c).[4]

Further, the Exchange proposes to amend the EDGX Options Minor Rule Violation Plan penalty schedule contained in Rule 25.3(d)—for violations of Rule 22.6(d) regarding Market Makers maintaining continuous bids and offers—to aggregate violations of Rule 22.6(d) that occur in a single month of a rolling 24-month period and sanction such aggregated violations as a single offense. The proposed amended penalty schedule is substantially similar to International Securities Exchange (''ISE'') Rule 1614(d)(11) Minor Rule Violation Plan penalties for continuous options quotation violations. In addition to these changes, the Exchange proposes to make minor non-substantive changes to conform to the Rules of BATS Exchange, Inc., specifically by capitalizing the term ''rule'' in Rule 8.15 and by adding the words ''and Policy'' to Interpretation and Policy .01.

Removal of Penalty Limitation

Rule 25.3 states that the Exchange may proceed under the Minor Rule Violation Plan pursuant to the procedures set forth in Rule 8.15 applicable to EDGX Equities. Currently, Rule 8.15(a) states that the Exchange may impose a fine ''not to exceed $2,500'' for a minor rule violation. Because existing Rule 25.3 recommends the imposition of penalties in excess of $2,500 in certain circumstances, the

[3] As set forth in Interpretation and Policy .01 to Rule 8.11, except as provided in Rule 8.15(a), the staff shall cause details regarding all formal disciplinary actions where a final decision has been issued to be published on a Web site maintained by the Exchange.

[4] 17 CFR 240.19d–1(c).

Exchange believes the penalty limitation in 8.15(a) is obsolete, inappropriate, and unnecessarily confusing. Moreover, abiding by the terms of the penalty limitation contained in 8.15(a) for purposes of the EDGX Options Minor Rule Violation Plan deprives Rule 25.3 of much of its meaning and effectiveness. Further, it is the Exchange's position that the penalty limitation currently contained in Rule 8.15(a) is also unnecessary because the Exchange must exercise its discretion to opt to proceed under the Minor Rule Violation Plan rather than under its default process, the formal disciplinary process. As a practical matter, if an individual or entity exceeds the prescribed Minor Rule Violation Plan fine threshold of $2,500, it will oftentimes be appropriate for the Exchange to decline to exercise its discretion to proceed under the Minor Rule Violation Plan and to instead proceed under the formal disciplinary process. The Exchange, however, believes it should have the discretion to elect to proceed under the Minor Rule Violation Plan for a minor rule violation that would otherwise cumulatively exceed $2,500. Accordingly, the Exchange proposes to eliminate the penalty limitation in Rule 8.15(a).

The Exchange recognizes, however, a fine exceeding $2,500 must be reported as final in accordance with SEC Rule 19d–1(c),[5] regardless of whether or not it is imposed under the Minor Rule Violation Plan. The Exchange provides, therefore, that only fines that do not exceed $2,500 will not be reported. Fines that exceed $2,500 will continue to be reported as final in compliance with SEC Rule 19d–1(c).[6]

Amendment to MRVP for Continuous Quoting Violations

The Exchange proposes to amend Rule 25.3(d) to impose fines for violations of Rule 22.6(d)—regarding a Market Maker's failure to maintain continuous bids and offers—under the Minor Rule Violation Plan by aggregating the violations that occur in a month and sanctioning the violations as a single offense. The Exchange proposes to continue its current recommendation of issuing a letter of caution for the first offense in a rolling 24-month period. For the second violation in the period, the Exchange proposes to issue a $1,000 penalty; for the third a $2,500 penalty; for the fourth a $5,000 penalty. Finally, if there occurs a fifth violation within a rolling 24-month period, the Exchange believes that such a violation is inappropriate for disposition under the Minor Rule Violation Plan, and the proposed amendment to Rule 25.3(d) directs that the violation be enforced in a formal disciplinary action. The Exchange believes it is appropriate to recommend higher penalties than recommended in current Rule 25.3(d) because the Exchange is aggregating violations that occur in a month and sanctioning the violations as a single offense.

As with other violations covered under the Exchange's Minor Rule Violation Plan, the Exchange may elect to forgo the Minor Rule Violation Plan and enforce any egregious violations of its rules under the Exchange's formal disciplinary process.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires exchange rules to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[9] which requires that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act such that it can enforce compliance with the Act by persons registered with the Exchange. The Exchange also believes the proposed rule change furthers the objectives of Section 6(b)(6)[10] of the Act, which requires that the rules of an exchange provide that its members and persons associated with its members be appropriately disciplined for violation of the provisions of the Act, the rules and regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. Finally, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,[11] in particular, in that it provides fair procedures for the disciplining of members and persons associated with members.

The Exchange believes the proposed rule change for Rule 8.15(a) fulfills the requirements set forth above because it modifies the procedures for the Exchange to discipline minor EDGX Options rule violations by removing the $2,500 penalty limitation from the EDGX Equities and EDGX Options Minor Rule Violation Plan and makes other minor stylistic and conforming changes. The proposed rule change further provides that the Exchange will not report fines that do not exceed $2,500 under the Minor Rule Violation Plan except as required under SEC Rule 19d–1(c).[12]

The Exchange believes the proposed rule change for Rule 25.3(d) fulfills the requirements set forth above because it permits the Exchange to levy progressively larger fines against a repeat-offender and prescribes that after five violations in a rolling 24-month period, the conduct is outside the purview of the Minor Rule Violation Plan, and formal disciplinary action is appropriate. Further, the Exchange believes the proposed rule change for Rule 25.3(d) fulfills the requirements set forth above because it clearly defines when and how a Market Maker may be disciplined under the Minor Rule Violation Plan. The Exchange also notes that the proposed rule change for Rule 25.3(d) is based on and substantially similar to ISE Rule 1614(d)(11).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[13] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change merely amends the procedures the Exchange intends to follow with regard to minor EDGX Options Rule 22.6(d) violations and removes an obsolete and unnecessary penalty limitation. Thus, the Exchange does not believe the proposed rule change will have any effect on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any

[5] 17 CFR 240.19d–1(c).

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(6).

[11] 15 U.S.C. 78f(b)(7).

[12] 17 CFR 240.19d–1(c).

[13] 15 U.S.C. 78f(b)(8).

unsolicited written comments from Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and paragraph (f)(6) of Rule 19b–4 thereunder,[15] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2016–03 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2016–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2016–03, and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03942 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b 4.

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77188; File No. SR–BATS–2016–18]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.13(b)(3)(H), Order Execution and Routing, To Amend the Operation of Non-Displayed Orders and Reserve Orders

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2016, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to amend the operation of Non-Displayed Orders[5] and Reserve Orders[6] when they are to be routed away from the Exchange pursuant to the Post to Away routing option set forth in Rule 11.13(b)(3)(H).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

A Non-Displayed Order is an order that is not displayed on the Exchange.[7] A Reserve Order is a limit order with a portion of the quantity displayed (''Display Quantity'') and with a reserve portion of the quantity (''Reserve Quantity'') that is not displayed.[8] Both the Display Quantity and the Reserve

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 11.9(c)(11).

[6] *See* Exchange Rule 11.9(c)(1).

[7] *See* Exchange Rule 11.9(c)(11).

[8] *See* Exchange Rule 11.9(c)(1).

Quantity are available for execution against incoming orders. Under the Post to Away routing option, the remainder of an order that was previously routed away and returned to the Exchange may be re-routed to and post on the order book of a destination on the System routing table [9] as specified by the User.[10]

Currently, Non-Displayed Orders and Reserve Orders that are routed to an away Trading Center pursuant to the Post to Away routing option are routed as fully displayed orders. The Exchange proposes to identify Non-Displayed Orders and Reserve Orders as such when routed to an away Trading Center. The Exchange believes doing so is consistent with the original intent of the order, to be not displayed or to include a Reserve Quantity.[11]

The Exchange, therefore, proposes to amend the definition of Non-Displayed Orders under Exchange Rule 11.9(c)(11) to state that a Non-Displayed Order that is to be re-routed pursuant to the Post to Away routing option set forth in Rule 11.13(b)(3)(H) will be identified as a Non-Displayed Order when routed to an away Trading Center. Similarly, the Exchange proposes to amend the definition of a Reserve Order under Exchange Rule 11.9(c)(1) to state that a Reserve Order that is to be re-routed pursuant to the Post to Away routing option set forth in Rule 11.13(b)(3)(H) will be identified as a Reserve Order when routed to an away Trading Center.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal promotes just and equitable principles of trade by enabling Members to continue to identify their order as a Non-Displayed Order or Reserve Order when they are re-routed to an away Trading Center. The proposal also removes impediments to and perfects the mechanism of a free and open market and a national market system by providing Users the flexibility with regard to the handling of their orders by ensuring that the order is not altered and retains its original instructions from order entry when it is routed to an away Trading Center. Doing so ensures that such orders that are routed pursuant to the Post to Away routing option may be posted to the away Trading Center's order book consistent with the order's original instructions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal would enhance competition by attracting additional order flow to the Exchange because it allows Users to ensure that their order is not altered and retains its original instructions from order entry when it is routed to an away Trading Center.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and paragraph (f)(6) of Rule 19b–4 thereunder.[15] The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2016–18 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2016–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of

[9] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Exchange Rule 11.13(b)(3).

[10] *See* Exchange Rule 11.13(b)(3)(H). The Post to Away routing option can be combined with the following routing options: ROUT, ROUX, ROUZ, INET, RDOT, and RDOX. *Id.* An order subject to the ROUT, ROUX, ROUZ, INET, RDOT, and RDOX routing options will not be posted to the order book of the Trading Center to which it is routed. The User may elect that the order be cancelled or post to the BATS Book upon its initial return to the Exchange. *Id.* Alternatively, if the User had selected the Post to Away routing option, the order would be currently routed to the away Trading Center as a Displayed Order.

[11] Routable Non-Displayed and Reserve Orders would be handled in accordance with the rules of the Trading Center to which they are routed.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2016–18 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03948 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77190; File No. SR–EDGA–2016–03]**

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.6, Definitions, To Amend the Operation of Orders With a Non-Displayed Instruction and Orders With Reserve Quantity

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2016, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the operation of orders with a Non-Displayed[5] instruction and orders with Reserve Quantity[6] under Rule 11.6, Definitions, when they are to be routed away from the Exchange pursuant to the Post to Away routing option set forth in Rule 11.11(g)(15).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Non-Displayed is an instruction the User may attach to an order stating that the order is not to be displayed by the System on the EDGA Book.[7] A Reserve Quantity is the portion of an order that includes a Non-Displayed instruction in which a portion of that order is also displayed on the EDGA Book.[8] Both the portion of the order with a Displayed instruction and the Reserve Quantity are available for execution against incoming orders. Under the Post to Away routing option, the remainder of an order that was previously routed away and returned to the Exchange may be re-routed to and post on the order book of a destination on the System routing table[9] as specified by the User.[10]

Currently, orders with a Non-Displayed instruction or Reserve Quantity that are routed to an away Trading Center pursuant to the Post to Away routing option are routed as fully displayed orders. The Exchange proposes to include a Non-Displayed instruction or to include a Reserve Quantity on orders routed to an away Trading Center. The Exchange believes doing so is consistent with the original intent of the order, to be Non-Displayed or to include a Reserve Quantity.[11]

The Exchange, therefore, proposes to amend the definition of Non-Displayed under Exchange Rule 11.6(d)(2) to state that an order with a Non-Displayed instruction that is to be re-routed pursuant to the Post to Away routing option set forth in Rule 11.11(g)(15) will be identified as Non-Displayed when routed to an away Trading Center. Similarly, the Exchange proposes to amend the definition of Reserve Quantity under Exchange Rule 11.6(m) to state that the Reserve Quantity of an order that is to be re-routed pursuant to the Post to Away routing option set forth in Rule 11.11(g)(15) will be identified as an order with a Reserve Quantity when routed to an away Trading Center.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal promotes just and equitable principles of trade because by enabling Members to continue to identify their order as an order with a Non-Displayed instruction or an order with Reserve Quantity when they are re-routed to an away Trading Center. The proposal also removes impediments to and perfects the mechanism of a free and open market and a national market

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 11.6(e)(2).

[6] *See* Exchange Rule 11.6(m).

[7] *See* Exchange Rule 11.6(e)(2). The term ''EDGA Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

[8] *See* Exchange Rule 11.6(m).

[9] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Exchange Rule 11.11(g).

[10] *See* Exchange Rule 11.11(g)(15). The Post to Away routing option can be combined with the following routing strategies: ROUT, ROUX, ROUE, ROUD, ROUZ, ROUQ, RDOT, RDOX, ROBB, ROCO, INET, IOCM and ICMT. *Id.* The User may elect that the order be cancelled or post to the EDGA Book upon its initial return to the Exchange. *Id.* An order subject to the ROUT, ROUX, ROUE, ROUD, ROUZ, ROUQ, RDOT, RDOX, ROBB, ROCO, INET, IOCM and ICMT routing options will not be posted to the order book of the Trading Center to which it is routed. Alternatively, if the User had selected the Post to Away routing option, the order would be currently routed to the away Trading Center as an order with a Displayed instruction.

[11] Orders to be routed with a Non-Displayed instruction or a Reserve Quantity would be handled in accordance with the rules of the Trading Center to which they are routed.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

system by providing Users the flexibility with regard to the handling of their orders by ensuring that the order is not altered and retains its original instructions from order entry when it is routed to an away Trading Center. Doing so ensures that such orders that are routed pursuant to the Post to Away routing option may be posted to the away Trading Center's order book consistent with the order's original instructions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal would enhance competition by attracting additional order flow to the Exchange because it allows Users to ensure that their order is not altered and retains its original instructions from order entry when it is routed to an away Trading Center.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and paragraph (f)(6) of Rule 19b–4 thereunder.[15] The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2016–03 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2016–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web-site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2016–03 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03950 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77189; File No. SR–EDGX–2016–08]**

## Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.6, Definitions, To Amend the Operation of Orders With a Non-Displayed Instruction and Orders With Reserve Quantity

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2016, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to amend the operation of orders with a Non-Displayed[5] instruction and orders with Reserve Quantity[6] under Rule 11.6, Definitions, when they are to be routed away from the Exchange pursuant to the Post to Away routing option set forth in Rule 11.11(g)(12).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 11.6(e)(2).

[6] *See* Exchange Rule 11.6(m).

the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Non-Displayed is an instruction the User may attach to an order stating that the order is not to be displayed by the System on the EDGX Book.[7] A Reserve Quantity is the portion of an order that includes a Non-Displayed instruction in which a portion of that order is also displayed on the EDGX Book.[8] Both the portion of the order with a Displayed instruction and the Reserve Quantity are available for execution against incoming orders. Under the Post to Away routing option, the remainder of an order that was previously routed away and returned to the Exchange may be re-routed to and post on the order book of a destination on the System routing table[9] as specified by the User.[10]

Currently, orders with a Non-Displayed instruction or Reserve Quantity that are routed to an away Trading Center pursuant to the Post to Away routing option are routed as fully displayed orders. The Exchange proposes to include a Non-Displayed instruction or to include a Reserve Quantity on orders routed to an away Trading Center. The Exchange believes doing so is consistent with the original intent of the order, to be Non-Displayed or to include a Reserve Quantity.[11]

The Exchange, therefore, proposes to amend the definition of Non-Displayed under Exchange Rule 11.6(d)(2) to state that an order with a Non-Displayed instruction that is to be re-routed pursuant to the Post to Away routing option set forth in Rule 11.11(g)(12) will be identified as Non-Displayed when routed to an away Trading Center. Similarly, the Exchange proposes to amend the definition of Reserve Quantity under Exchange Rule 11.6(m) to state that the Reserve Quantity of an order that is to be re-routed pursuant to the Post to Away routing option set forth in Rule 11.11(g)(12) will be identified as an order with a Reserve Quantity when routed to an away Trading Center.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal promotes just and equitable principles of trade by enabling Members to continue to identify their order as an order with a Non-Displayed instruction or an order with Reserve Quantity when they are re-routed to an away Trading Center. The proposal also removes impediments to and perfects the mechanism of a free and open market and a national market system by providing Users the flexibility with regard to the handling of their orders by ensuring that the order is not altered and retains its original instructions from order entry when it is routed to an away Trading Center. Doing so ensures that such orders that are routed pursuant to the Post to Away routing option may be posted to the away Trading Center's order book consistent with the order's original instructions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal would enhance competition by attracting additional order flow to the Exchange because it allows Users to ensure that their order is not altered and retains its original instructions from order entry when it is routed to an away Trading Center.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and paragraph (f)(6) of Rule 19b–4 thereunder.[15] The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and

[7] *See* Exchange Rule 11.6(e)(2). The term ''EDGX Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

[8] *See* Exchange Rule 11.6(m).

[9] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Exchange Rule 11.11(g).

[10] *See* Exchange Rule 11.11(g)(12). The Post to Away routing option can be combined with the following routing options: ROUT, ROUX and ROUE. *Id.* An order subject to the ROUT, ROUX and ROUE routing options will not be posted to the order book of the Trading Center to which it is routed. The User may elect that the order be cancelled or post to the EDGX Book upon its initial return to the Exchange. *Id.* Alternatively, if the User had selected the Post to Away routing option, the order would be currently routed to the away Trading Center as an order with a Displayed instruction.

[11] Orders to be routed with a Non-Displayed instruction or a Reserve Quantity would be handled in accordance with the rules of the Trading Center to which they are routed.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2016–08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2016–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2016–08 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03949 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77197; File No. SR–NYSEArca–2016–34]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.31P(a)(2)(C) Relating to Repricing Events

February 19, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 19, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31P(a)(2)(C) (Orders and Modifiers) relating to repricing events. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 7.31P(a)(2)(C) relating to repricing events that occur upon arrival of an Intermarket Sweep Order designated Day (''Day ISO'').

Rule 7.31P(e)(3)(C) provides that a Day ISO, if marketable on arrival, will be immediately traded with contra-side interest in the NYSE Arca Book up to its full size and limit price and any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO. Accordingly, under current rules, on arrival, a Day ISO may be displayed at a price that locks or crosses a protected quotation.

Under Rule 7.36P(b)(3), if arrival of a Day ISO would result in less than a round lot being displayed, such order would be displayed on the Exchange's proprietary data feeds, but it would not be considered a new Exchange BBO or be considered a protected quotation. In addition, under Rule 7.38P(b)(1), the working price of an odd-lot quantity of a Day ISO will depend on where the limit price is in relation to the PBBO, and whether the PBBO is crossed.

Separately, Rule 7.31P(a)(2)(C) describes how the Exchange re-prices resting orders to buy (sell) to avoid locking or crossing a protected quotation of another market by assigning a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). The rule further specifies that ''[i]f a Day ISO to buy (sell) arrives before the PBO (PBB) is updated, such re-priced Limit Order(s) to buy (sell) will be repriced to the lower (higher) of the display price of the Day ISO or the original price of the Limit Order(s).'' Accordingly, current rules specify that arrival of a Day ISO results in a repricing event for resting orders.

The Exchange proposes to amend Rule 7.31P(a)(2)(C) to specify how orders are repriced under that paragraph due to the arrival of a Day ISO. Specifically, the Exchange proposes to specify that the repricing event for resting orders under this Rule due to the arrival of a Day ISO to buy (sell) would occur only if the arriving Day ISO would result in at least a round lot being displayed as a new BB (BO). In other words, the arrival of the Day ISO must result in a new protected quotation at the Exchange before any resting orders are repriced.

The Exchange also proposes to specify what would occur if the arriving Day ISO would not result in at least a round lot being displayed. When resting orders have been repriced under Rule 7.31P(a)(2)(C), if a Day ISO to buy (sell) arrives that would result in less than a round lot being displayed, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

proposes that such Day ISO also be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). This proposed treatment of odd lot Day ISOs is similar to treatment of odd lots under Rule 7.38P(b)(1), however, the Exchange proposes that under Rule 7.31P(a)(2)(C), even if the PBBO is crossed, the arriving odd lot quantity of the Day ISO to buy (sell) be assigned a working price equal to the PBO (PBB) and not equal to the PBB (PBO). The Exchange proposes this difference from Rule 7.38P(b)(1) so that all orders repriced pursuant to Rule 7.31P(a)(2)(C), including arriving Day ISO odd lots, are treated similarly.

Finally, the Exchange proposes to move the last sentence of Rule 7.31P(a)(2)(C), without change, to be the second sentence of that rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting transparency in Exchange rules by providing specificity regarding when resting orders would be repriced due to the arrival of a Day ISO. Specifically, the proposed rule change would specify that an arriving Day ISO needs to result in a round lot or more being displayed as a new Exchange BBO before resting orders would be repriced under Rule 7.31P(a)(2)(C). Rule 7.31P(a)(2)(C) already provides that resting orders would be repriced upon arrival of a Day ISO, and the amendment provides specificity that before resting orders may be repriced, the arrival of the Day ISO needs to result in a new protected quotation.

The proposed rule change would further remove impediments to and perfect the mechanism of a free and open market and a national market system by specifying that if the arrival of the Day ISO to buy (sell) would not result in a round lot or more being displayed and thus would not result in a repricing event for resting orders, the Day ISO would instead be assigned a display price of one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). This proposed rule text is similar to Rule 7.38P(b)(1), which already provides that an arriving odd lot order to buy (sell) will be assigned a working price based on the PBBO. The Exchange proposes a difference for how an odd lot quantity of an arriving Day ISO would be priced under Rule 7.31P(a)(2)(C) as compared to Rule 7.38P(b)(1). Specifically, the Exchange believes that the proposed pricing of an arriving odd-lot sized Day ISO under Rule 7.31P(a)(2)(C) would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a consistent manner for repricing orders under Rule 7.31P(a)(2)(C), regardless whether they were resting orders or arriving odd lot quantity of a Day ISO. Providing for different treatment of an arriving Day ISO that would result in the display of an odd-lot quantity is consistent with Regulation NMS, which permits exchanges to establish their own rules for the handling of odd lot orders.[6] The Exchange believes that the proposed amendments would promote transparency in Exchange rules regarding the manner by which the Exchange reprices resting orders based on the arrival of a Day ISO.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to make amendments to Rule 7.31P(a)(2)(C) relating to repricing events due to the arrival of a Day ISO.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *See* Commission Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and 610 of Regulation NMS, April 4, 2008 update, Question 7.03, available at *https://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that it anticipates beginning the migration of symbols to Pillar on February 22, 2016. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest because it will permit the Exchange to amend Rule 7.31P(a)(2)(C) relating to the repricing of certain orders prior to the beginning of trading on Pillar. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–34 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–34, and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03961 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77192; File No. SR–NASDAQ–2015–161]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to the Listing and Trading of the Shares of the First Trust RiverFront Dynamic Europe ETF, First Trust RiverFront Dynamic Asia Pacific ETF, First Trust RiverFront Dynamic Emerging Markets ETF, and First Trust RiverFront Dynamic Developed International ETF of First Trust Exchange-Traded Fund III

February 19, 2016.

On December 22, 2015, The NASDAQ Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares of the First Trust RiverFront Dynamic Europe ETF; First Trust RiverFront Dynamic Asia Pacific ETF; First Trust RiverFront Dynamic Emerging Markets ETF; and First Trust RiverFront Dynamic Developed International ETF (individually, ''Fund,'' and collectively, ''Funds''). The proposed rule change was published for comment in the **Federal Register** on January 8, 2016.[3] On January 8, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On February 18, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[5] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 22, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates April 7, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2015–161), as modified by Amendment Nos. 1 and 2 thereto.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–03952 Filed 2–24–16; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 9454]**

### Notice of a Public Meeting

The Department of State will conduct an open meeting at 10:30 a.m. on Tuesday, March 22, 2016, at the headquarters of the Radio Technical Commission for Maritime Service (RTCM) in Suite 605, 1611 N. Kent Street, Arlington, Virginia 22209. The primary purpose of the meeting is to

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76817 (January 4, 2016), 81 FR 978.

[4] In Amendment No. 1, the Exchange clarified the proposed rule change by providing additional information regarding the currencies, and instruments that provide exposure to such currencies, in which each Fund will invest. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues (Amendment No. 1 is available at: *http://www.sec.gov/comments/sr-nasdaq-2015-161/nasdaq2015161-1.pdf*).

[5] In Amendment No. 2, the Exchange expanded the application of certain criteria for the equity securities in which the Funds will invest, so that they will apply on a continual basis. Amendment No. 2 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise any novel regulatory issues (Amendment No. 2 is available at: *http://www.sec.gov/comments/sr-nasdaq-2015-161/nasdaq2015161-2.pdf*).

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

prepare for the fortieth session of the International Maritime Organization's (IMO) Facilitation Committee to be held at the IMO Headquarters, United Kingdom, April 4–8, 2016.

The agenda items to be considered include:

—Adoption of the agenda; report on credentials
—Decisions of other IMO bodies
—Consideration and adoption of proposed amendments to the Convention
—Comprehensive review of the FAL Convention
—Application of single-window concept
—Requirements for access to, or electronic versions of, certificates and documents, including record books required to be carried on ships
—Measures to protect the safety of persons rescued at sea
—Consideration and analysis of reports and information on persons rescued at sea and stowaways
—Guidelines on the facilitation aspects of protecting the maritime transport network from cyberthreats
—Guidelines on minimum training and education for mooring personnel
—Review of the ICAO/IMO publication on International signs to provide guidance to persons at airports and marine terminals
—Technical cooperation activities related to facilitation of maritime traffic
—Relations with other organizations
—Application of the Committee's Guidelines
—Work programme
—Election of Chairman and Vice-Chairman for 2017
—Any other business
—Consideration of the report of the Committee on its fortieth session

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. David Du Pont, by email at *David.A.DuPont@uscg.mil,* or by phone at (202) 372–1497, not later than March 15, 2016. Requests made after March 15, 2016 might not be able to be accommodated. In the case of inclement weather where the U.S. Federal Government is closed or delayed, a public meeting may be conducted virtually by calling (202) 475–4000 or 1–855–475–2447, Participant code: 887 809 72. The meeting coordinator will confirm whether the virtual public meeting will be utilized. Additional information regarding this and other public meetings related to the IMO may be found at: *www.uscg.mil/imo.*

Dated: February 12, 2016.

**Jonathan Burby,**

*Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State .*

[FR Doc. 2016–04048 Filed 2–24–16; 8:45 am]

**BILLING CODE 4710–09–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 35993]**

### Grenada Railroad, LLC—Lease and Operation Exemption—Illinois Central Railroad Company

Grenada Railroad, LLC (Grenada Railroad), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Illinois Central Railroad Company (Illinois Central),[1] and to operate approximately 2.5 miles of rail line between milepost 703.8 and milepost 706.3, including but not limited to any sidings, yard tracks, yard leads or ancillary tracks, switches, signals, crossings, structures, bridges, together with land upon which said tracks are situated, in Canton, Miss.

Grenada Railroad currently holds authority to operate within the State of Mississippi pursuant to a 15-year lease/purchase and operating agreement executed on June 23, 2015.[2] The purpose of this transaction is to facilitate an agreement between Grenada Railroad and Illinois Central for Grenada Railroad to provide improved service to Barnett Phillips Lumber Co., a shipper located in Canton.

Grenada Railroad states that there are no agreements applicable to the line imposing any interchange commitments.

The transaction may be consummated on or after March 10, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed).

Grenada Railroad certifies that its projected annual revenues as a result of this transaction will not exceed $5 million or result in the creation of a Class II or Class I rail 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 for stay must be filed no later than March 3, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35993, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

According to Grenada Railroad, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: February 22, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Tia Delano,**

*Clearance Clerk.*

[FR Doc. 2016–04015 Filed 2–24–16; 8:45 am]

**BILLING CODE 4915–01–P**

[1] Illinois Central is a subsidiary of the Canadian National Railway.

[2] *Ill. Co. R.R.—Lease & Operation Exemption—N. Cent. Miss. Reg'l R.R. Auth. & Grenada Ry.,* FD 35940 (STB served July 9, 2015). Grenada Railroad was formerly known as Illinois Company Rail Road, LLC. In a letter filed on July 14, 2015, the Board was notified of the name change. Grenada Railroad is indirectly owned by Iowa Pacific Holdings, LLC, through its wholly owned, noncarrier subsidiary, Permian Basin Railways.

## SURFACE TRANSPORTATION BOARD

**[Docket No. AB 55 (Sub-No. 754X)]**

### CSX Transportation, Inc.—Discontinuance of Service Exemption—in Hamilton County, Ohio

CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over approximately a 2.07-mile rail line on CSXT's Southern Region, Louisville Division, Cincinnati Terminal Subdivision, also known as the Mill Creek Branch, between milepost BEK 2.24 and milepost BEK 4.31 in Hamilton County, Ohio. (the Line). The Line traverses United States Postal Service Zip Codes 45214, 45225, and 45223. There are no stations on the Line.

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic needs to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of

complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on March 26, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)[1] must be filed by March 7, 2016.[2] Petitions to reopen must be filed by March 16, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.''*

Decided: February 22, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Tia Delano,**

*Clearance Clerk.*

[FR Doc. 2016–04168 Filed 2–24–16; 8:45 am]

**BILLING CODE 4915–01–P**

[1] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[2] Because this is a discontinue proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require an environmental review.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2016–0025]**

### Petition for Exemption; Summary of Petition Received; SEESPAN, Inc.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before March 16, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2015–1571 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dan Ngo (202) 267–4264, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 19, 2016.

**Dale A. Bouffiou,**

*Acting Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2015–1571

*Petitioner:* SEESPAN, Inc.

*Section(s) of 14 CFR Affected:* 61.23(a) and (c), 61.101(e)(4) and (5), 61.113(a), 61.315(a), 91.7(a), 91.119(c), 91.121, 91.151(a)(1), 91.405(a), 91.407(a)(1), 91.409(a), and 91.417(a) and (b)

*Description of Relief Sought:* The petitioner requests to operate a small unmanned aircraft system over land and/or water to photograph sporting events, entertainment and news gathering events for the general public and purchase by sports, entertainment, and media organizations.

[FR Doc. 2016–03983 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2016–0022]**

### Petition for Exemption; Summary of Petition Received; M3 Consulting Group, LLC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before March 16, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2015–4248 using any of the following methods:

• *Federal eRulemaking Portal: Go to http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dan Ngo, (202) 267–4264. 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 19, 2016.

**Dale A. Bouffiou,**

*Acting Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2015–4248.

*Petitioner:* M3 Consulting Group, LLC.

*Section(s) of 14 CFR Affected:* 61.113 (a); 61.23 (a)(c); 61.104 (e)(4)(5); 61.315 (a); 91.7 (a); 91.119 (c); 91.121; 91.407 (a)(1); 91.409 (a)(1)(2); 91.417 (a)(b); 91.151 (a)(1); 91.405 (a).

*Description of Relief Sought:* The petitioner is requesting relief related to Unmanned Aircraft Systems (UAS) operations for Aerial Release for Sterile Insect Technique.

[FR Doc. 2016–03969 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2016–0023]**

### Petition for Exemption; Summary of Petition Received; Liberty Mutual Insurance Company

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before March 16, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2015–0513 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dan Ngo, (202) 267–4264. 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 19, 2016.

**Dale A. Bouffiou,**

*Acting Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2015–0513

*Petitioner:* Liberty Mutual Insurance Company

*Section(s) of 14 CFR Affected:* §§ 61.23(a) and (c), 61.101(e)(4) and (5), 61.113(a) and (b), 61.315(a), 61.133(a), 91.7(a), 91.119(c), 91.121, 91.151(a)(1), 91.405(a), 91.407(a)(1), 91.409(a)(1) and (2), and 91.417(a) and (b).

*Description of Relief Sought:* The petitioner is requesting relief from the restriction from operating an Unmanned Aircraft System (UAS) closer than 500 feet to nonparticipating persons, vehicles, or structures in order to conduct roof and building inspections in urban and suburban environments. Petitioner seeks to establish a 25′ perimeter around the building or structure being inspected.

[FR Doc. 2016–03984 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Government/Industry Aeronautical Charting Forum Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting

**SUMMARY:** This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

**DATES:** The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet April 26, 2016 from 8:30 a.m. to 5:00 p.m. The Charting Group will meet April 27 and 28, 2016 from 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** The meeting will be hosted by Air Line Pilots Association (ALPA) located at 535 Herndon Parkway, Herndon, VA 20170.

**FOR FURTHER INFORMATION CONTACT:** For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125; telephone: (405) 954–5852.

For information relating to the Charting Group, contact Valerie S. Watson, FAA, Aeronautical Information Services, Governance & Standards, AJV–553, 1305 East-West Highway, SSMC4, Station 3409, Silver Spring, MD 20910; telephone: (301) 427–5155.

**SUPPLEMENTARY INFORMATION:** Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from April 26 through April 28, 2016, from 8:30 a.m. to 5:00 p.m. at Air Line Pilots Association (ALPA), at their offices located at 535 Herndon Parkway, Herndon, VA 20170.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, and new aeronautical charting and air traffic control initiatives. Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by April 7, 2016, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION** section not later than April 7, 2016. Public statements will only be considered if time permits.

Issued in Washington, DC, on February 18, 2016.

**Valerie S. Watson,**

*Co-Chair, Aeronautical Charting Forum.*

[FR Doc. 2016–03977 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2016–0024]**

### Petition for Exemption; Summary of Petition Received; Helicopters West Aerospace LLC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before March 16, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2015–0430 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dan Ngo (202) 267–4264, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 19, 2016.

**Dale A. Bouffiou,**

*Acting Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2015–0430.

*Petitioner:* Helicopters West Aerospace LLC.

*Section(s) of 14 CFR Affected:* 45.27 (a), 61.113(a) and (b), 91.7(a), 91.105, 91.119 (c), 91.121, 91.151(b), 91.405(a), 91.407(a)(1), 91.409(a)(1) and (a)(2), and 91.417(a) and (b).

*Description of Relief Sought:* The petitioner requests to operate a small unmanned aircraft system over land and/or water to photograph sporting events, entertainment and news gathering events for the general public and purchase by sports, entertainment, and media organizations.

[FR Doc. 2016–03980 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2016–0021]**

### Petition for Exemption; Summary of Petition Received; Leading Edge Associates, Inc.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before March 16, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2015–0346 using any of the following methods:

• *Federal eRulemaking Portal: Go to http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dan Ngo, (202) 267–4264. 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 19, 2016.

**Dale A. Bouffiou,**

*Acting Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2015–0346

*Petitioner:* Leading Edge Associates, Inc.

*Section(s) of 14 CFR Affected:* 61.113 (a); 61.23(a)(c); 61.104(e)(4)(5); 61.315(a); 91.7(a); 91.119(c); 91.121; 91.407(a)(1); 91.409(a)(1)(2); 91.417(a)(b); 91.151(a)(1); 91.405(a).

*Description of Relief Sought:* The petitioner is requesting relief in order to operate a PrecisionVision 30 Unmanned Aircraft System (UAS) for mosquito adulticiding and larvaciding in the vector markets using EPA approved, Federally labeled and registered products in the National Airspace System (NAS).

[FR Doc. 2016–03964 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. 2016–17]**

### Petition for Exemption; Summary of Petition Received; Gulfstream Aerospace Corporation

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before March 16, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2015–4420 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Brent Hart (202) 267–4034, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 18, 2016.

**James M. Crotty,**

*Acting Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2015–4420

*Petitioner:* Gulfstream Aerospace Corporation

*Section(s) of 14 CFR Affected:* 61.57(a) and (b)

*Description of Relief Sought:* The petitioner is seeking an exemption from § 61.57(a) and (b) to allow pilots/operators operating Gulfstream model G–IV, GIV–X, GV, GV–SP and GVI (G650 and G650ER) to use any of the listed aircraft or a Level B, C, or D simulator that represents one of the types of Gulfstream airplanes to meet the recent takeoff and landing experience requirements of § 61.57, without Gulfstream holding a 14 CFR part 142 certificate.

[FR Doc. 2016–03978 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA 2015–0255]**

### Agency Information Collection Activities; Extension of a Currently-Approved Information Collection Request: Transportation of Household Goods; Consumer Protection

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its

review and approval. The FMCSA requests approval to extend an ICR titled, ''Transportation of Household Goods; Consumer Protection.'' The information collected will be used to help regulate motor carriers transporting household goods (HHG) for individual shippers. FMCSA invites public comment on the ICR. On September 21, 2015, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on this ICR. The agency received no comments in response to that notice.

**DATES:** Please send your comments to this notice by March 28, 2016. OMB must receive your comments by this date to act quickly on the ICR.

**ADDRESSES:** All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2015–0255. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Rodgers, Chief, Commercial Enforcement and Investigations Division, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–0073; email *Kenneth.rodgers@dot.gov.* Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal Holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Transportation of Household Goods; Consumer Protection.

*OMB Control Number:* 2126–0025.

*Type of Request:* Extension of a currently-approved information collection.

*Respondents:* Household goods movers and consumers.

*Estimated Number of Respondents:* 7,500 respondents [4,900 household goods movers + 2,600 consumers = 7,500].

*Estimated Time per Response:* Varies from 5 minutes to display assigned U.S. DOT number in created advertisement to 12.5 minutes to distribute consumer publication, and 10 minutes to complete an online household goods consumer complaint.

*Expiration Date:* April 30, 2016.

*Frequency of Response:* Other (Once).

*Estimated Total Annual Burden:* 5,224,800 hours [Informational documents provided to prospective shippers at 29,300 hours + Written Cost estimates for prospective shippers at 4,377,450 hours + Service orders, bills of lading at 763,100 hours + In-transit service notifications at 21,500 hours + Complaint and inquiry records including establishing records system at 33,050 hours + Household Goods—Consumer Complaint at 400 hours = 5,224,800].

*Background:* The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) authorized the Secretary of Transportation (Secretary) to regulate household goods carriers engaged in interstate operations for individual shippers. In earlier legislation, Congress abolished the former Interstate Commerce Commission and transferred the Commission's jurisdiction over household goods transportation to the U.S. Department of Transportation (DOT) (ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803, Dec. 29 1995). Prior to FMCSA's establishment, the Secretary delegated this household goods jurisdiction to the Federal Highway Administration, FMCSA's predecessor organization within DOT.

The FMCSA has authority to regulate the overall commercial operations of the household goods industry under 49 U.S.C. 14104, ''Household goods carrier operations.'' Under § 14104(a)(1), paperwork required of household goods carrier must be minimized to the maximum extent feasible consistent with the protection of individual shippers. This ICR includes the information collection requirements contained in title 49 CFR part 375, ''Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations.'' The information collected encompasses that which is generated, maintained, retained, disclosed, and provided to, or for, the agency under 49 CFR part 375.

Sections 4202 through 4216 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005) (SAFETEA–LU) amended various provisions of existing law regarding household goods transportation. It specifically addressed: definitions (section 4202); payment of rates (section 4203); registration requirements for household goods motor carriers (section 4204); carrier operations (section 4205); enforcement of regulations (section 4206); liability of carriers under receipts and bills of lading (section 4207); arbitration requirements (section 4208); civil penalties for brokers and unauthorized transportation (section 4209); penalties for holding goods hostage (section 4210); consumer handbook (section 4211); release of broker information (section 4212); working group for Federal-State relations (section 4213); consumer complaint information (section 4214); review of liability of carriers (section 4215); and application of State laws (section 4216). The FMCSA regulations that set forth Federal requirements for movers that provide interstate transportation of household goods are found in 49 CFR part 375, ''Transportation of Household Goods; Consumer Protection Regulation.''

On July 16, 2012, FMCSA published a Direct Final Rule titled, ''Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations: Household Goods Motor Carrier Record Retention Requirements,'' (77 FR 41699). The rule amended the regulations governing the period during which HHG motor carriers must retain documentation of an individual shipper's waiver of receipt of printed copies of consumer protection materials. This change harmonized the retention period with other document retention requirements applicable to HHG motor carriers. FMCSA also amended the regulations to clarify that a HHG motor carrier is not required to retain waiver documentation from any individual shippers for whom the carrier does not actually provide services.

*Public Comments Invited:* FMCSA requests that you comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions, (2) the accuracy of the estimated burden, (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information, and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority delegated in 49 CFR 1.87 on: February 17, 2016.

**G. Kelly Regal,**

*Associate Administrator, Office of Research and Information Technology.*

[FR Doc. 2016–04041 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2015–0436]**

### Agency Information Collection Activities; Extension of a Currently-Approved Information Collection Request: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The information collected will be used to help ensure that motor carriers of passengers and property maintain appropriate levels of financial responsibility to operate on public highways.

**DATES:** We must receive your comments on or before April 25, 2016.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2015–0436 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. 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 below.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

*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 Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Secrist, Office of Registration and Safety Information, Chief, East and South Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–385–2367; email: *jeff.secrist@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Secretary of Transportation is responsible for implementing regulations which establish minimal levels of financial responsibility for: (1) For-hire motor carriers of property to cover public liability, property damage and environmental restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Forms MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier of property or passengers has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—49 CFR 387.9; and motor carriers of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information enclosed within these documents.

*Title:* Financial Responsibility for Motor Carrier of Passengers and Motor Carriers of Property.

*OMB Control Number:* 2126–0008.

*Type of Request:* Extension of a currently-approved information collection.

*Respondents:* Insurance and surety companies of motor carriers of property (Forms MCS–90 and MCS–82) and motor carriers of passengers (Forms MCS–90B and MCS–82B).

*Estimated Number of Respondents:* 8,004.

*Estimated Time per Response:* The FMCSA estimates it takes two minutes to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability or the Motor Carrier Public Liability Surety Bond; and one minute to place either document on board the vehicle [49 CFR 387.7(f)(property); 387.31(f)(passengers)]. These endorsements and surety bonds are maintained at the motor carrier's principal place of business [49 CFR 387.7(d); 49 CFR 387.31(d)].

*Expiration Date:* June 30, 2016.

*Frequency of Response:* Upon creation, change or replacement of an insurance policy or surety bond.

*Estimated Total Annual Burden:* 4,777 hours [4,065 annual burden hours for ICs 1–4 + 712 annual burden hours for IC–5 document replacement = 4,777].

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: February 17, 2016.

**G. Kelly Regal,**

*Associate Administrator for Office of Research and Information Technology.*

[FR Doc. 2016–04032 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2005–21613]**

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated January 21, 2016, the Association of American Railroads (AAR) has petitioned the Federal Railroad Administration (FRA) for renewal of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229—Railroad Locomotive Safety Standards. FRA assigned the petition Docket Number FRA–2005–21613.

This regulatory relief was initially granted by FRA in a letter dated December 2, 2005. This letter, along with subsequent modifications and renewals, established a program to perform field investigations to determine new limits for the air brake system clean, repair, and test requirements applicable to electronic air brake systems manufactured by New York Air Brake (NYAB) and Wabtec Railway Electronics (Wabtec). At the time, those requirements were contained in 49 CFR 229.27 and 229.29, which have since been reorganized and updated in 229.29 as level 2 and level 3 air brake system maintenance. The program required that each air brake system be periodically evaluated by a joint committee involving a railroad, the air brake manufacturer, labor organizations (both operating and maintenance crafts) and FRA representatives. Several joint committees, with extensive participation from each of the above mentioned groups, were formed on CSX Transportation (CSX), BNSF Railway (BNSF), and Union Pacific Railroad (UP). All of the air brake systems that were studied were endorsed by consensus of the participating groups for varying extensions to the clean, repair, and test intervals given in 49 CFR 229.29. All of the committees have concluded their investigations and none are currently meeting.

As provided for in the waiver, relief was also extended to certain other AAR member railroads which applied for inclusion and provided a statement from the air brake manufacturer attesting to the similarity of their air brake systems to the ones tested.

Based on the similarity of design documented by the air brake manufacturers and performance demonstrated by tests and teardowns performed on various AAR member railroads, AAR is requesting a unified extension of the waiver applicable to all member railroads. AAR also requests that this waiver extension include all of the NYAB and Wabtec Air Brake systems that were studied by the joint committees. The air brake systems, conditions, and restrictions are requested to be as given in approval letters to Amtrak (June 19, 2014), CSX (August 14, 2015), and a joint letter to CSX and UP (October 15, 2015). A summary of the requested intervals and brake systems is given in the following table:

| Model | Inspection interval (years) | Conditions | Notes |
|---|---|---|---|
| New York Air Brake CCB2, CCB26 | 9 | Non-fragmented COT&S | If equipped with BPCP manufactured March 2013 or later. |
| New York Air Brake CCB2, CCB26 | 7 | Non-fragmented COT&S | If *not* equipped with BPCP manufactured March 2013 or later. |
| New York Air Brake CCB2, CCB26 | | Fragmented COT&S. | |
| + 16 Control Portion | 9 | Fragmented COT&S. | |
| + Brake Pipe Control Portion | 10 | Fragmented COT&S | If BPCP manufactured March 2013 or later. |
| + Brake Pipe Control Portion | 7 | Fragmented COT&S | If BPCP *not* manufactured March 2013 or later. |
| + All other portions | 10 | Fragmented COT&S. | |
| New York Air Brake CCB1 | 6.5 | Non-fragmented COT&S. | |
| New York Air Brake CCB1 | | Fragmented COT&S. | |
| + 20 Portion | 6.5 | Fragmented COT&S. | |
| + All other portions | 8.5 | Fragmented COT&S. | |
| WABTEC Epic 3101 & Epic 3102 w/o D2 | 8 | | |
| WABTEC FastBrake | 10 | | |

AAR also submitted copies of FRA decision letters documenting the intervals above and giving complete conditions as determined by FRA based on the consensus reached in the various joint railroad, manufacturer, labor and FRA waiver committees. These letters are available online at *www.regulations.gov* under Docket Number FRA–2005–21613; item numbers –0061, –0073, and –0076.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 11, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2016–04046 Filed 2–24–16; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Comment Request; Disclosure of Financial and Other Information by National Banks

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, ''Disclosure of Financial and Other Information by National Banks.''

**DATES:** Comments must be submitted on or before April 25, 2016.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0182, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

*Title:* Disclosure of Financial and Other Information by National Banks (12 CFR 18).

*OMB Control No.:* 1557–0182.

*Type of Review:* Extension, without revision, of a currently approved collection.

*Description:* The collections of information are found in 12 CFR 18.3, 18.4, and 18.8. Section 18.3 requires the preparation of an annual disclosure statement and specifies when a national bank must make the statement available to shareholders. Section 18.4 outlines what information the disclosure statement must contain, and provides that a national bank may, at its option, supplement its annual disclosure statement with a narrative discussion. Lastly, § 18.8 requires that a national bank promptly mail or otherwise furnish its annual disclosure statement upon request.

This program of periodic financial disclosure is needed not only to facilitate informed decision making by existing and potential customers and investors, but also to improve public understanding of, and confidence in, the financial condition of individual national banks and the national banking system. Further, financial disclosure reduces the likelihood that the market will overreact to incomplete information.

*Affected Public:* Businesses or other for-profit.

*Burden Estimates:*

*Estimated Number of Respondents:* 1,100.

*Estimated Total Annual Burden:* 555 hours.

*Frequency of Response:* On occasion.

*Comments:* Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 19, 2016.

**Mary Hoyle Gottlieb,**

*Regulatory Specialist, Legislative and Regulatory Activities Division.*

[FR Doc. 2016–03966 Filed 2–24–16; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Interagency Appraisal Complaint Form

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC) and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Joint notice and request for comment.

**SUMMARY:** The OCC and the FDIC (the Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on an information collection renewal, as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The Agencies are soliciting comment concerning the renewal of each Agency's information collection titled ''Interagency Appraisal Complaint Form.'' The Agencies also are giving notice that they have each sent their collection to OMB for review.

**DATES:** Comments must be received by March 28, 2016.

**ADDRESSES:**

*OCC:* Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0314, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

*FDIC:* You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/.*
- *Mail:* Gary Kuiper (202.898.3877), Counsel, MB–3016, or Manuel Cabeza (202.898.3767), Counsel, MB–3105, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@FDIC.gov.*

*Instructions:* Comments submitted must include ''Interagency Appraisal Complaint Form.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/,* including any personal information provided.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0314 or 3064–0190, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

*FDIC:* Gary Kuiper or Manuel Cabeza at the address or telephone number given above.

**SUPPLEMENTARY INFORMATION:** In compliance with the PRA, 44 U.S.C. 3501 *et seq.,* the Agencies are seeking comment on the renewal of the following collection of information:

**Interagency Appraisal Complaint Form**

Section 1473(p) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] provides that the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) shall establish and operate a national hotline (ASC Hotline) to receive complaints of non-compliance with the appraisal independence standards of the Uniform Standards of Professional Appraisal Practice (USPAP) if the ASC determines, six months after enactment of that section (*i.e.,* January 21, 2011), that no such national hotline exists. The statute requires that the ASC Hotline shall include a toll-free telephone number and an email address. Section 1473(p) further directs the ASC to refer complaints received through the ASC Hotline to the appropriate government bodies for further action, which may include referrals to the Agencies, the Federal Reserve Board (Board), the National Credit Union Administration (NCUA), the Consumer Financial Protection Bureau (CFPB), and State agencies. On January 12, 2011, the ASC determined that a national appraisal hotline did not exist, and a notice of that determination was published in the **Federal Register** on January 28, 2011 (76 FR 5161). As a result, the ASC established a hotline to refer complaints to appropriate state and Federal regulators.

Representatives from the Agencies, the Board, the NCUA, and the CFPB met and established a process to facilitate the referral of complaints received through the ASC Hotline to the appropriate Federal financial institution regulatory agency or agencies. The Agencies, the Board, and the NCUA developed the Interagency Appraisal Complaint Form (IACF) to collect the information necessary to take further action on the complaint. The CFPB incorporated the process into one of their existing systems.

**Description of the IACF**

The IACF was developed for use by those who wish to file a formal, written complaint that an entity subject to the jurisdiction of one or more Agencies, the Board, or the NCUA has failed to comply with the appraisal independence standards or USPAP. The IACF is designed to collect information necessary for one or both of the Agencies, the Board, or the NCUA to take further action on a complaint from an appraiser, other individual, financial

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act section 1473, Public Law 111–203, 124 Stat. 1376, July 21, 2010; 12 U.S.C. 3351(i).

institution, or other entities. The Agencies, the Board, and the NCUA use the information to take further action on the complaint to the extent the complaint relates to an issue within their jurisdiction. The Board and the NCUA are renewing their forms separately.

The OCC and FDIC estimate that the burden of this collection of information is as follows:

*OCC*

*OMB Control Number:* 1557–0314.

*Estimated Number of Respondents:* 1,500.

*Estimated Burden per Response:* 0.5 hours.

*Estimated Total Annual Burden:* 750 hours.

*FDIC*

*OMB Control Number:* 3064–0190.

*Estimated Number of Respondents:* 200.

*Estimated Burden per Response:* 0.5 hours.

*Estimated Total Annual Burden:* 100 hours.

The Agencies issued a notice regarding the collection for 60 days of comment on December 4, 2015, 80 FR 75896. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimates of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 17, 2016.

**Mary Hoyle Gottlieb,**

*Regulatory Specialist, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

Dated at Washington, DC, this 19th day of February 2016.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016–03968 Filed 2–24–16; 8:45 am]

**BILLING CODE 4810–33–P; 6714–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations.

**DATES:** Written comments should be received on or before April 25, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations.

*OMB Number:* 1545–2014.

*Form Number:* TD 9452.

*Abstract:* The final regulations require a collection of information in order for a taxpayer to make certain tax elections. The American Jobs Creation Act of 2004 amended the foreign tax credit treatment of dividends from noncontrolled section 902 corporations effective for post-2002 tax years, and the Gulf Opportunity Zone Act of 2005 permitted taxpayers to elect to defer the effective date of these amendments until post-2004 tax years (GOZA election). Treas. Reg. § 1.904–7(f)(9)(ii)(C) requires a taxpayer making the GOZA election to attach a statement to such effect to its next tax return for which the due date (with extensions) is more than 90 days after April 25, 2006. Treas. Reg. § 1.964–1(c)(3) requires certain shareholders making tax elections (section 964 elections) on behalf of a controlled foreign corporation or noncontrolled section 902 corporation to sign a jointly executed consent (that is retained by one designated shareholder) and to attach a statement to their tax returns for the election year.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and Households, Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 50.

*Estimated Time per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 25.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 18, 2016.

**Tuawana Pinkston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2016–04021 Filed 2–24–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1045

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1045, Application for Tentative Refund.

**DATES:** Written comments should be received on or before April 25, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Tentative Refund.

*OMB Number:* 1545–0098.

*Form Number:* 1045.

*Abstract:* Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a net operating loss, unused general business credit, or claim of right adjustment under Internal Revenue Code section 1341(b). The information obtained is used to determine the validity of the application.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, and farms.

*Estimated Number of Respondents:* 17,503.

*Estimated Time per Respondent:* 29 hours, 26 minutes.

*Estimated Total Annual Burden Hours:* 515,114.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 17, 2016.

**Tuawana Pinkston,**

*IRS Reports Clearance Office.*

[FR Doc. 2016–04018 Filed 2–24–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Information Collection; Comment Request

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before April 25, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or *Tuawana.Pinkston@irs.gov.*

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

*We invite comments on:* (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

*Title:* Ownership Certificate.

*OMB Number:* 1545–0054.

*Form Number:* 1000.

*Abstract:* Form 1000 is used by citizens, resident individuals, fiduciaries, and partnerships in connection with interest on bonds of a domestic, resident foreign, or nonresident foreign corporation containing a tax-free covenant and issued before January 1, 1934. IRS uses the information to verify that the correct amount of tax was withheld.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals or households.

*Estimated Number of Responses:* 1,500.

*Estimated Time per Response:* 3 hours, 23 minutes.

*Estimated Total Annual Burden Hours:* 5,040.

*Title:* Application for Enrollment to Practice Before the Internal Revenue Service. Application for Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent (ERPA).

*OMB Number:* 1545–0950.

*Form Number:* Form 23 and Form 23–EP.

*Abstract:* Form 23 must be completed by those who desire to be enrolled to practice before the Internal Revenue Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment. Form 23–EP is the application form for Enrolled Retirement Plan Agents (ERPA's).

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and the Federal government.

*Estimated Number of Respondents:* 4,800.

*Estimated Time per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 1,200.

*Title:* Manufacturers' Certification of Specified Plug-in Electric Vehicles.

*OMB Number:* 1545–2150.

*Form Number:* Form 23 Notice Number: Notice 2009–58.

*Abstract:* The American Recovery and Reinvestment Act of 2009 provides, under § 30 of the Internal Revenue Code, a credit for certain new specified plug-in electric drive vehicles. This notice provides procedures for a vehicle manufacturer to certify that a vehicle meets the statutory requirements for the credit, and to certify the amount of the credit available with respect to the vehicle. The notice also provides guidance to taxpayers who purchase vehicles regarding the conditions under which they may rely on the vehicle manufacturer's certification.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This notice is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business and for-profit.

*Estimated Number of Respondents:* 25.

*Estimated Average Time per Respondent:* 10 hrs.

*Estimated Total Annual Burden Hours:* 250 hrs.

*Title:* The Health Coverage Tax Credit (HCTC) Reimbursement Request Form.

*Form Number:* Form 14095.

*Abstract:* This form will be used by HCTC participants to request reimbursement for health plan premiums paid prior to the commencement of advance payments.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 3,058.

*Estimated Time per Respondent:* 40 minutes.

*Estimated Total Annual Burden Hours:* 2,039.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: February 18, 2016.

**Tuawana Pinkston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2016–04017 Filed 2–24–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Real Estate Mortgage Investment Conduits.

**DATES:** Written comments should be received on or before April 25, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Real Estate Mortgage Investment Conduits.

*OMB Number:* 1545–1276.

*Regulation Project Number:* TD 8458.

*Abstract:* Final regulations under section 860E(e) of the Code relate to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The regulations accelerate the time when income is recognized for withholding tax purposes to conform to the timing of income recognition for general income tax purposes.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,600.

*Estimated Time per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 525.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 17, 2016.

**Tuawana Pinkston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2016–04020 Filed 2–24–16; 8:45 am]

**BILLING CODE 4830–01–P**

# FEDERAL REGISTER

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Part II

## Department of Labor

29 CFR Part 13
Establishing Paid Sick Leave for Federal Contractors; Proposed Rules

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**29 CFR Part 13**

**RIN 1235–AA13**

## Establishing Paid Sick Leave for Federal Contractors

**AGENCY:** Wage and Hour Division, Department of Labor

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes regulations to implement Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors, signed by President Barack Obama on September 7, 2015, which requires certain parties that contract with the Federal Government to provide their employees with up to 7 days of paid sick leave annually, including paid leave allowing for family care. Executive Order 13706 explains that providing access to paid sick leave will improve the health and performance of employees of Federal contractors and bring their benefits packages in line with model employers, ensuring that Federal contractors remain competitive employers and generating savings and quality improvements that will lead to improved economy and efficiency in Government procurement. The Executive Order directs the Secretary of Labor (Secretary) to issue regulations by September 30, 2016, to implement the Order's requirements. This proposed rule therefore defines terms used in the regulatory text, describes the categories of contracts and employees the Order covers and excludes from coverage, sets forth requirements and restrictions governing the accrual and use of paid sick leave, and prohibits interference with or discrimination for the exercise of rights under the Executive Order. It also describes the obligations of contracting agencies, the Department of Labor, and contractors under the Executive Order, and it establishes the standards and procedures for complaints, investigations, remedies, and administrative enforcement proceedings related to alleged violations of the Order. As required by the Order and to the extent practicable, the proposed rule incorporates existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act, the Service Contract Act, the Davis-Bacon Act, the Family and Medical Leave Act, the Violence Against Women Act, and Executive Order 13658, Establishing a Minimum Wage for Contractors.

**DATES:** Comments must be received on or before March 28, 2016.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA13, by either of the following methods:

*Electronic Comments:* Submit comments through the Federal e-Rulemaking Portal *http://www.regulations.gov.* Follow the instructions for submitting comments.

*Mail:* Address written submissions to Robert Waterman, Compliance Specialist, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210.

*Instructions:* Please submit only one copy of your comments by only one method. All submissions must include the agency name and RIN, identified above, for this rulemaking. Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. Comments that are mailed must be received by the date indicated for consideration in this rulemaking. For additional information on submitting comments and the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. For questions concerning the interpretation and enforcement of labor standards related to government contracts, individuals may contact the Wage and Hour Division (WHD) local district offices (see contact information below).

*Docket:* For access to the docket to read background documents or comments, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Robert Waterman, Compliance Specialist, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this proposed rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the WHD's Web site for a nationwide listing of WHD district and area offices at *http://www.dol.gov/whd/america2.htm.*

**SUPPLEMENTARY INFORMATION:**

### I. Electronic Access and Filing Comments

*Public Participation:* This proposed rule is available through the **Federal Register** and the *http://www.regulations.gov* Web site. You may also access this document via the WHD's Web site at *http://www.dol.gov/whd/.* To comment electronically on Federal rulemakings, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov,* which will allow you to find, review, and submit comments on Federal documents that are open for comment and published in the **Federal Register**. You must identify all comments submitted by including ''RIN 1235–AA13'' in your submission. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period (date identified above); comments received after the comment period closes will not be considered. Submit only one copy of your comments by only one method. Please be advised that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

### II. Executive Order 13706 Requirements and Background

On September 7, 2015, President Barack Obama signed Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors (the Executive Order or the Order). 80 FR 54697.

Section 1 of Executive Order 13706 explains that the Order seeks to increase efficiency and cost savings in the work performed by parties that contract with the Federal Government by ensuring that employees on those contracts can earn up to 7 days or more of paid sick leave annually, including paid leave allowing for family care. 80 FR 54697. The Order states that providing access to paid sick leave will improve the health and performance of employees of Federal contractors and bring benefits packages at Federal contractors in line with model employers, ensuring that they remain competitive employers in the search for dedicated and talented employees. *Id.* The Order further states that these savings and quality improvements will lead to improved economy and efficiency in Government procurement. *Id.*

Section 2 of the Executive Order establishes paid sick leave for Federal contractors and subcontractors. 80 FR 54697. Section 2(a) provides that

executive departments and agencies (agencies) shall, to the extent permitted by law, ensure that new contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts''), as described in section 6 of the Order, include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that all employees, in the performance of the contract or any subcontract thereunder, shall earn not less than 1 hour of paid sick leave for every 30 hours worked. *Id.* Section 2(b) prohibits a contractor from limiting the total accrual of paid sick leave per calendar year, or at any point, at less than 56 hours. *Id.*

Section 2(c) explains that paid sick leave earned under the Order may be used by an employee for an absence resulting from: (i) physical or mental illness, injury, or medical condition; (ii) obtaining diagnosis, care, or preventive care from a health care provider; (iii) caring for a child, a parent, a spouse, a domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions or needs for diagnosis, care, or preventive care described in (i) or (ii) or is otherwise in need of care; or (iv) domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes described in (i) or (ii), to obtain additional counseling, to seek relocation, to seek assistance from a victim services organization, or take related legal action, including preparation for or participation in any related civil or criminal legal proceeding, or to assist an individual related to the employee as described in (iii) in engaging in any of these activities. 80 FR 54697.

Section 2(d) provides that paid sick leave shall carry over from one year to the next and shall be reinstated for employees rehired by a covered contractor within 12 months after a job separation. *Id.*

Under section 2(e), the use of paid sick leave cannot be made contingent on the requesting employee finding a replacement to cover any work time to be missed. 80 FR 54698. Section 2(f) provides that the paid sick leave required by the Order is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act, and contractors may not receive credit toward their prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the Order's requirements. *Id.*

Section 2(g) explains that an employer's existing paid sick leave policy provided in addition to the fulfillment of Service Contract Act or Davis-Bacon Act obligations, if applicable, and made available to all covered employees will satisfy the requirements of the Executive Order if the amount of paid leave is sufficient to meet the requirements of section 2 and if it may be used for the same purposes and under the same conditions described in the Executive Order. *Id.*

Section 2(h) of the Order establishes that paid sick leave shall be provided upon the oral or written request of an employee that includes the expected duration of the leave, and is made at least 7 calendar days in advance where the need for the leave is foreseeable, and in other cases as soon as is practicable. *Id.*

Section 2(i) addresses when a contractor may require employees to provide certification or documentation regarding the use of leave. 80 FR 54698. It provides that a contractor may only require certification issued by a health care provider for paid sick leave used for the purposes listed in sections 2(c)(i), (c)(ii), or (c)(iii) for employee absences of 3 or more consecutive workdays, to be provided no later than 30 days from the first day of the leave. *Id.* It further provides that if 3 or more consecutive days of paid sick leave is used for the purposes listed in section 2(c)(iv), documentation may be required to be provided from an appropriate individual or organization with the minimum necessary information establishing a need for the employee to be absent from work. *Id.* The Executive Order notes that the contractor shall not disclose any verification information and shall maintain confidentiality about domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law. *Id.*

Section 2(j) states that nothing in the Order shall require a covered contractor to make a financial payment to an employee upon a separation from employment for unused accrued sick leave. 80 FR 54698. Section 2(j) further notes, however, that unused leave is subject to reinstatement as prescribed in section 2(d). *Id.*

Section 2(k) prohibits a covered contractor from interfering with or in any other manner discriminating against an employee for taking, or attempting to take, paid sick leave as provided for under the Order, or in any manner asserting, or assisting any other employee in asserting, any right or claim related to the Order. *Id.*

Section 2(l) states that nothing in the Order shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under the Order. *Id.*

Section 3(a) of the Executive Order provides that the Secretary shall issue such regulations by September 30, 2016, as are deemed necessary and appropriate to carry out the Order, to the extent permitted by law and consistent with the requirements of 40 U.S.C. 121, including providing exclusions from the requirements set forth in the Order where appropriate; defining terms used in the Order; and requiring contractors to make, keep, and preserve such employee records as the Secretary deems necessary and appropriate for the enforcement of the provisions of the Order or the regulations thereunder. 80 FR 54698. It also requires that, to the extent permitted by law, within 60 days of the Secretary issuing such regulations, the Federal Acquisition Regulatory Council (FARC) shall issue regulations in the Federal Acquisition Regulation (FAR) to provide for inclusion in Federal procurement solicitations and contracts subject to the Executive Order the contract clause described in section 2(a) of the Order. *Id.*

Additionally, section 3(b) states that within 60 days of the Secretary issuing regulations pursuant to the Order, agencies shall take steps, to the extent permitted by law, to exercise any applicable authority to ensure that contracts or contract-like instruments for concessions and contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public, entered into after January 1, 2017, consistent with the effective date of such agency action, comply with the requirements set forth in section 2 of the Order. 80 FR 54699.

Section 3(c) specifies that any regulations issued pursuant to section 3 of the Order should, to the extent practicable and consistent with section 7 of the Order, incorporate existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* (FLSA); the McNamara-O'Hara Service Contract Act, 41 U.S.C. 6701 *et seq.* (SCA); the Davis-Bacon Act, 40 U.S.C. 3141 *et seq.* (DBA); the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.* (FMLA); the Violence Against Women Act of 1994, 42 U.S.C. 13925 *et seq.* (VAWA); and Executive Order

13658, Establishing a Minimum Wage for Contractors, 79 FR 9851 (Feb. 20, 2014) (Executive Order 13658 or Minimum Wage Executive Order). *Id.*

Section 4(a) of the Executive Order grants authority to the Secretary to investigate potential violations of and obtain compliance with the Order, including the prohibitions on interference and discrimination in section 2(k) of the Order. 80 FR 54699. Section 4(b) further explains that the Executive Order creates no rights under the Contract Disputes Act, and disputes regarding whether a contractor has provided employees with paid sick leave prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued pursuant to the Order. *Id.*

Section 5 of the Executive Order establishes that if any provision of the Order, or applying such provision to any person or circumstance, is held to be invalid, the remainder of the Order and the application of the provisions of such to any person or circumstances shall not be affected thereby. *Id.*

Section 6(a) of the Executive Order provides that nothing in the Order shall be construed to impair or otherwise affect (i) the authority granted by law to an executive department, agency, or the head thereof; or (ii) the functions of the Director of the Office of Management and Budget (OMB) relating to budgetary, administrative, or legislative proposals. 80 FR 54699. Section 6(b) states that the Order is to be implemented consistent with applicable law and subject to the availability of appropriations. *Id.* Section 6(c) explains that the Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. *Id.*

Section 6(d) of the Executive Order establishes that the Order shall apply only to a new contract or contract-like instrument, as defined by the Secretary in the regulations issued pursuant to section 3(a) of the Order, if: (i) (A) It is a procurement contract for services or construction; (B) it is a contract or contract-like instrument for services covered by the Service Contract Act; (C) it is a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor (Department) regulations at 29 CFR 4.133(b); or (D) it is a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (ii) the wages of employees under such contract or contract-like instrument are governed by the DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions. 80 FR 54699.

Section 6(e) states that, for contracts or contract-like instruments covered by the SCA or DBA, the Order shall apply only to contracts or contract-like instruments at the thresholds specified in those statutes. 80 FR 54699–700. Additionally, Section 6(e) provides that for procurement contracts in which employees' wages are governed by the FLSA, the Order shall apply only to contracts or contract-like instruments that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to the Order pursuant to regulations or actions taken under section 3 of the Order. 80 FR 54700.

Section 6(f) specifies that the Order shall not apply to grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended; or any contracts or contract-like instruments expressly excluded by the regulations issued pursuant to section 3(a) of the Order. *Id.* Section 6(g) strongly encourages independent agencies to comply with the Order's requirements. *Id.*

Section 7(a) of the Executive Order provides that the Order is effective immediately and shall apply to covered contracts where the solicitation for such contract has been issued, or the contract has been awarded outside the solicitation process, on or after: (i) January 1, 2017, consistent with the effective date for the action taken by the FARC pursuant to section 3(a) of the Order; or (ii) January 1, 2017, for contracts where an agency action is taken pursuant to section 3(b) of the Order, consistent with the effective date for such action. 80 FR 54700. Section 7(b) specifies that the Order shall not apply to contracts or contract-like instruments that are awarded, or entered into pursuant to solicitations issued, on or before the effective date for the relevant action taken pursuant to section 3 of the Order. *Id.*

## III. Discussion of Proposed Rule

### *A. Legal Authority*

The President issued Executive Order 13706 pursuant to his authority under ''the Constitution and the laws of the United States of America,'' expressly including 40 U.S.C. 121, a provision of the Federal Property and Administrative Services Act (Procurement Act). 80 FR 54697. The Procurement Act authorizes the President to ''prescribe policies and directives that [the President] considers necessary to carry out'' the statutory purposes of ensuring ''economical and efficient'' government procurement and administration of government property. 40 U.S.C. 101, 121(a). Executive Order 13706 delegates to the Secretary the authority to issue regulations ''deemed necessary and appropriate to carry out this order.'' 80 FR 54698. The Secretary has delegated his authority to promulgate these regulations to the Administrator of the WHD. Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (published Dec. 24, 2014).

### *B. Stakeholder Engagement*

As part of the development of this proposed rule, the Department has engaged stakeholders who have an interest in the Executive Order to solicit their views regarding implementation of the Order's paid sick leave requirements and important issues to address in this rulemaking. In particular, the Department held listening sessions regarding the Order with worker advocates and business representatives in October and November 2015.

### *C. Overview of the Proposed Rule*

The Department's notice of proposed rulemaking (NPRM), which would amend Title 29 of the Code of Federal Regulations (CFR) by adding part 13, proposes standards and procedures for implementing and enforcing Executive Order 13706. Proposed subpart A of part 13 addresses general matters, including the purpose and scope of the rule, sets forth definitions of terms used in the proposed part, and describes the types of contracts and employees covered by the Order and part 13 and excluded from such coverage. It describes the paid sick leave requirements for contractors established by the Executive Order, including rules and restrictions regarding the accrual and use of such leave. It also prohibits interference with the accrual or use of paid sick leave provided pursuant to the Executive Order or part 13, discrimination for the exercise of rights under the Executive Order or part 13, and failure to comply with the recordkeeping requirements of part 13. Finally, proposed subpart A includes a prohibition against waiver of rights.

Proposed subpart B establishes the obligations of the Federal government (specifically, contracting agencies and the Department) under the Order, and proposed subpart C establishes the

obligations of contractors under the Order, including recordkeeping requirements. Proposed subparts D and E specify standards and procedures related to alleged violations of the Order and part 13, including complaint intake, investigations, remedies, and administrative enforcement proceedings. Proposed appendix A contains a contract clause to implement Executive Order 13706.

The following section-by-section discussion of this proposed rule presents the contents of each section in more detail. The Department invites comments on any issues addressed in this NPRM.

Subpart A—General

Proposed subpart A of part 13 describes the purpose and scope of the proposed rule, and it sets forth definitions of terms used in the proposed rule, descriptions of the types of contracts and employees covered by the Order and part 13 and excluded from such coverage, and rules and restrictions regarding the accrual and use of paid sick leave. Proposed subpart A also prohibits interference with the accrual or use of the paid sick leave required by, and discrimination for the exercise of rights under, the Executive Order or part 13, as well as violations of the recordkeeping requirements of part 13. Finally, proposed subpart A includes a prohibition against waiver of rights.

Section 13.1 Purpose and Scope

Proposed § 13.1(a) explains that the purpose of the proposed rule is to implement Executive Order 13706 and reiterates statements from the Order that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that provide paid sick leave to their employees. It explains that the Order states that providing access to paid sick leave will improve the productivity of employees by improving their health and performance and will bring benefits packages offered by Federal contractors in line with model employers, ensuring they remain competitive in the search for dedicated and talented employees. As stated in proposed § 13.1(a), it is for these reasons that the Executive Order concludes that the provision of paid sick leave under the Order will generate savings and quality improvements in the work performed by parties who contract with the Federal Government, thereby leading to improved economy and efficiency in Government procurement. The Department believes that, by increasing the quality and efficiency of services provided to the Federal Government, the Executive Order will improve the value that taxpayers receive from the Federal Government's investment.

Proposed § 13.1(b) sets forth the general position of the Federal Government that providing access to paid sick leave on Federal contracts will increase efficiency and cost savings for the Federal Government, and it explains the general requirement established in Executive Order 13706 that new contracts with the Federal Government include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, requiring, as a condition of payment, that the contractor and any subcontractors provide paid sick leave to employees in the amount of not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with covered contracts. Proposed § 13.1(b) also specifies that nothing in Executive Order 13706 or part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under the Order or part 13.

Proposed § 13.1(c) outlines the scope of this proposed rule and provides that neither Executive Order 13706 nor part 13 creates any rights under the Contract Disputes Act or creates any private right of action. The Department does not interpret the Executive Order as limiting existing rights under the Contract Disputes Act. This provision also implements the Executive Order's directive that disputes regarding whether a contractor has provided paid sick leave as prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued under the Order. The provision specifies, however, that nothing in the Order or part 13 is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. Finally, this paragraph specifies that neither the Order nor part 13 would preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

Section 13.2 Definitions

Proposed § 13.2 defines terms for purposes of part 13. Section 3(c) of the Executive Order instructs that any regulations issued pursuant to the Order should ''incorporate existing definitions'' under the FLSA, SCA, DBA, FMLA, VAWA, and Executive Order 13658 ''to the extent practicable and consistent with section 7 of this order.'' 80 FR 54699. Because of the similarities in language, structure, and intent of the Minimum Wage Executive Order and Executive Order 13706, many of the definitions provided in this proposed rule are identical to or based on definitions promulgated in the Minimum Wage Executive Order Final Rule. Pursuant to section 4(c) of the Minimum Wage Executive Order, those definitions were largely based either on the language of the Order itself or the definitions of relevant terms set forth in the statutory text or implementing regulations of the FLSA, SCA, or DBA; in addition, some definitions were based on definitions published by the FARC in section 2.101 of the FAR, 48 CFR 2.101, or definitions set forth in the Department's regulations implementing Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts (Executive Order 13495 or Nondisplacement Executive Order), at 29 CFR 9.2. 79 FR 60637. Definitions relevant because of provisions of Executive Order 13706 that do not appear in Executive Order 13658 are largely based on definitions set forth in the statutory text or implementing regulations of the FMLA or the VAWA, as well as regulations issued by the U.S. Office of Personnel Management (OPM) at 5 CFR part 630, subparts B and D, which govern the accrual and use of sick leave by employees of the Federal government.

The definitions discussed in this proposed rule would govern the implementation and enforcement of Executive Order 13706. Nothing in the rule is intended to alter the meaning of or to be interpreted inconsistently with the definitions set forth in section 2.101 of the FAR for purposes of that regulation.

The Department proposes to define *accrual year* to mean the 12-month period during which a contractor may limit an employee's accrual of paid sick leave to no less than 56 hours.

The Department proposes to define the term *Administrative Review Board* as the Administrative Review Board within the U.S. Department of Labor.

The Department proposes to define the term *Administrator* to mean the Administrator of the Wage and Hour Division. As proposed, the term also includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under part 13.

The Department proposes to define *as soon as is practicable* to mean as soon as both possible and practical, taking

into account all of the facts and circumstances of the individual case. This definition is derived from the definition of ''as soon as practicable'' in the FMLA regulations. 29 CFR 825.302(b).

The Department proposes to define *certification issued by a health care provider* as any type of written document created or signed by a health care provider (or by a representative of the health care provider) that contains information verifying that the physical or mental illness, injury, medical condition, or need for diagnosis, care, or preventive care or other need for care referred to in proposed § 13.5(c)(1)(i), (ii), or (iii) exists. This definition allows employees to provide as certification a greater range of documents than would suffice to demonstrate that a serious health condition exists for purposes of FMLA. *See* 29 CFR 825.305, 825.306. For example, under this proposal, a note from a hospital nurse stating that an employee needed to have surgery and would need at least 3 days to recover before returning to work would meet the definition, as would a note from an employee's parent's doctor stating that the parent is in need of daily caretaking. A contractor may not require that an employee or the individual for whom the employee is caring have seen the health care provider in person in order to accept the certification.

The Department proposes to define *child* to mean (1) a biological, adopted, step, or foster son or daughter of the employee; (2) a person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian; (3) a person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis;* or (4) a child, as described in paragraphs (1) through (3) of the definition, of an employee's spouse or domestic partner. This definition is adopted from the definition of ''son or daughter'' in the OPM regulations governing leave for Federal employees. 5 CFR 630.201(b). The Department notes that this proposed definition is deliberately broader than the definition of ''son or daughter'' in the FMLA, which includes only minor children or adult children ''incapable of self-care because of a mental or physical disability.'' 29 CFR 825.102. It is intended that employees be permitted to use paid sick leave for a broader range of purposes than those for which they can use FMLA leave, including to care for an employee's child of any age.

The Department proposes a definition of *concessions contract* or *contract for concessions* identical to the definition of those terms in the Minimum Wage Executive Order Final Rule. *See* 79 FR 60722 (codified at 29 CFR 10.2). Specifically, the term is proposed to mean a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services; examples of such contracts noted in the definition are those the principal purpose of which is to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment. This proposed definition is not limited based on the beneficiary of the services; the proposed definition encompasses contracts regardless of whether they are of direct benefit to the Federal Government, its property, its civilian or military personnel, or the general public. *See* 29 CFR 4.133; *see also* 79 FR 60638. The proposed definition includes, but is not limited to, all concessions contracts excluded by Departmental regulations under the SCA at 29 CFR 4.133(b). *See* 79 FR 60638.

The Department proposes to define *contract* and *contract-like instrument* collectively for purposes of the Executive Order in the same manner as it did in the Minimum Wage Executive Order implementing regulations. *See* 79 FR 60722 (codified at 29 CFR 10.2). Specifically, a *contract* or *contract-like instrument* is defined in this proposed rule as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The proposed definition of the term *contract* broadly includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The proposed definition of the term *contract* would be interpreted broadly to include, but not be limited to, any contract that may be consistent with the definition provided in the FAR or applicable Federal statutes. This definition would include, but would not be limited to, any contract that may be covered under any Federal procurement statute. The Department specifically proposes to note in this definition that contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. The proposed definition also explains that, in addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. The proposed definition also specifies that the term *contract* includes contracts covered by the SCA, contracts covered by the DBA, concessions contracts not subject to the SCA, and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. As explained in the Minimum Wage Executive Order rulemaking, this proposed definition of *contract* was derived from the definition of the term *contract* set forth in Black's Law Dictionary (9th ed. 2009) and § 2.101 of the FAR (48 CFR 2.101), as well as the descriptions of the term *contract* that appear in the SCA's regulations at 29 CFR 4.110–.111 and 4.130. *See* 79 FR 60638–41.

The Department notes that it is deliberately adopting a broad definition of this term, but the mere fact that a legal instrument constitutes a *contract* does not mean that such contract is subject to the Executive Order. In order for a contract to be covered by the Executive Order and part 13, the contract must (1) qualify as a *contract* or *contract-like instrument;* (2) fall within one of the specifically enumerated types of contracts set forth in section 6(d)(i) of the Order and proposed § 13.3; and (3) be a ''new contract'' pursuant to the definition described below. Therefore, for example, although a cooperative agreement is considered a contract pursuant to the Department's proposed definition, a cooperative agreement will not be covered by the Executive Order and part 13 unless it is a ''new contract'' and is subject to the SCA or DBA, is a concessions contract, or is entered into in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

The Department proposes to define *contracting officer* using a definition based on that used in the Final Rule issued pursuant to the Minimum Wage Executive Order, which in turn was adopted from the definition in section 2.101 of the FAR. *See* 79 FR 60641 (citing 48 CFR 2.101). As proposed, the

term means a representative of an executive department or agency with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. Furthermore, the term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

The Department proposes to define *contractor* to mean any individual or other legal entity that is awarded a Federal Government contract or a subcontract under a Federal Government contract. The term *contractor* refers to both a prime contractor and all of its first or lower-tier subcontractors on a contract with the Federal Government. This definition includes lessors and lessees. The Department notes that the term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in part 13. The proposed definition also explains that the U.S. Government, its agencies, and its instrumentalities are not considered contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of Executive Order 13706. This proposed definition, which is derived from the definition adopted in the Minimum Wage Executive Order rulemaking, *see* 79 FR 60722 (codified at 29 CFR 10.2), incorporates relevant aspects of the definitions of the term *contractor* in section 9.403 of the FAR, *see* 48 CFR 9.403; the SCA's regulations at 29 CFR 4.1a(f); and the Department's regulations implementing the Nondisplacement Executive Order at 29 CFR 9.2. The definition differs from the Minimum Wage Executive Order only in that it does not refer to employers of employees performing on covered Federal contracts whose wages are computed pursuant to special certificates issued under 29 U.S.C. 214(c). Although such employers would be contractors for purposes of Executive Order 13706, such a reference is not called for in this definition because, unlike the Minimum Wage Executive Order, this Order does not contain any explicit reference to employees whose wages are computed pursuant to section 14(c) certificates.

The Department proposes to define the term *Davis-Bacon Act* (DBA) to mean the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.,* and its implementing regulations.

The Department proposes to define the term *domestic partner* to mean an adult in a committed relationship with another adult. This definition includes both same-sex and opposite-sex relationships. The Department proposes to further explain that a committed relationship is one in which the employee and the domestic partner of the employee are each other's sole domestic partner (and are not married to or domestic partners with anyone else) and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union). This definition is adopted from the definitions of ''domestic partner'' and ''committed relationship'' in the OPM regulations regarding the use of sick leave by Federal employees. 5 CFR 630.201(b).

The Department proposes to define *domestic violence* as (1) felony or misdemeanor crimes of violence (including threats or attempts) committed: (i) By a current or former spouse, domestic partner, or intimate partner of the victim; (ii) by a person with whom the victim shares a child in common; (iii) by a person who is cohabitating with or has cohabitated with the victim as a spouse, domestic partner, or intimate partner; (iv) by a person similarly situated to a spouse of the victim under domestic or family violence laws of the jurisdiction in which the victim resides or the events occurred; or (v) by any other adult person against a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the victim resides or the events occurred. Under the proposed definition, domestic violence also includes any crime of violence considered to be an act of domestic violence according to State law. This definition is derived from the VAWA, 42 U.S.C. 13925(a)(8), and its implementing regulations, 28 CFR 90.2(a).

The Department proposes to define *employee* similarly to the way the term *worker* was used in the Minimum Wage Executive Order rulemaking, *see* 79 FR 60723, but with some differences reflecting the differences in the text of that Executive Order and Executive Order 13706. As proposed, the term would mean any person engaged in performing work on or in connection with a contract covered by the Executive Order, and whose wages under such contract are governed by the SCA, DBA, or FLSA, including employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions, regardless of the contractual relationship alleged to exist between the individual and the employer. Furthermore, the term *employee* includes any person performing work on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the U.S. Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

Much of this definition comes directly from section 6(d)(ii) of the Executive Order, and as noted, much of it is identical to the definition of *worker* in the Minimum Wage Executive Order regulations. Most importantly, the term refers to employees whose wages are governed by the DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions, as directed in the Executive Order. 80 FR 54699. Furthermore, the definition emphasizes, as explained in the Minimum Wage Executive Order rulemaking, the well-established principle under the DBA, SCA, and FLSA that employee coverage does not depend upon the existence or form of any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons. *See* 79 FR 60644 (citing 29 U.S.C. 203(d), (e)(1), (g) (FLSA); 41 U.S.C. 6701(3)(B), 29 CFR 4.155 (SCA); 29 CFR 5.5(a)(1)(i) (DBA)). As reflected in the proposed definition, the Executive Order is intended to apply to a wide range of employment relationships. Neither an individual's subjective belief about his or her employment status nor the existence of a contractual relationship is determinative of whether an employee is covered by the Executive Order. In particular, whether a worker is an ''employee'' or an ''independent contractor'' as those terms are often used in other contexts is not material to whether that worker is an employee under this proposed definition; even workers who are independent contractors are covered by the SCA and DBA, and that coverage is adopted for purposes of this Order and part 13. *See, e.g.,* 29 CFR 4.155 (SCA); 29 CFR 5.5(a)(1)(i) (DBA); *In re Igwe,* ARB Case No. 07–120, 2009 WL 4324725, at *3–4 (Nov. 25, 2009) (rejecting an argument that ''the individuals working on the four contracts were not entitled to SCA prevailing wages and fringe benefits because they were independent contractors, not employees'' because ''the relevant inquiry is whether the persons working on the contract come

within the SCA definition of 'service employee' '' and explaining ''the irrelevance of 'contractual relationship' to that definition''). The definition's inclusion of any person performing work on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, is similarly in keeping with the Minimum Wage Executive Order's adoption of those provisions from the SCA and DBA regulations. *See* 79 FR 60644 (citing 29 CFR 4.6(p) (SCA); 29 CFR 5.2(n) (DBA)).

The most significant difference between this definition of *employee* and the Minimum Wage Executive Order rulemaking's definition of *worker* is the inclusion of employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions. Executive Order 13706 explicitly provides that it applies to such employees. 80 FR 54699. The Executive Order's paid sick leave requirements therefore apply, for example, to employees employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541.

Finally, the Department notes that because unlike the Minimum Wage Executive Order, Executive Order 13706 makes no reference to individuals performing work on or in connection with a covered contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), that category of employees is not explicitly mentioned in this proposed definition. However, such individuals would plainly fall within the definition of *employee* for purposes of this rulemaking because their wages are, as described below, governed by the FLSA.

The Department proposes to define *executive departments and agencies* for purposes of this rulemaking by adopting the definition of that term used in the Minimum Wage Executive Order rulemaking, which was derived from the definition of *executive agency* provided in section 2.101 of the FAR, 48 CFR 2.101. 79 FR 60642, 60722 (codified at 29 CFR 10.2). The Department therefore interprets the Executive Order to apply to executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, independent establishments within the meaning of 5 U.S.C. 104(1), and wholly owned Government corporations within the meaning of 31 U.S.C. 9101. The Department does not interpret this definition as including the District of Columbia or any Territory or possession of the United States.

The Department proposes to define *Executive Order 13495* or *Nondisplacement Executive Order* to mean Executive Order 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts, 74 FR 6103 (Feb. 4, 2009), and its implementing regulations at 29 CFR part 9.

The Department proposes to define *Executive Order 13658* or *Minimum Wage Executive Order* to mean Executive Order 13658 of February 12, 2014, Establishing a Minimum Wage for Contractors, 79 FR 9851 (Feb. 20, 2014), and its implementing regulations at 29 CFR part 10.

The Department proposes to define *Fair Labor Standards Act* (FLSA) as the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.,* and its implementing regulations.

The Department proposes to define *Family and Medical Leave Act* (FMLA) as the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.,* and its implementing regulations.

The Department proposes to define *family violence,* a term used in the definition of *domestic violence,* to mean any act or threatened act of violence, including any forceful detention of an individual that results or threatens to result in physical injury and is committed by a person against another individual (including an elderly individual) to or with whom such person is related by blood, is or was related by marriage or is or was otherwise legally related, or is or was lawfully residing. Because VAWA does not provide a definition of the term, this definition is adopted from the definition of ''family violence'' in the Family Violence Prevention and Services Act, 42 U.S.C. 10401. *See* 42 U.S.C. 10402(4).

Proposed § 13.2 defines *Federal Government* as an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. This proposed definition is identical to that used in the regulations implementing the Minimum Wage Executive Order. 79 FR 60722 (codified at 29 CFR 10.2). That definition was based on the definition of *Federal Government* set forth in 29 CFR 9.2, but eliminated the term ''procurement'' from that definition because Executive Order 13658 applies—as does Executive Order 13706—to both procurement and non-procurement contracts. 79 FR 60642. Consistent with the SCA, the term *Federal Government* includes nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or of other Federal agencies. *See* 29 CFR 4.107(a). For purposes of Executive Order 13706 and part 13, the Department's proposed definition does not include the District of Columbia or any Territory or possession of the United States. As used in the Order and part 13, the term also does not include any independent regulatory agency within the meaning of 44 U.S.C. 3502(5) because such agencies are not required to comply with the Order or part 13.

The Department proposes to define *health care provider* as any practitioner who is licensed or certified under Federal or State law to provide the health-related service in question or any practitioner recognized by an employer or the employer's group health plan. The term includes, but is not limited to, doctors of medicine or osteopathy, podiatrists, dentists, psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, physician assistants, physical therapists, and Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. This definition is intended to be broad and inclusive. It is derived from the definitions of health care provider in the FMLA regulations, 29 CFR 825.125, and OPM regulations, 5 CFR 630.201 and 5 CFR 630.1202.

The Department proposes to define the term *independent agencies* as any independent regulatory agency within the meaning of 44 U.S.C. 3502(5). Section 6(g) of the Executive Order states that ''[i]ndependent agencies are strongly encouraged to comply with the requirements of this order.'' The Department interprets this provision, as it did an identical provision in the Minimum Wage Executive Order, to mean that independent agencies are not required to comply with this Executive Order. *See* 79 FR 9853; 79 FR 60643. This proposed definition is therefore based on other Executive Orders that similarly exempt independent regulatory agencies within the meaning of 44 U.S.C. 3502(5) from the definition of *agency* or include language requesting that they comply. *See, e.g.,* Executive Order 13636, 78 FR 11739 (Feb. 12, 2013) (defining *agency* as any executive department, military department, Government corporation, Government-controlled operation, or other establishment in the executive branch of the Government but excluding independent regulatory agencies as defined in 44 U.S.C. 3502(5)); Executive Order 13610, 77 FR 28469 (May 10, 2012) (same); Executive Order 12861, 58 FR 48255 (September 11, 1993) (''Sec. 4

Independent Agencies. All independent regulatory commissions and agencies are requested to comply with the provisions of this order.''); Executive Order 12837, 58 FR 8205 (Feb. 10, 1993) (''Sec. 4. All independent regulatory commissions and agencies are requested to comply with the provisions of this order.'').

The Department proposes to include in § 13.2 a definition of *individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.* As proposed, the term means any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship. Although this term is used in the OPM regulations, *see* 5 CFR 630.201 (defining ''family member,'' for purposes of Federal employees' use of leave, to include the term), OPM has not created a regulatory definition of it; the Department's definition is, however, derived from OPM's discussion of the term in OPM's 2010 Final Rule, Absence and Leave; Definitions of Family Member, Immediate Relative, and Related Terms, 75 FR 33491 (June 14, 2010). In particular, OPM explained that creating an exhaustive list of the relationships that meet the definition is not possible, but that OPM has ''broadly interpreted the phrase to include such relationships as grandparent and grandchild, brother- and sister-in-law, fiancé and fiancée, cousin, aunt and uncle, other relatives not specified in [the list naming a spouse, child, parent, brother, or sister], and close friend, to the extent that the connection between the employee and the individual was significant enough to be regarded as having the closeness of a family relationship even though the individuals might not be related by blood or formally in law.'' 75 FR 33492.

The Department understands this term to be inclusive of non-nuclear family structures. It could include, for example, an individual who was a foster child in the same home in which the employee was a foster child for several years and with whom the employee has maintained a sibling-like relationship, a friend of the family in whose home the employee lived while she was in high school and whom the employee therefore considers to be like a mother or aunt to her, or an elderly neighbor with whom the employee has regularly shared meals and to whom the employee has provided unpaid caregiving assistance for the past 5 years and whom the employee therefore considers to be like a grandfather to her. The Department seeks comments regarding its proposed definition of this term, in particular regarding whether additional specificity is necessary.

The Department proposes to define *intimate partner,* a term used in the definition of *domestic violence,* to mean a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on a consideration of the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship. This definition is derived from the definition of ''dating partner'' in the VAWA. *See* 42 U.S.C. 13925(a)(9).

The Department proposes that the term *new contract* have the same meaning as in the Minimum Wage Executive Order Final Rule, but with dates altered to reflect the timing contemplated in section 7 of Executive Order 13706. *See* 79 FR 60722 (codified at 29 CFR 10.2); 80 FR 54700. Under the proposed definition, a *new contract* is a contract that results from a solicitation issued on or after January 1, 2017, or a contract that is awarded outside the solicitation process on or after January 1, 2017. This term includes both new contracts and replacements for expiring contracts. It does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government. For purposes of the Executive Order, a contract that is entered into prior to January 1, 2017 will constitute a *new contract* if, through bilateral negotiation, on or after January 1, 2017: (1) The contract is renewed; (2) the contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2016 providing for a short-term limited extension; or (3) the contract is amended pursuant to a modification that is outside the scope of the contract. The Minimum Wage Executive Order rulemaking explained that this definition was derived from section 8 of that Executive Order, 79 FR 9853, is consistent with the convention set forth in section 1.108(d) of the FAR, 48 CFR 1.108(d), and was developed in part in response to comments on the proposed definition of *new contract* that appeared in the Minimum Wage Executive Order NPRM. 79 FR 60643, 60646–49.

For purposes of the Executive Order and part 13, which use the terms in reference to domestic violence, sexual assault, or stalking, the Department proposes to define *obtain additional counseling, seek relocation, seek assistance from a victim services organization, or take related legal action* to mean to spend time arranging, preparing for, or executing acts related to addressing physical injuries or mental or emotional impacts resulting from being a victim of domestic violence, sexual assault, or stalking. Such acts include finding and using services of a counselor or victim services organization, as that term is defined below, intended to assist a victim to respond to or prevent future incidents of domestic violence, sexual assault, or stalking; identifying and moving to a different residence to avoid being a victim of domestic violence, sexual assault, or stalking; or a victim's pursuing any related legal action, as that term is defined below. Counseling can but need not be provided by a health care provider.

The Department proposes to define *obtaining diagnosis, care, or preventive care from a health care provider* to mean receiving services from a health care provider, whether to identify, treat, or otherwise address an existing condition or to prevent potential conditions from arising. The Department interprets this term broadly; examples include, but are not limited to, obtaining a prescription for antibiotics at a health clinic, attending an appointment with a psychologist, having an annual physical or gynecological exam, or receiving a teeth cleaning from a dentist's assistant. The definition further provides that the term includes time spent traveling to and from the location at which such services are provided or recovering from receiving such services.

The Department proposes to define the term *Office of Administrative Law Judges* to mean the Office of Administrative Law Judges, U.S. Department of Labor.

Proposed § 13.2 defines the term *option* by adopting the definition of that term used in the Minimum Wage Executive Order rulemaking, which adopted the definition set forth in section 2.101 of the FAR, 48 CFR 2.101. 79 FR 60643, 60722 (codified at 29 CFR 10.2). Specifically, the term *option* means a unilateral right in a contract by which, for a specified time, the Federal Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

The Department proposes to define *paid sick leave* to mean compensated absence from employment that is required by Executive Order 13706 and part 13. Throughout the proposed regulatory text and this discussion of that text, the Department uses ''paid sick leave'' to refer to the leave required by the Order and part 13 and ''paid sick time'' to refer more generally to any

compensated absence from work for time used for purposes similar (although not necessarily identical) to the purposes described in the Order, including as required by State and local laws or as provided pursuant to contractors' existing policies or under collective bargaining agreements.

Proposed § 13.2 defines the term *parent* to mean (1) a biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor; (2) a person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; (3) a person who stands *in loco parentis* to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis;* or (4) a parent, as described in paragraphs (1) through (3) of the definition, of an employee's spouse or domestic partner. This definition is adopted from the OPM regulations regarding leave for Federal employees. 5 CFR 630.102(b).

The Department proposes to define *physical or mental illness, injury, or medical condition* as any disease, sickness, disorder, or impairment of, or any trauma to, the body or mind. The Department understands the Executive Order to intend for this term to be understood broadly, to include any illness, injury, or medical condition, regardless of whether it requires attention from a health care provider or whether it would be a ''serious health condition'' that qualifies for use of leave under the Family and Medical Leave Act. *See* 29 U.S.C. 2611(11); 29 CFR 825.113. Examples include, but are not limited to, a common cold, ear infection, upset stomach, ulcer, flu, headache, migraine, sprained ankle, broken arm, or depressive episode.

The Department proposes to define *predecessor contract* to mean a contract that precedes a successor contract. The term *successor contract* would be defined as explained below.

The proposed regulatory text defines *procurement contract for construction* as that term was defined for purposes of the Minimum Wage Executive Order Final Rule, that is, to mean a contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. 79 FR 60723 (codified at 29 CFR 10.2). That definition, which is derived from language found at 40 U.S.C. 3142(a) and 29 CFR 5.2(h), includes any contract subject to the DBA. *See* 79 FR 60643.

The Department proposes to define the term *procurement contract for services* to mean a contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder, and to state that the term includes any contract subject to the SCA. This proposed definition is derived, as explained in the Minimum Wage Executive Order, from language set forth in 41 U.S.C. 6702(a), 29 CFR 4.1a(e), and 29 CFR 9.2. 79 FR 60643.

For purposes of the Executive Order and part 13, which use the terms in reference to domestic violence, sexual assault, or stalking, the Department proposes to define *related legal action* or *related civil or criminal legal proceeding* to mean any type of legal action, in any forum, that relates to domestic violence, sexual assault, or stalking, including, but not limited to, family, tribal, territorial, immigration, employment, administrative agency, housing matters, campus administrative or protection or stay-away order proceedings, and other similar matters; and criminal justice investigations, prosecutions, and post-trial matters (including sentencing, parole, and probation) that impact the victim's safety and privacy. This definition, which the Department intends to be broad and inclusive, is derived from the definition of ''legal assistance'' that appears in the VAWA. *See* 42 U.S.C. 13925(a)(19). The Department understands this definition to encompass actions in any civil or criminal court, including a juvenile court. It also includes administrative proceedings run by institutions of higher education (college, community college, university, or trade school), such as those related to alleged violations of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*

Under proposed § 13.2, *Secretary* means the Secretary of Labor and includes any official of the U.S. Department of Labor authorized to perform any of the functions of the Secretary of Labor under part 13.

The Department proposes to define the term *Service Contract Act* (SCA) to mean the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.,* and its implementing regulations. *See* 29 CFR 4.1a(a).

The proposed definition of *sexual assault* in § 13.2 is any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent. This definition is adopted from the VAWA. *See* 42 U.S.C. 13925(a)(29).

In this NPRM, the term *solicitation* is defined to have the meaning given to it in the Minimum Wage Executive Order Final Rule, *i.e.,* any request to submit offers, bids, or quotations to the Federal Government. 79 FR 60673 (codified at 29 CFR 10.2). As explained in the Minimum Wage Executive Order rulemaking, the definition is based on language from 29 CFR 9.2, and requests for information issued by Federal agencies and informal conversations with federal workers do not fall within the definition. *See* 79 FR 60643–44.

The Department proposes to define the term *spouse* as the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a common law marriage that was entered into in a State that recognizes such marriages or, if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State. This definition is derived from the FMLA regulations. *See* 29 CFR 825.122 (as updated by Definition of Spouse Under the Family and Medical Leave Act, 80 FR 9989 (Feb. 25, 2015)). The Department's references to marriage and common law marriage include both same-sex and opposite-sex marriages or common law marriages.

Under proposed § 13.2, *stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. This definition is adopted from the VAWA. *See* 42 U.S.C. 13925(a)(30).

The Department proposes to define *successor contract* to mean a contract for the same or similar services as were provided by a different predecessor contractor at the same location.

In proposed § 13.2, the Department defines the term *United States* as it did in the Minimum Wage Executive Order rulemaking, which uses the definitions of that term set forth in 29 CFR 9.2 and 48 CFR 2.101, though it does not adopt any of the exceptions to the definition of the term set forth in the FAR. *See* 79 FR 60645. Based on those regulations, *United States* means the United States and all executive departments, independent establishments, administrative agencies, and

instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, and instrumentalities, including nonappropriated fund instrumentalities. When the term is used in a geographic sense, the *United States* means the 50 States and the District of Columbia.

The Department proposes to define *victim services organization* to mean a nonprofit, nongovernmental, or tribal organization or rape crisis center, including a State or tribal coalition, that assists or advocates for victims of domestic violence, sexual assault, or stalking, including domestic violence shelters, faith-based organizations, and other organizations, with a documented history of effective work concerning domestic violence, sexual assault, or stalking. This definition is based on the definition of ''victim service provider'' in the VAWA. *See* 42 U.S.C. 13925(a)(43). The Department intends this definition to include organizations that provide services to adult, teen, and/or child victims of domestic violence, sexual assault, or stalking.

The Department proposes to define *Violence Against Women Act* (VAWA) as the Violence Against Women Act of 1994, 42 U.S.C. 13925 *et seq.,* and its implementing regulations.

The Department proposes to define *Wage and Hour Division* to mean the Wage and Hour Division within the U.S. Department of Labor.

Section 13.3 Coverage

Proposed § 13.3 addresses and implements the coverage provisions of section 6 of Executive Order 13706. 80 FR 54697–54700. Proposed § 13.3(a) would implement the provisions regarding the categories of contracts and employees covered by the Order by stating that part 13 applies to any new contract with the Federal Government, unless excluded by § 13.4, provided that: (1)(i) It is a procurement contract for construction covered by the DBA; (ii) it is a contract for services covered by the SCA; (iii) it is a contract for concessions, including any concessions contract excluded from coverage under the SCA by Department of Labor regulations at 29 CFR 4.133(b); or (iv) it is a contract in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (2) the wages of employees performing on or in connection with such contract are governed by the DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions.

Proposed § 13.3(b) incorporates the monetary value thresholds referred to in section 6(e) of the Executive Order. Specifically, it would provide that for contracts covered by the SCA or the DBA, part 13 applies to prime contracts only at the thresholds specified in those statutes, and for procurement contracts where employees' wages are governed by the FLSA (*i.e.,* procurement contracts not covered by the SCA or DBA), part 13 applies when the prime contract exceeds the micro-purchase threshold, as defined in 41 U.S.C. 1902(a). As proposed, § 13.3(b) further explains that for all other covered prime contracts and for all subcontracts awarded under covered prime contracts, part 13 applies regardless of the value of the contract. In this context, ''all other prime contracts'' covered by the Order and part 13 refers to non-procurement concessions contracts not covered by the SCA and non-procurement contracts with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public not covered by the SCA.

Proposed § 13.3(c), which is identical to the analogous provision in the Minimum Wage Executive Order Final Rule, 29 CFR 10.3(c), states that part 13 only applies to contracts with the Federal Government requiring performance in whole or in part within the United States; it further explains that if a contract with the Federal Government is to be performed in part within and in part outside the United States and is otherwise covered by the Executive Order and part 13, the requirements of the Order and part 13 would apply with respect to that part of the contract that is performed within the United States.

Proposed § 13.3(d), adopted from the Minimum Wage Executive Order regulations, 29 CFR 10.3(d), explains that part 13 does not apply to contracts subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. 6501 *et seq.*

The preamble to the Minimum Wage Executive Order Final Rule addressed several issues related to the coverage provisions of that Order in its discussion of the regulatory text that was codified at 29 CFR 10.3; because many of those issues are also relevant to Executive Order 13706, the Department addresses them here. Where the language of § 13.3 is based on text of Executive Order 13706 that is identical to the text of the Minimum Wage Executive Order, the Department interprets the text identically, although the Department is posing one question about a contracts coverage issue, as described below. The Department's interpretations of language from Executive Order 13706 that differs from the text of the Minimum Wage Executive Order are based on and consistent with the language of the Order being implemented here.

Coverage of Executive Agencies and Departments

Executive Order 13706 applies to all ''[e]xecutive departments and agencies.'' 80 FR 54697. The Department proposes to define *executive departments and agencies* in § 13.2 as explained above.

Executive Order 13706, like the Minimum Wage Executive Order, strongly encourages but does not compel ''[i]ndependent agencies'' to comply with its requirements. 80 FR 54700; *see also* 79 FR 9853. The Department interprets this provision, in light of the Executive Order's broad goal of providing paid sick leave to employees on contracts with the Federal Government, as a narrow exemption from coverage. The proposed rule would define independent agencies as explained in the discussion of § 13.2 above.

Coverage of New Contracts With the Federal Government

Proposed § 13.3(a) provides that the requirements of the Executive Order apply to a ''new contract with the Federal Government.'' By applying only to ''new contracts,'' the Executive Order ensures that contracting agencies and contractors will have sufficient notice of any obligations under Executive Order 13706 and can take into account any potential impact of the Order prior to entering into ''new contracts'' on or after January 1, 2017. As discussed above, the proposed definition of the term *contract* is broadly inclusive, and the proposed definition of *new contract* is modeled on the definition of that term in the Minimum Wage Executive Order Final Rule, 29 CFR 10.2, and incorporates the provisions of section 7 of Executive Order 13706. Therefore, part 13 applies to contracts with the Federal Government, unless excluded by § 13.4, that result from solicitations issued on or after January 1, 2017, or to contracts that are awarded outside the solicitation process on or after January 1, 2017. For example, any covered contracts that are added to the GSA Schedule in response to GSA Schedule solicitations issued on or after January 1, 2017 qualify as ''new contracts'' subject to the Order; any covered task orders issued pursuant to those contracts also would be deemed to be ''new contracts.'' This would include

contracts to add new covered services as well as contracts to replace expiring contracts.

As explained in the discussion of proposed § 13.2, the proposed definition of *new contract* also provides that the term includes both new contracts and replacements for expiring contracts. However, consistent with the Minimum Wage Executive Order Final Rule, the proposed definition does not include unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government. As discussed above, the Department proposes to define the term *option* to mean a unilateral right in a contract by which, for a specified time, the Federal Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract. *See* 48 CFR 2.101.

The proposed definition of *new contract* also provides that for purposes of the Executive Order, a contract that is entered into prior to January 1, 2017 will constitute a *new contract* if, through bilateral negotiation, on or after January 1, 2017: (1) The contract is renewed; (2) the contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2016 providing for a short-term limited extension; or (3) the contract is amended pursuant to a modification that is outside the scope of the contract. These statements have the same meaning in part 13 as they did in the Minimum Wage Executive Order rulemaking. *See* 79 FR 60646–49. As also noted in the Minimum Wage Executive Order rulemaking, the Department understands that contract extensions may be accomplished through options created by an agency pursuant to FAR clause 52.217–8 (which allows for an extension of time of up to 6 months for a contractor to perform services that were acquired but not provided during the contract period) or FAR clause 52.217–9 (which provides for an extension of the contract term to provide additional services for a limited term specified in the contract at previously agreed upon prices). The contracting agency's exercise of extensions under these clauses would not trigger application of the Order's paid sick leave requirements because the clauses give the contracting agency a discretionary right to unilaterally exercise the option to extend, and unilateral options are excluded from the definition of ''new contract.''

Specifically, and particularly in light of these clauses, a bilaterally negotiated extension of an existing contract on or after January 1, 2017 will be viewed as a ''new contract'' unless the extension is made pursuant to a term in the contract as of December 31, 2016 providing for a short-term limited extension, in which case the extension will not constitute a ''new contract'' and will not be covered. Therefore, a short-term, bilaterally negotiated extension of contract terms (*e.g.,* an extension of 6 months or less) that was provided for by the pre-negotiated terms of the contract prior to January 1, 2017, such as a bridge to prevent a gap in service, would not constitute a new contract. *See* Interim Final Rule, Federal Acquisition Regulation; Establishing a Minimum Wage for Contractors, 79 FR 74544, 74545 (Dec. 15, 2014) (providing that contacting officers ''shall include'' the FAR contract clause to implement the Minimum Wage Executive Order when ''bilateral modifications extending the contract . . . are individually or cumulatively longer than six months''). In addition, when a contracting agency exercises its unilateral right to extend the term of an existing service contract and simply makes pricing adjustments based on increased labor costs that result from its obligation to include a current SCA wage determination pursuant to 29 CFR 4.4 but no bilateral negotiations occur (other than any necessary to determine and effectuate those pricing adjustments), the Department would not view the exercise of that option as a ''new contract'' covered by the Executive Order.

An extension that was bilaterally negotiated and not previously authorized by the terms of the existing contract, however, would be a ''new contract'' subject to the Order's paid sick leave requirements. The Department also notes that a long-term extension of an existing contract will qualify as a ''new contract'' subject to the Executive Order even if such an extension was provided for by a pre-negotiated term of the contract.

With respect to the coverage of other contract modifications, the Department's approach in this proposal is identical to that in the Minimum Wage Executive Order Final Rule. 79 FR 60646–49. It is meant to reflect that modifications within the scope of the contract do not in fact constitute new contracts. Long-standing contracting principles recognize that an existing contract, especially a larger one, will often require modifications, which may include very modest changes (*e.g.,* a small change to a delivery schedule). Therefore, regulations such as the FAR do not require agencies to create new contracts to support these actions. Accordingly, contract modifications that are within the scope of the contract within the meaning of the FAR, *see* 48 CFR 6.001(c) and related case law, are not ''new contracts'' for purposes of the Executive Order, even when undertaken after January 1, 2017.

However, if the parties bilaterally negotiate a modification that is outside the scope of the contract, the agency will be required to create a new contract, triggering solicitation and/or justification requirements, and thus such a modification after January 1, 2017 will constitute a ''new contract'' subject to the Executive Order's paid sick leave requirements. For example, if an existing SCA-covered contract for janitorial services at a Federal office building is modified by bilateral negotiation after January 1, 2017 to also provide for security services at that building, such a modification would likely be regarded as outside the scope of the contract and thus qualify as a ''new contract'' subject to the Executive Order. Similarly, if an existing DBA-covered contract for construction work at Site A was modified by bilateral negotiation after January 1, 2017 to also cover construction work at Site B, such a modification would generally be viewed as outside the scope of the contract and thus trigger coverage of the Executive Order. The Department cautions, however, that whether a modification qualifies as ''within the scope'' or ''outside the scope'' of the contract is necessarily a fact-specific determination. *See, e.g., AT&T Communications, Inc.* v. *Wiltel, Inc.,* 1 F.3d 1201 (Fed. Cir. 1993).

Although in-scope modifications do not create ''new contracts'' under part 13, the Department strongly encourages agencies to bilaterally negotiate, as part of any such modification, application of the Executive Order's paid sick leave requirements so that these contracts can take advantage of the benefits of such leave. For example, the FARC should encourage, if not require, contracting officers to modify existing indefinite-delivery, indefinite-quantity contracts in accordance with FAR section 1.108(d)(3) to include the paid sick leave requirements of Executive Order 13706 and part 13, particularly if the remaining ordering period extends at least 6 months and the amount of remaining work or number of orders expected is substantial. *See* 79 FR 74545 (providing that contracting officers ''are strongly encouraged to include'' the FAR contract clause to implement the Minimum Wage Executive Order in ''existing indefinite-delivery indefinite-quantity contracts, if the remaining ordering period extends at least six months and the amount of remaining

work or number of orders expected is substantial'').

Coverage of Types of Contractual Arrangements

Proposed § 13.3(a)(1) sets forth the specific types of contractual arrangements with the Federal Government that are covered by the Executive Order. Executive Order 13706 and part 13 are intended to apply to a wide range of contracts with the Federal Government for services or construction, and proposed § 13.3(a)(1) implements the Executive Order by generally extending coverage to procurement contracts for construction covered by the DBA; service contracts covered by the SCA; concessions contracts, including any concessions contract excluded by the Department's regulations at 29 CFR 4.133(b); and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. Each of these categories of contractual agreements, which are treated in this proposed rulemaking as they were in the Minimum Wage Executive Order rulemaking, is discussed in greater detail below.

*Procurement Contracts for Construction:* Section 6(d)(i)(A) of the Executive Order extends coverage to any ''procurement contract for . . . construction.'' 80 FR 54699. As explained in the Minimum Wage Executive Order rulemaking, 79 FR 60650, this language indicates that the Executive Order and part 13 apply to contracts subject to the DBA and that they do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)–(60).

The DBA applies, in relevant part, to contracts to which the Federal Government is a party, for the construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Federal Government and which require or involve the employment of mechanics or laborers. 40 U.S.C. 3142(a). The DBA's regulatory definition of *construction* is expansive and includes all types of work done on a particular building or work by laborers and mechanics employed by a construction contractor or construction subcontractor. *See* 29 CFR 5.2(j). For purposes of the DBA and therefore the Executive Order, a contract is ''for construction'' if ''more than an incidental amount of construction-type activity'' is involved in its performance. *See, e.g., In the Matter of Crown Point, Indiana Outpatient Clinic,* WAB Case No. 86–33, 1987 WL 247049, at * 2 (June 26, 1987) (citing *In re: Military Housing, Fort Drum, New York,* WAB Case No. 85–16, 1985 WL 167239 (Aug. 23, 1985)), *aff'd sub nom. Building & Construction Trades Dep't, AFL–CIO* v. *Turnage,* 705 F. Supp. 5 (D.D.C. 1988); Office of Legal Counsel, U.S. Department of Justice, *Reconsideration of Applicability of the Davis-Bacon Act to the Veterans Administration's Lease of Medical Facilities* (OLC Letter), 18 Op. O.L.C. 109, 1994 WL 810699, at * 5 (May 23, 1994). The term ''contract for construction'' is not limited to contracts entered into with a construction contractor; rather, a contract for construction ''would seem to require only that there be a contract, and that one of the things required by that contract be construction of a public work.'' OLC Letter at * 3–4. The term ''public building or public work'' includes any building or work, the construction, prosecution, completion, or repair of which is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public. *See* 29 CFR 5.2(k).

Proposed § 13.3(b) implements section 6(e) of Executive Order 13706, 80 FR 52699–700, which provides that the Order applies only to DBA-covered prime contracts that exceed the $2,000 value threshold specified in the DBA. *See* 40 U.S.C. 3142(a). Consistent with the DBA, there is no value threshold requirement for application of Executive Order 13706 and part 13 to subcontracts awarded under such prime contracts.

*Procurement Contracts for Services:* Proposed § 13.3(a)(1)(ii) provides, in language identical to that of 29 CFR 10.3(a)(1)(ii) as promulgated by the Minimum Wage Executive Order Final Rule, 79 FR 60723, that coverage of the Executive Order and part 13 encompasses any ''contract for services covered by the Service Contract Act.''

This proposed provision implements section 6(d)(i)(B) of the Executive Order, which states that the Order applies to ''a contract or contract-like instrument for services covered by the Service Contract Act.'' 80 FR 54699. The SCA applies (subject to the exceptions discussed below) to any contract entered into by the United States that ''has as its principal purpose the furnishing of services in the United States through the use of service employees.'' 41 U.S.C. 6702(a)(3); *see also* 29 CFR 4.110. The SCA is intended to cover a wide variety of service contracts with the Federal Government, so long as the principal purpose of the contract is to provide services using service employees. *See, e.g.,* 29 CFR 4.130(a). SCA coverage exists regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. 29 CFR 4.133(a).

In addition to the provision in section 6(d)(i)(B) of the Executive Order extending coverage to contracts covered by the SCA, section 6(d)(i)(A) provides that the Order applies to ''a procurement contract for services.'' 80 FR 54699. In the Minimum Wage Executive Order rulemaking, the Department interpreted these two phrases together to mean that Executive Order 13658 applied to all procurement and non-procurement contracts covered by the SCA. The phrase ''a procurement contract for services'' could, however, be construed to encompass a category or categories of procurement contracts for services beyond those covered by the SCA.

The SCA does not apply to all procurement contracts with the Federal Government for services. For example, the SCA contains a list of exemptions from its coverage: It does not apply to ''a contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect''; ''a contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934''; ''a contract for public utility services, including electric light and power, water, steam, and gas''; ''an employment contract providing for direct services to a Federal agency by an individual''; and ''a contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations.'' 41 U.S.C. 6702(b); *see also* 29 CFR 4.115–4.122. Additionally, 29 CFR 4.123(d) and (e) identify certain categories of contracts the Department has exempted, pursuant to authority granted by the SCA, *see* 41 U.S.C. 6707(b), from SCA coverage to the extent regulatory criteria for exclusion from coverage are satisfied. For example, 29 CFR 4.123(e)(1)(i)(A) exempts from SCA coverage certain contracts principally for the maintenance, calibration, or repair of automated data processing equipment and office information/word processing systems. Furthermore, the SCA does not apply to contracts for services to be performed exclusively by persons who are not service employees, *i.e.,* persons who qualify as bona fide executive, administrative, or professional employees as defined in the FLSA's regulations at 29 CFR part 541. 29 CFR

4.113(a)(2); *see also* 41 U.S.C. 6701(a)(3)(C), 6702(a)(3); WHD Field Operations Handbook (FOH) ¶ 14c07. Similarly, a contract for services ''performed essentially by bona fide executive, administrative, or professional employees, with the use of service employees being only a minor factor in contract performance,'' is not covered by the SCA. 29 CFR 4.113(a)(3); FOH ¶ 14c07.

The Department seeks comment as to whether it should include within the coverage of Executive Order 13706 a wider set of procurement contracts for services than those contracts for services covered by the SCA. An interpretation treating as covered procurement contracts for services performed exclusively or essentially by employees who qualify as bona fide executive, administrative, or professional employees as defined in the FLSA's regulations at 29 CFR part 541—a type of employee covered by section 6(d)(ii) of the Order because such employees qualify for an exemption from the FLSA's minimum wage and overtime provisions, 80 FR 54700—would, for example, extend the Order's paid sick leave requirements to some such employees who would otherwise not be covered by the Order. An interpretation treating as covered other types of service contracts explicitly exempted from SCA coverage under 41 U.S.C. 6702(b) and 29 CFR 4.123(d) and (e) would also extend the Order's paid sick leave requirements to at least some employees on any such contracts; although those employees' wages would by definition not be covered by the SCA, under such an interpretation, employees performing on or in connection with such contracts whose wages were governed by the FLSA, including employees who qualify for an exemption from its minimum wage and overtime provisions, would be entitled to paid sick leave under the Order and part 13. The Department seeks comments discussing the potential scope and implications of such coverage, including whether employees who work on or in connection with certain categories of non-SCA-covered service contracts currently typically do not have paid sick time or do not have any type of paid time off such that the protections of Executive Order 13706 would be particularly significant to them. (If in the Final Rule, the Department changes the scope of coverage of service contracts, it will make a corresponding change to proposed § 13.4(d), which—as explained below—sets forth an exclusion from the Order's coverage for service contracts not covered by the SCA or proposed § 13.3(a)(1)(iii) or (iv).)

The Department notes that regardless of whether it adopts a broader interpretation of the set of procurement contracts for services covered by the Order and part 13, under proposed § 13.3(a)(1)(iii) and (iv) as well as § 13.3(d), described in more detail below, the Order's paid sick leave requirements will apply to service contracts that are concessions contracts, including all concessions contracts excluded by the SCA regulations at 29 CFR 4.133(b); will apply to service contracts that are in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and will not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government that are subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. 6501 *et seq.*

Finally, proposed § 13.3(b) implements section 6(e) of the Executive Order, which provides that for SCA-covered contracts, the Executive Order applies only to those prime contracts that exceed the threshold for prevailing wage requirements specified in the SCA. 80 FR 54700. Although the SCA covers all non-exempted contracts with the Federal Government that have the ''principal purpose'' of furnishing services in the United States through the use of service employees regardless of the value of the contract, the prevailing wage requirements of the SCA only apply to covered contracts in excess of $2,500. 41 U.S.C. 6702(a)(2). Consistent with the SCA, there is no value threshold requirement for application of Executive Order 13706 and part 13 to subcontracts awarded under such prime contracts.

*Contracts for Concessions:* Proposed § 13.3(a)(1)(iii) implements the Executive Order's coverage of a ''contract or contract-like instrument for concessions, including any concessions contract excluded by the Department of Labor's regulations at 29 CFR 4.133(b),'' 80 FR 54699, just as the Minimum Wage Executive Order Final Rule implemented identical language in that Order, *see* 79 FR 60638, 60652. The proposed definition of *concessions contract* is addressed in the discussion of proposed § 13.2.

The SCA generally covers contracts for concessionaire services. *See* 29 CFR 4.130(a)(11). Pursuant to the Secretary's authority under section 4(b) of the SCA, however, the SCA's regulations specifically exempt from coverage concession contracts ''principally for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public.'' 29 CFR 4.133(b); 48 FR 49736, 49753 (Oct. 27, 1983).[1] Proposed § 13.3(a)(1)(iii) extends coverage of the Executive Order and part 13 to all concession contracts with the Federal Government, including those exempted from SCA coverage. For example, the Executive Order generally covers souvenir shops at national monuments as well as boat rental facilities and fast food restaurants at National Parks. In addition, consistent with the SCA's implementing regulations at 29 CFR 4.107(a), the Department notes that the Executive Order generally applies to concessions contracts with nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or other Federal agencies.

Proposed § 13.3(b) implements the value threshold requirements of section 6(e) of Executive Order 13706. 80 FR 54699–700. Pursuant to that section, the Executive Order applies to an SCA-covered concessions contract only if it exceeds $2,500. *Id.;* 41 U.S.C. 6702(a)(2). Section 6(e) of the Executive Order further provides that, for procurement contracts where employees' wages are governed by the FLSA, such as any procurement contracts for concessionaire services that are excluded from SCA coverage under 29 CFR 4.133(b), part 13 applies only to contracts that exceed the $3,000 micro-purchase threshold, as defined in 41 U.S.C. 1902(a). There is no value threshold for application of Executive Order 13706 and part 13 to subcontracts awarded under covered prime contracts or for non-procurement concessions contracts that are not covered by the SCA.

*Contracts in Connection with Federal Property or Lands and Related to Offering Services:* Proposed § 13.3(a)(1)(iv) implements section 6(d)(i)(D) of the Executive Order, which extends coverage to contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for

[1] This exemption applies to certain concessions contracts that provide services to the general public, but does not apply to concessions contracts that provide services to the Federal Government or its personnel or to concessions services provided incidentally to the principal purpose of a covered SCA contract. *See, e.g.,* 29 CFR 4.130 (providing an illustrative list of SCA-covered contracts); *In the Matter of Alcatraz Cruises, LLC,* ARB Case No. 07–024, 2009 WL 250456 (ARB Jan. 23, 2009) (holding that the SCA regulatory exemption at 29 CFR 4.133(b) does not apply to National Park Service contracts for ferry transportation services to and from Alcatraz Island).

Federal employees, their dependents, or the general public. *See* 80 FR 54699; *see also* 79 FR 60655 (Minimum Wage Executive Order Final Rule preamble discussion of identical provisions in the Minimum Wage Executive Order and 29 CFR part 10). To the extent that such agreements are not otherwise covered by § 13.3(a)(1), the Department interprets this provision as generally including leases of Federal property, including space and facilities, and licenses to use such property entered into by the Federal Government for the purpose of offering services to the Federal Government, its personnel, or the general public. In other words, a private entity that leases space in a Federal building to provide services to Federal employees or the general public would be covered by the Executive Order and part 13 regardless of whether the lease is subject to the SCA. Although evidence that an agency has retained some measure of control over the terms and conditions of the lease or license to provide services is not necessary for purposes of determining applicability of this section, such a circumstance strongly indicates that the agreement involved is covered by section 6(d)(i)(D) of the Executive Order and proposed § 13.3(a)(1)(iv). Pursuant to this interpretation, a private fast food or casual dining restaurant that rents space in a Federal building and serves food to the general public would be subject to the Executive Order's paid sick leave requirements even if the contract does not constitute a concessions contract for purposes of the Order and part 13. Additional examples of agreements that would generally be covered by the Executive Order and part 13 under this approach, even if they are not subject to the SCA, include delegated leases of space in a Federal building from an agency to a contractor whereby the contractor operates a child care center, credit union, gift shop, barber shop, health clinic, or fitness center in the space to serve Federal employees and/or the general public.

Despite this broad definition, the Department notes some limits to it. Coverage under this section only extends to contracts that are in connection with Federal property or lands. The Department does not interpret section 6(d)(i)(D)'s reference to ''Federal property'' to encompass money; as a result, purely financial transactions with the Federal Government, *i.e.,* contracts that are not in connection with physical property or lands, would not be covered by the Executive Order or part 13. For example, if a Federal agency contracts with an outside catering company to provide and deliver coffee for a conference, such a contract will not be considered a covered contract under section 6(d)(i)(D), although it would be a covered contract under section 6(d)(i)(B) if it is covered by the SCA. In addition, section 6(d)(i)(D) coverage only extends to contracts ''related to offering services for Federal employees, their dependents, or the general public.'' Therefore, if a Federal agency contracts with a company to solely supply materials in connection with Federal property or lands, the Department will not consider the contract to be covered by section 6(d)(i)(D) because it is not a contract related to offering services. Likewise, because a license or permit to conduct a wedding on Federal property or lands generally would not relate to offering services for Federal employees, their dependents, or the general public, but rather would only relate to offering services to the specific individual applicant(s), the Department would not consider such a contract covered by section 6(d)(i)(D).

Pursuant to proposed § 13.3(b) and section 6(e) of Executive Order 13706, 80 FR 54700, the Order and part 13 apply only to SCA-covered prime contracts in connection with Federal property and related to offering services if such contracts exceed $2,500. *Id.;* 41 U.S.C. 6702(a)(2). For procurement contracts in connection with Federal property and related to offering services where employees' wages are governed by the FLSA (rather than the SCA), part 13 applies only to such contracts that exceed the $3,000 micro-purchase threshold, as defined in 41 U.S.C. 1902(a). As to subcontracts awarded under prime contracts in this category and non-procurement contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public that are not SCA-covered, there is no value threshold for coverage under Executive Order 13706 and part 13.

*Contracts Subject to the Walsh-Healey Public Contracts Act:* Finally, the Department proposes to include as § 13.3(d) a statement that contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, *i.e.,* those subject to the Walsh-Healey Public Contracts Act (PCA), 41 U.S.C. 6501 *et seq.,* are not covered by Executive Order 13706 or part 13. As in the Minimum Wage Executive Order rulemaking, the Department proposes to exercise its authority under the Order to ''provid[e] exclusions from the requirements set forth in this order where appropriate,'' 80 FR 64698, and to follow the regulations set forth in the FAR at 48 CFR 22.402(b) in addressing whether the DBA (and thus the Executive Order) applies to construction work on a PCA contract. Under this approach, where a PCA-covered contract involves a substantial and segregable amount of construction work that is subject to the DBA, employees whose wages are governed by the DBA or FLSA, including those who qualify for an exemption from the FLSA's minimum wage and overtime provisions, are covered by the Executive Order for the hours that they spend performing on or in connection with such DBA-covered construction work.

Coverage of Subcontracts

As explained in the Minimum Wage Executive Order rulemaking, 79 FR 60657–58, the same test for determining application of the Executive Order to prime contracts applies to the determination of whether a subcontract is covered by the Order, with the distinction that the value threshold requirements set forth in section 6(e) of the Order do not apply to subcontracts. In other words, the requirements of the Order apply to a subcontract if the subcontract qualifies as a *contract* or *contract-like instrument* under the definition set forth in part 13 and it falls within one of the four specifically enumerated types of contracts set forth in section 6(d)(i) of the Order and proposed § 13.3(a)(1).

Pursuant to this approach, only covered subcontracts of covered prime contracts are subject to the requirements of the Executive Order. Therefore, just as the Executive Order does not apply to prime contracts that are subject to the PCA, it likewise does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment. In other words, the Executive Order does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment between a manufacturer or other supplier and a covered contractor for use on a covered Federal contract. For example, a subcontract to supply napkins and utensils to a covered prime contractor operating a fast food restaurant on a military base is not a covered subcontract for purposes of this Order. The Executive Order likewise does not apply to contracts under which a contractor orders materials from a construction materials supplier.

Coverage of Employees

Proposed § 13.3(a)(2) implements section 6(d)(ii) of Executive Order

13706, which provides that the paid sick leave requirements of the Order only apply if the wages of employees under a covered contract are governed by the DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions. 80 FR 54699. This coverage provision is distinct from that in Executive Order 13658 in that the Minimum Wage Executive Order did not cover employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions, *see* 79 FR 9853; the discussion below reflects this distinction.

An employee's wages are governed by the FLSA for purposes of section 6(d)(ii) of the Executive Order and part 13 if the employee is entitled to minimum wage and/or overtime compensation under sections 6 and/or 7 of the FLSA or the employee's wages are calculated pursuant to special certificates issued under section 14 of the FLSA. *See* 29 U.S.C. 206, 207, 214. The Department interprets the Order's explicit coverage of employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions to mean that the Order and part 13 apply to an employee who would be entitled to minimum wage and/or overtime compensation under the FLSA but for the application of an exemption from the FLSA's minimum wage and overtime requirements pursuant to section 13 of the Act. *See* 29 U.S.C. 213. Such employees include those employed in a bona fide executive, administrative, or professional capacity as defined in section 13(a)(1) of the FLSA, 29 U.S.C. 213(a)(1), and 29 CFR part 541.

The Department interprets the Order's reference to employees whose wages are governed by the DBA to include laborers and mechanics who are covered by the DBA, including any individual who is employed on a DBA-covered contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. The Department also interprets the language in section 6(d)(ii) of Executive Order 13706 and proposed § 13.3(a)(2) to extend coverage to employees performing on or in connection with DBA-covered contracts for construction who are not laborers or mechanics but whose wages are governed by the FLSA as provided above, including those who qualify for an exemption from the FLSA's minimum wage and overtime provisions. Although such employees are not covered by the DBA itself because they are not ''laborers and mechanics,'' 40 U.S.C. 3142(b), such individuals are employees performing on or in connection with a contract subject to the Executive Order whose wages are governed by the FLSA, including those who qualify for an exemption from the FLSA's minimum wage and overtime provisions, and thus are covered by section 6(d) of the Order. 80 FR 54699. This coverage extends to employees whose wages are governed by the FLSA, including those who qualify for an exemption from the FLSA's minimum wage and overtime provisions, who are working on or in connection with DBA-covered contracts regardless of whether such employees are physically present on the DBA-covered construction worksite.

The Order also refers to employees whose wages are governed by the SCA. The SCA provides that ''service employees'' directly engaged in providing specific services called for by the SCA-covered contract are entitled to SCA prevailing wage rates. 41 U.S.C. 6701(3), 6703; 29 CFR 4.152. These employees are covered by the plain language of section 6(d) of Executive Order 13706. This category includes individuals who are employed on an SCA contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

Under the SCA, ''service employees'' who do not perform the services required by an SCA-covered contract but whose duties are ''necessary to performance of the contract'' must be paid at least the FLSA minimum wage. 29 CFR 4.153; *see also* 41 U.S.C. 6704(a). The Department interprets the language in section 6(d)(ii) of Executive Order 13706 and proposed § 13.3(a)(2) to extend coverage to this category of employee. For example, an accounting clerk who is paid hourly to process invoices and work orders on an SCA-covered contract for janitorial services would likely not qualify as performing services required by the contract (and therefore would not be entitled to SCA prevailing wages), but the clerk would be entitled to at least the FLSA minimum wage. Therefore, the clerk would be covered by the Executive Order.

Furthermore, some employees perform work on or in connection with SCA-covered contracts but are not ''service employees'' for purposes of the Act because that term does not include an individual employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in the FLSA regulations at 29 CFR part 541. 41 U.S.C. 6701(3)(C). As explained above, these employees are covered pursuant to section 6(d)(ii) of the Executive Order. For example, a contractor could employ a manager who meets the test for the executive employee exemption under 29 U.S.C. 213(a)(1) and 29 CFR 541.100 to supervise janitors on an SCA-covered contract for cleaning services at a Federal building. Because that manager performs work on a covered contract and qualifies for an exemption from the FLSA's minimum wage and overtime provisions, she would be entitled to the paid sick leave required by Executive Order 13706 and part 13.

The Department notes that where State or local government employees are performing on or in connection with covered contracts and their wages are governed by the SCA or the FLSA, including employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions, such employees are entitled to the protections of the Executive Order and part 13. The DBA does not apply to construction performed by State or local government employees.

On or In Connection With

The paid sick leave requirements of Executive Order 13706 and part 13 apply to employees performing work ''on or in connection with'' covered contracts. As it did in the Minimum Wage Executive Order rulemaking, *see* 79 FR 60671–72, the Department interprets these terms in a manner consistent with SCA regulations, *see, e.g.,* 29 CFR 4.150–.155. Specifically, the Department views employees performing ''on'' a covered contract as those employees directly performing the specific services called for by the contract. Whether an employee is performing ''on'' a covered contract will be determined, as explained in the Minimum Wage Executive Order Final Rule, 79 FR 60660, in part by the scope of work or a similar statement set forth in the covered contract that identifies the work (*e.g.,* the services or construction) to be performed under the contract. Accordingly, all laborers and mechanics engaged in the construction of a public building or public work on the site of the work will be regarded as performing ''on'' a DBA-covered contract, and all service employees performing the specific services called for by an SCA-covered contract will also be regarded as performing ''on'' a

contract covered by the Executive Order. In other words, any employee who is entitled to be paid DBA or SCA prevailing wages is necessarily performing ''on'' a covered contract. For purposes of concessions contracts and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public that are not covered by the SCA, the Department will regard any employee performing the specific services called for by the contract as performing ''on'' the covered contract in the manner described above.

The Department regards an employee performing ''in connection with'' a covered contract to be any employee who is performing work activities that are necessary to the performance of a covered contract but who is not directly engaged in performing the specific services called for by the contract itself. This standard, also articulated in the Minimum Wage Executive Order rulemaking, is derived from SCA regulations. *See* 79 FR 60659 (citing 29 CFR 4.150–.155).

The Department notes that the Order does not extend to employees who are not engaged in working on or in connection with a covered contract. For example, a technician who is hired to repair a DBA contractor's electronic time system or a janitor who is hired to clean the bathrooms at the DBA contractor's company headquarters are not covered by the Order because they are not performing the specific duties called for by the contract or other services or work necessary to the performance of the contract. Similarly, the Executive Order would not apply to a landscaper at the home office of an SCA contractor because that employee is not performing the specific duties called for by the SCA contract or other services or work necessary to the performance of the contract. And the Executive Order would not apply to an employee hired by a covered concessionaire to redesign the storefront sign for a snack shop in a National Park unless the redesign of the sign was called for by the concessions contract itself or otherwise necessary to the performance of the contract. The Department notes for clarity that because the Order and part 13 do not apply to employees of Federal contractors who do no work on or in connection with a covered contract, a contractor could be required to provide paid sick leave to some of its employees but not others; in other words, it is not the case that because a contractor has one or more Federal contracts, all of its projects becomes covered.

Geographic Scope

Proposed § 13.3(c), which is identical to 29 CFR 10.3(c) as promulgated in the Minimum Wage Executive Order Final Rule, *see* 79 FR 60723, provides that Executive Order 13706 and part 13 only apply to contracts with the Federal Government requiring performance in whole or in part within the United States. This interpretation is reflected in the Department's proposed definition of the term *United States,* which provides that when used in a geographic sense, the *United States* means the 50 States and the District of Columbia. Under this approach, the requirements of the Order and part 13 would not apply to contracts with the Federal Government to be performed in their entirety outside the geographical limits of the United States as thus defined. If a contract with the Federal Government is to be performed in part within and in part outside these geographical limits and is otherwise covered by the Executive Order and part 13, however, the requirements of the Order and part 13 would apply with respect to that part of the contract that is performed within the United States, *i.e.,* employees would accrue paid sick leave based on their hours worked on or in connection with covered contracts within the United States, and could likewise use accrued paid sick leave while performing on or in connection with a covered contract within the United States. As with other instances described below in which employees perform some work covered by the Executive Order and part 13 and other work that is not, or if some employees working on or in connection with a covered contract do so in the United States and others do so outside the United States, a contractor wishing to comply with the Order's paid sick leave requirements as to only some employees on a contract or only some of an employee's hours worked must keep records adequately segregating non-covered work from covered work. If a contractor does not make and maintain such records, in the absence of other proof regarding the location of the work, all of the employees' hours worked on or in connection with the covered contract and/or all of the employees working on or in connection with the covered contract will be presumed to be covered by the Order and part 13.

Section 13.4 Exclusions

Proposed § 13.4 sets forth exclusions from the Executive Order's requirements, including by implementing the exclusions set forth in section 6(f) of the Order and creating other limited exclusions from coverage as authorized by section 3(a) of the Executive Order. *See* 80 FR 54698, 54700. Specifically, proposed § 13.4(a) through (d) describes the limited categories of contractual arrangements with the Federal Government for services or construction that are excluded from the paid sick leave requirements of the Executive Order and part 13, and proposed § 13.4(e) establishes a narrow category of employees that are excluded from coverage of the Order and part 13.

Proposed § 13.4(a) implements the statement in section 6(f) of Executive Order 13706 that the Order does not apply to ''grants.'' 80 FR 54700. As it did in the Minimum Wage Executive Order rulemaking, *see* 79 FR 60665–66, the Department interprets this provision to mean that the paid sick leave requirements of the Executive Order and part 13 do not apply to grants as that term is used in the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.* That statute defines a ''grant agreement'' as ''the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—(1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' 31 U.S.C. 6304. Section 2.101 of the FAR similarly excludes ''grants,'' as defined in the Federal Grant and Cooperative Agreement Act, from its coverage of contracts. 48 CFR 2.101. Several appellate courts have also adopted this construction of ''grants'' in defining the term for purposes of other Federal statutory schemes. *See, e.g., Chem. Service, Inc.* v. *Environmental Monitoring Systems Laboratory,* 12 F.3d 1256, 1258 (3rd Cir. 1993) (applying same definition of ''grants'' for purposes of 15 U.S.C. 3710a); *East Arkansas Legal Services* v. *Legal Services Corp.,* 742 F.2d 1472, 1478 (D.C. Cir. 1984) (applying same definition of ''grants'' in interpreting 42 U.S.C. 2996a). If a contract qualifies as a grant within the meaning of the Federal Grant and Cooperative Agreement Act, it would be excluded from coverage of Executive Order 13706 and part 13.

Proposed § 13.4(b) implements the other exclusion set forth in section 6(f) of Executive Order 13706, which states that the Order does not apply to ''contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended.'' 80 FR 54700. This proposed provision is identical to 29 CFR 10.4(b) as promulgated by the Minimum Wage Executive Order. *See* 79 FR 60723.

Proposed § 13.4(c) provides that any procurement contracts for construction that are not subject to the DBA are excluded from coverage of the Executive Order and part 13. This proposed provision is identical to 29 CFR 10.4(c) as promulgated by the Minimum Wage Executive Order Final Rule. *See* 79 FR 60723. The Department proposes to make coverage of construction contracts under the Executive Order and part 13 consistent with coverage under the DBA in order to assist all interested parties in understanding their rights and obligations under Executive Order 13706.

Similarly, proposed § 13.4(d) incorporates the SCA's exemption of certain service contracts into the exclusionary provisions of the Executive Order. This proposed provision excludes from coverage of the Executive Order and part 13 any contracts for services, except for those expressly covered by proposed § 13.3(a)(1)(iii) or (iv), that are exempted from coverage under the SCA, pursuant to its statutory language at 41 U.S.C. 6702(b) or its implementing regulations, including those at 29 CFR 4.115 through 4.122 and 29 CFR 4.123(d) and (e). The Department notes that this exemption would not apply if the relevant service contract is expressly included within the Executive Order's coverage by proposed § 13.3(a)(1)(iii) or (iv). For example, certain types of concessions contracts are excluded from SCA coverage pursuant to 29 CFR 4.133(b) but are explicitly covered by section 6(d)(i)(C) of the Executive Order and part 13 under proposed § 13.3(a)(1)(iii). The Department notes that any comments addressing whether the Department should change proposed § 13.3(a)(1)(ii) to extend coverage to any categories of ''procurement contracts for services'' beyond those covered by the SCA would be relevant to this proposed provision as well.

Proposed § 13.4(e) provides that the accrual requirements of part 13 do not apply to employees performing in connection with covered contracts, *i.e.,* those employees who perform work duties necessary to the performance of the contract but who are not directly engaged in performing the specific work called for by the contract, who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts. It further provides that this exclusion is inapplicable to employees performing on covered contracts, *i.e.,* those employees directly engaged in performing the specific work called for by the contract, at any point during the workweek. Finally, it explains that this exclusion is also inapplicable to employees performing in connection with covered contracts with respect to any workweek in which the employees spend 20 percent or more of their hours worked performing in connection with a covered contract. This provision adopts language included in the Minimum Wage Executive Order Final Rule in response to comments expressing concern about new burdens on contractors associated with employees who spend an insubstantial amount of time performing work in connection with covered contracts (in particular, DBA-covered contractors that did not previously segregate hours worked by FLSA-covered employees, including those who were not present on the site of the construction work). 79 FR 60659, 60724 (codified at 29 CFR 10.4(f)). The Department explained in that rulemaking that it expected the exclusion to significantly mitigate the recordkeeping concerns identified by commenters without substantially affecting the Executive Order's economy and efficiency interests, and noted that it has used a 20 percent threshold for other purposes in the SCA and DBA contexts. 79 FR 60660 (citing 29 CFR 4.123(e)(2); WHD FOH ¶¶ 15e06, 15e10(b), 15e16(c), and 15e19).

As explained in the Minimum Wage Executive Order rulemaking, 79 FR 60659–62, this exclusion does not apply to any employee performing ''on,'' rather than ''in connection with,'' a covered contract at any point during the workweek. (The meaning of these terms is addressed above, in the discussion of the coverage provisions of proposed § 13.3.) If an employee spends any time performing on a covered contract and that employee's wages are governed by the DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions, the employee will be entitled to accrue and use paid sick leave pursuant to the Executive Order as to all time performing on or in connection with covered contracts in that workweek. For an employee solely performing ''in connection with'' a covered contract, however, the Executive Order's paid sick leave requirements will only apply if that employee spends 20 percent or more of her hours worked in a given workweek performing in connection with covered contracts. Therefore, in order to apply this exclusion correctly, contractors must accurately distinguish between employees performing ''on'' a covered contract and those employees performing ''in connection with'' a covered contract. As explained in the discussion of these concepts above, employees directly performing the specific services called for by the contract are performing ''on'' a covered contract. This category includes any employee who is entitled to be paid DBA or SCA prevailing wages; such an employee is therefore entitled to accrue and use paid sick leave as required by the Executive Order and part 13 regardless of whether such covered work constitutes less than 20 percent of the employee's overall hours worked in a particular workweek.

This exclusion could apply, however, to any employees who are not directly engaged in performing the specific construction identified in a DBA contract (*i.e.,* they are not DBA-covered laborers or mechanics) but whose services are necessary to the performance of the DBA contract, such as employees who do not perform the construction identified in the DBA contract either due to the nature of their non-physical duties and/or because they are not present on the site of the work, but whose duties would be regarded as essential for the performance of the contract. For example, proposed § 13.4(e) could apply to a security guard patrolling or monitoring a construction worksite where DBA-covered work is being performed or a clerk who processes the payroll for DBA contracts (either on or off the site of the work). If the security guard or clerk also performed the duties of a DBA-covered laborer or mechanic (for example, by painting or moving construction materials), however, the exclusion would not apply to any hours worked on or in connection with the contract in that workweek because that employee performed ''on'' the covered contract at some point in the workweek.

Similarly, any employees performing work in connection with an SCA contract who are not entitled to SCA prevailing wages but are, because they perform work ''in connection with'' an SCA-covered contract, entitled to at least the FLSA minimum wage could fall within the scope of this exclusion provided their work falls below the 20 percent threshold. For example, the exclusion could apply to an accounting

clerk who processes a few invoices for SCA contracts out of hundreds of other invoices for non-covered contracts during the workweek or a human resources employee who assists for short periods of time in the hiring of the employees performing on the SCA-covered contract in addition to the hiring of employees on other non-covered projects.

With respect to concessions contracts and contracts in connection with Federal property or lands and related to offering services, the proposed § 13.4(e) exclusion could apply to any employees performing in connection with such contracts who are not at any time directly engaged in performing the specific services identified in the contract but whose services or work duties are necessary to the performance of the covered contract. One example of an employee who could qualify for this exclusion is a clerk who handles the payroll for a child care center that leases space in a Federal building as well as the center's other locations that are not covered by the Executive Order and thus does not spend 20 percent or more of his time handling payroll for the child care center in the Federal building.

Importantly, as in the Minimum Wage Executive Order rulemaking, 79 FR 60661–62, the Department notes that a contractor seeking to rely on this exclusion must correctly determine the hours worked, make and maintain records (or other affirmative proof) that the employee did not work ''on'' a covered contract, and appropriately segregate the hours worked by the employee in connection with the covered contract from other work not subject to the Executive Order. This requirement is consistent with other instances, described elsewhere in this preamble, in which employees perform some work covered by the Executive Order and part 13 and some work that is not. In the absence of records or other proof demonstrating that an employee did not work ''on'' a covered contract and adequately segregating non-covered work from the work performed in connection with a covered contract, the exclusion will not apply, and employees who work in connection with a covered contract will be presumed to have spent all paid time performing such work throughout the workweek.

The quantum of affirmative proof necessary to support reliance on the exclusion will vary with the circumstances. For example, it may require considerably less affirmative proof to satisfy the proposed § 13.4(e) exclusion with respect to an accounting clerk who only occasionally processes an SCA-contract-related invoice than would be necessary to establish the exclusion with respect to a security guard who works on a DBA-covered site for at least several hours each week.

Additionally, the Department notes that in calculating hours worked by a particular employee in connection with covered contracts for purposes of determining whether this exclusion may apply, contractors must determine the aggregate amount of hours worked on or in connection with covered contracts in a given workweek by that employee. For example, if an administrative assistant works for a single employer 40 hours per week and spends 2 hours each week handling payroll for each of four separate SCA contracts, the 8 hours that the employee spends performing in connection with the four covered contracts must be aggregated for each workweek in order to determine whether the exclusion applies. In this case, the exclusion would not apply because the employee's hours worked in connection with the SCA contracts constitute 20 percent of her total hours worked for that workweek. As a result, the 8 hours that the employee spends performing in connection with the four covered contracts each workweek would count toward the accrual of paid sick leave.

Finally, the Department acknowledges that the Minimum Wage Executive Order rulemaking contained additional exclusions for certain categories of employees that are not replicated in this proposed rule. Specifically, under the Minimum Wage Executive Order regulations, employees whose wages are not governed by section 206(a)(1) of the FLSA because of the applicability of exemptions under section 213(a) are not entitled to the protections of Executive Order 13658. 29 CFR 10.4(e)(3). Executive Order 13706 expressly covers employees to whom an exemption from the FLSA's minimum wage and overtime provisions applies, *see* 80 FR 54699, so no similar exclusion would be appropriate in this rulemaking. Additionally, the Minimum Wage Executive Order does not apply to employees whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a) or (b). 29 CFR 10.4(e)(1), (2). Because the Department interprets Executive Order 13706 to be intended to apply to a broad range of employees, the Order explicitly applies to employees whose wages are governed by the FLSA, and the Order (unlike the Minimum Wage Executive Order) contains no reference to any category of employees whose wages are calculated pursuant to special certificates, the Department proposes to interpret Executive Order 13706 to apply to employees whose wages are calculated pursuant to special certificates under section 14 of the FLSA. It therefore does not propose to incorporate an exclusion for any such employees in this proposed rule.

Section 13.5 Paid Sick Leave for Federal Contractors and Subcontractors

Proposed § 13.5 implements section 2 of Executive Order 13706 by setting forth rules and restrictions regarding the accrual and use of paid sick leave.

Proposed § 13.5(a) addresses the accrual of paid sick leave. Proposed § 13.5(a)(1) provides that a contractor shall permit an employee to accrue not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract. This requirement implements section 2(a) of Executive Order 13706. 80 FR 54697. Proposed § 13.5(a) further provides that a contractor shall aggregate an employee's hours worked on or in connection with all covered contracts for that contractor for purposes of paid sick leave accrual. For example, if a subcontractor who installs windows in building construction projects sends a single employee to three separate DBA-covered projects, all the time the employee spends on all worksites—whether during the same or different workweeks—for the subcontractor must be added together to determine how much paid sick leave the employee has accrued. If in one workweek the employee spent 20 hours at Site A and 10 hours at Site B, she would have accrued 1 hour of paid sick leave at the end of that workweek; if in the next workweek the employee spent 30 hours at Site C, she would then have a total accrual of 2 hours of paid sick leave. As for an employee who falls within the 20 percent of hours worked exclusion created by proposed § 13.4(e) for some workweeks but not others, only the employee's hours worked on or in connection with covered contracts during workweeks in which the exclusion does not apply would count toward accrual of paid sick leave.

Proposed § 13.5(a)(1)(i) explains that for purposes of Executive Order 13706 and part 13, ''hours worked'' includes all time for which an employee is or should be paid, meaning time an employee spends working or in paid time off status, including time when the employee is using paid sick leave or any other paid time off provided by the contractor. This definition is different from the use of the term ''hours worked'' in other contexts and applies only for purposes of the Executive Order. It includes (but is broader than)

all time considered ''hours worked'' for purposes of the SCA and the FLSA, *i.e.,* all time an employee is suffered or permitted to work. 29 CFR 4.178 (explaining that ''[i]n general, the hours worked by an employee include all periods in which the employee is suffered or permitted to work whether or not required to do so, and all time during which the employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace''); 29 CFR 785.11 (''Work not requested but suffered or permitted is work time.''); *see also* 29 CFR part 785 (FLSA regulations regarding hours worked principles).

The Department's interpretation of ''hours worked'' under Executive Order 13706 to additionally include paid time off, although distinct from the FLSA and SCA definitions of the term, is analogous to the accrual of vacation leave under the SCA, where absences from work (with or without pay) generally count toward satisfaction of length of service requirements for vacation benefits. 29 CFR 4.173(b)(1). And it is consistent with the OPM regulation regarding leave accrual by federal employees, which provides that an employee accrues leave each pay period based on time she is ''in a pay status.'' 5 CFR 630.202(a). The Department's interpretation also reflects its view that basing paid sick leave accrual on all time an employee is in pay status, rather than merely on when the employee is suffered or permitted to work, will be administratively easier (or no more difficult) for contractors to implement. The Department further notes that this interpretation generally will have minimal impact on the rate of an employee's accrual of paid sick leave and, with respect to many employees who work at least full time (or potentially even less) each week on or in connection with covered contracts, will have no impact on the total amount of paid sick leave accrued per year because such employees will reach the maximum 56 hours within each accrual year regardless of whether paid time off is included. The Department reiterates that this broad definition of hours worked is only for purposes of the Executive Order and part 13 and has no bearing on the definition of hours worked in other contexts, such as the definition for purposes of the FLSA and SCA, which is set forth in longstanding regulations under those statutes. *See* 29 CFR part 785 (FLSA hours worked principles); 29 CFR 4.178 (adopting FLSA hours worked principles for purposes of the SCA).

The Department reiterates that only hours worked (as that term is defined for purposes of the Order and part 13) on or in connection with a covered contract, rather than hours worked on or in connection with a non-covered contract, count toward paid sick leave accrual. For example, if an employee works on an SCA-covered contract for security services for 30 hours each workweek and works for the same contractor on a private contract for security services an additional 30 hours each workweek, the contractor would only be required to allow that employee to accrue 1, rather than 2, hours of paid sick leave each workweek. Similarly, if an employee works for one contractor on a DBA-covered contract for construction for 2 months and then on a private contract for construction for 2 months, the contractor would only be required to allow the employee to accrue paid sick leave during the first 2 months. But the Department proposes to require contractors who wish to distinguish covered and non-covered hours worked for purposes of paid sick leave accrual to keep records that clearly reflect that distinction. Specifically, proposed § 13.5(a)(1)(i) explains that to properly exclude time spent on non-covered work from an employee's hours worked that count toward the accrual of paid sick leave, a contractor must accurately identify in its records the employee's covered and non-covered hours worked. In the absence of records or other proof adequately segregating the time—whether because of a contractor's inadequate recordkeeping, because the contractor preferred permitting the employee to more rapidly accrue paid sick leave rather than keeping such records, or for another reason—the employee would be presumed to have spent all paid time performing work on or in connection with a covered contract. This policy is consistent with the treatment of hours worked on SCA- and non-SCA-covered contracts, *see* 29 CFR 4.178, 4.179, as well as the treatment of covered versus non-covered time under the Minimum Wage Executive Order rulemaking, *see* 79 FR 60660–61, 60672.

Proposed § 13.5(a)(1)(ii) provides that a contractor shall calculate an employee's accrual of paid sick leave no less frequently than at the conclusion of each workweek, but it is not required to allow employees to accrue paid sick leave in increments smaller than 1 hour for completion of any fraction of 30 hours worked. In other words, a contractor must treat each employee's paid sick leave as accruing no less frequently than at the end of each workweek, but an employee need only be permitted to accrue a full hour of paid sick leave after working a full 30 hours, rather than accruing any fraction of an hour for any fraction of 30 hours worked during the workweek. The Department considers ''workweek'' to have the meaning explained in the FLSA regulations, *i.e.,* a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods—that need not coincide with the calendar week but must generally remain fixed for each employee. *See* 29 CFR 778.105.

Proposed § 13.5(a)(1)(ii) further explains that any remaining fraction of 30 hours worked shall be added to hours worked for the same contractor in subsequent workweeks to reach the next 30 hours worked provided that the next workweek in which the employee performs on or in connection with a covered contract occurs within the same accrual year. (The term *accrual year* is defined in proposed § 13.2 and further explained below.) For example, assume an employee works on a covered concessions contract for 45 hours in workweek 1 and 20 hours in workweek 2. At the conclusion of workweek 1, the employee will have accrued 1 hour of paid sick leave based on her first 30 hours worked and, unless the employer chooses to allow accrual in increments smaller than 1 hour, will not have accrued additional paid sick leave based on the additional 15 hours she worked in that workweek. At the conclusion of workweek 2, the employee will have accrued an additional hour of paid sick leave based on the additional 15 hours in workweek 1 plus her first 15 hours worked in workweek 2. The employee need not have earned any paid sick leave based on the remaining 5 hours worked during workweek 2. If the employee spends several subsequent weeks working for the contractor on a private contract and then returns to working on the covered concessions contract, under this provision as proposed, those remaining 5 hours would be added to her subsequent hours worked on the concessions contract for purposes of reaching her next accrued hour of paid sick leave (provided her return to the covered concessions contract occurred within the same accrual year as workweek 2, and, as explained below, provided that the same, rather than a successor, contractor holds the concessions contract). An employer may elect to permit employees to accrue paid sick leave in fractions of an hour—because it finds the related recordkeeping less burdensome than keeping track of hours worked from previous workweeks, it allows for use of

paid sick leave in increments smaller than 1 hour, or for any other reason—provided all hours worked for the contractor on or in connection with covered contracts within the accrual year are counted toward an employee's paid sick leave accrual.

Proposed § 13.5(a)(1)(iii) addresses the accrual of paid sick leave for employees as to whom contractors are not obligated by another statute to keep records of hours worked. For most employees on covered contracts, such as service employees on SCA-covered contracts, laborers and mechanics on DBA-covered contracts, and all employees performing work on or in connection with any covered contract whose wages are governed by the FLSA, contractors are already obligated by the SCA, DBA, or FLSA to keep records of employees' hours worked as that term is defined under those statutes. 29 CFR 4.6(g)(1)(iii), 4.185 (SCA); 29 CFR 5.5(a)(3)(i) (DBA); 29 CFR 516.2(a)(7), 516.30(a) (FLSA). As to those employees, therefore, contractors are already collecting information central to calculating the accrual of paid sick leave. But for those employees who are employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541, contractors are not currently required by the SCA, DBA, or FLSA to keep such records. *See* 29 CFR 4.6(g)(1)(iii), 4.156, 4.185 (requiring that records be kept for ''service employees'' to whom the SCA applies and excluding from that category ''persons employed in an executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541); 29 CFR 5.5(a)(3)(i), 5.2(m) (requiring that records be kept for ''laborers and mechanics'' to whom the DBA applies and excluding from those terms ''[p]ersons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title''); 29 CFR 516.3 (excusing employers of ''each employee in a bona fide executive, administrative, or professional capacity . . . as defined in part 541 of this chapter'' from the FLSA requirement to maintain and preserve records of hours worked). In order not to impose a new recordkeeping burden on employers of such employees, proposed § 13.5(a)(1)(iii) would allow contractors to choose to continue not to keep records of such employees' hours worked, but instead to allow the employees to accrue paid sick leave as though the employees were working on or in connection with a covered contract for 40 hours per week. Contractors may, under the proposed provision, choose to calculate paid sick leave accrual by tracking the employee's actual hours worked. Contractors who do so, however, must permit the relevant employees to accrue paid sick leave based on their actual hours worked consistently across workweeks rather than, for example, using the 40 hours assumption in workweeks during which an employee works more than 40 hours but not those in which the employee works fewer. The Department would apply these principles to any employees exempt from the FLSA's minimum wage and overtime provisions and not covered by the SCA or DBA. This approach is consistent with FMLA recordkeeping regulations, under which there is a general requirement that FMLA-covered employers keep records of hours worked by employees eligible for FMLA leave but an exception with respect to employees who are not covered by or are exempt from the FLSA; employers of those employees need not keep such records so long as the employer presumes that the employees have met the hours requirement for FMLA eligibility. *See* 29 CFR 825.500(c)(1), (f). Proposed § 13.5(a)(1)(iii) further provides that if such an employee regularly works fewer than 40 hours per week on or in connection with covered contracts, whether because the employee splits time between covered and non-covered contracts or because the employee is part-time, the contractor may allow the employee to accrue paid sick leave based on the employee's typical number of hours worked on covered contracts per workweek. Although the contractor need not keep records of the employee's hours worked each week, to use a number less than 40 for this purpose, the contractor must have probative evidence of the employee's typical number of covered hours worked, such as payroll records showing that an employee who performs on a covered contract was paid for only 20 hours per week by the contractor.

Proposed § 13.5(a)(2) would require a contractor to inform an employee, in writing, of the amount of paid sick leave that the employee has accrued but not used (i) no less than monthly, (ii) at any time when the employee makes a request to use paid sick leave, (iii) upon the employee's request for such information, but no more often than once a week, (iv) upon a separation from employment, and (v) upon reinstatement of paid sick leave pursuant to § 13.5(b)(3). Some of these requirements are based on FMLA regulations regarding notification to an employee of how much leave will be or has been counted against her FMLA entitlement, *see* 29 CFR 825.300(d)(6), but they are modified to account for the differences between FMLA leave and paid sick leave, including in the method of accrual. The fourth and fifth requirements are meant to ensure that employees who may be and ultimately are rehired by a contractor or a successor contractor know how much paid sick leave they should and do have available upon such rehiring. The Department believes it is important that employees be able to determine whether absences will be paid (so they can, for example, schedule their own or their family members' doctors' appointments to occur after they have accrued sufficient paid sick leave), and does not believe these notification requirements will create a significant burden for contractors. The Department notes that a contractor's existing procedure for informing employees of their available paid time off, such as notification accompanying each paycheck or an online system an employee can check at any time, can be used to satisfy or partially satisfy these requirements provided it is written (including electronically) and clearly indicates the amount of paid sick leave an employee has accrued separately from indicating amounts of other types of paid time off available (except where the employer's paid time off policy satisfies the requirements of proposed § 13.5(f)(5), described below).

Proposed § 13.5(a)(3) permits a contractor to choose to provide an employee with at least 56 hours of paid sick leave at the beginning of each accrual year rather than allowing the employee to accrue such leave based on hours worked over time. As proposed, it further provides that in such circumstances, the contractor need not comply with the accrual requirements described in proposed § 13.5(a)(1). The contractor must, however, allow carryover of paid sick leave as required by proposed § 13.5(b)(2), and although the contractor may limit the amount of paid sick leave an employee may carry over to no less than 56 hours, the contractor may not limit the amount of paid sick leave an employee has available for use at any point as is otherwise permitted by proposed § 13.5(b)(3). For example, if a contractor exercises this option and an employee carries over 16 hours of paid sick leave from one accrual year to the next (as described in the discussion of proposed § 13.5(b)(2) below), the contractor must permit the employee to have 72 hours (16 hours plus 56 hours) of paid sick

leave available for use as of the beginning of the second accrual year (because the contractor is not permitted to limit an employee's paid sick leave at any point in time as described in the discussion of proposed § 13.5(b)(3) below). Under proposed § 13.5(c)(4), described below, the contractor may not limit the employee's use of that paid sick leave in the second (or any) accrual year, but the employee's use can effectively be limited if the contractor sets, as permitted by this proposed provision, a limit on the amount of paid sick leave an employee can carry over from year to year; in the example, if the employee who had 72 hours of paid sick leave at the beginning of accrual year 2 did not use any leave in that year, she could be permitted to carry over only 56 hours into accrual year 3. The Department believes this option will be beneficial to contractors that find the tracking of hours worked and/or calculations of paid sick leave accrual to be burdensome, and it provides employees with the full amount of paid sick leave contemplated by the Executive Order at the beginning of each accrual year.

Proposed § 13.5(b) implements the Executive Order's provisions, in sections 2(b), (d), and (j), regarding maximum accrual, carryover, and reinstatement of paid sick leave as well as non-payment for unused paid sick leave. Proposed § 13.5(b)(1) provides that a contractor may limit the amount of paid sick leave an employee is permitted to accrue at not less than 56 hours in each accrual year. Proposed § 13.5(b)(1) would also provide detail regarding an *accrual year,* a term defined in proposed § 13.2. The Department proposes to explain that an accrual year is a 12-month period beginning on the date an employee's work on or in connection with a covered contract began or any other fixed date chosen by the contractor, such as the date a covered contract began, the date the contractor's fiscal year begins, a date relevant under State law, or the date a contractor uses for determining employees' leave entitlements under the FMLA pursuant to 29 CFR 825.200. Under this proposal, a contractor may choose its accrual year but must use a consistent option for all employees and may not select or change its accrual year in order to avoid the paid sick leave requirements of Executive Order 13706 and part 13. As under the FMLA, if a contractor does not select an accrual year, the option that provides the most beneficial outcome to the employee will be used. *See* 29 CFR 825.200(e).

Proposed § 13.5(b)(2) provides that paid sick leave shall carry over from one accrual year to the next. This proposed language would mean that upon the date a contractor has selected as the beginning of the accrual year, an employee would continue to have available for use as much paid sick leave as the employee had accrued but not used as of the end of the previous accrual year. Proposed § 13.5(b)(2) further provides that paid sick leave carried over from the previous accrual year shall not count toward any limit the contractor sets on the annual accrual of paid sick leave. For example, if an employee carries over 30 unused hours of paid sick leave from accrual year 1 to accrual year 2, she must still be permitted to accrue up to 56 additional hours of paid sick leave in accrual year 2 rather than only 26 (because 30 plus 26 is 56), subject to the limitations described below.

Proposed § 13.5(b)(3) provides that a contractor may limit the amount of paid sick leave an employee is permitted to have available for use at any point to not less than 56 hours and further explains that even if an employee has accrued fewer than 56 hours of paid sick leave since the beginning of the accrual year, the employee need only be permitted to accrue additional paid sick leave if the employee has fewer than 56 hours available for use. For example, if an employee carries over 56 hours of paid sick leave into a new accrual year, a contractor may prohibit that employee from accruing any additional paid sick leave until she has used some portion of that leave. If and when she does use paid sick leave, she must be permitted to accrue additional paid sick leave, up to a limit of no less than 56 hours for the accrual year, beginning with hours worked in the workweek after she has used paid sick leave such that her amount of available paid sick leave is less than 56 hours. Similarly, if an employee carries over 16 hours of paid sick leave into a new accrual year, she must be permitted to accrue 40 additional hours of paid sick leave even if she does not use any paid sick leave while that accrual occurs. Once she has 56 hours of paid sick leave accrued, the contractor may prohibit her from accruing any additional leave unless, and until the workweek after, she uses some portion of the 56 hours. If she uses, for example, 24 hours of paid sick leave in the same accrual year (such that she has 32 hours remaining available for use), she must be permitted to accrue up to at least 16 more hours (in addition to the 40 hours she has already accrued during the accrual year) for a total of 56 hours accrued in that accrual year. If she did so, she would then have 48 hours of paid sick leave (32 previously available hours plus 16 newly accrued hours) available for use and could be limited to that amount until the next accrual year.

Proposed § 13.5(b)(4) implements the second clause of section 2(d) of the Executive Order by providing that paid sick leave shall be reinstated for employees rehired by the same contractor or a successor contractor within 12 months after a job separation. The proposed text specifies that this reinstatement requirement applies whether the employee leaves and returns to a job on or in connection with a single covered contract or works for a single contractor on or in connection with more than one covered contract, regardless of whether the employee remains employed by the contractor to work on non-covered contracts in between periods of working on covered contracts. For example, if a service employee on an SCA-covered contract accrued but did not use 12 hours of paid sick leave, moved to a different work site to perform work unrelated to a contract with the Federal Government (either with or not with the same employer), and after 6 months, returned to the original SCA-covered contract, that employee would begin back on the original job with 12 hours of paid sick leave available for use. Pursuant to proposed §§ 13.5(a)(2) and 13.5(b)(1), if her first week back on the job is within the same accrual year during which she accrued those 12 hours, the contractor would be required to count any fraction of 30 hours worked in her previous time on the contract toward the accrual of her next hour of paid sick leave, but the contractor may limit her additional accrual in that accrual year to 44 hours such that she can only accrue 56 hours total in the accrual year.

Proposed § 13.5(b)(4) further explains that the reinstatement requirement also applies if an employee takes a job on or in connection with a covered successor contract after working for a different contractor on or in connection with the predecessor contract, including when an employee is entitled to a right of first refusal of employment from a successor contractor under Executive Order 13495. (The terms ''successor contract'' and ''predecessor contract'' are defined in proposed § 13.2, and the requirements that a predecessor contractor submit to a contracting agency, and a contracting agency provide to a successor contractor, a certified list of relevant employees' accrued, unused paid sick leave appear in proposed §§ 13.26 and 13.11(f), respectively.) For example, if an employee performing work on a contract

to sell food to the public in a National Park has accrued 16 hours of paid sick leave, the contract ends, a different contractor takes over the food stand, and that employee is rehired by the successor contractor, he would begin the new job with 16 hours of paid sick leave. Because the successor contractor is not the same contractor for which the employee previously worked, proposed § 13.5(a)(2) does not require that the successor contractor count any fraction of 30 hours worked for the predecessor contractor toward the accrual of the employee's next hour of paid sick leave. (This means that predecessor and successor contractors will not have to submit and receive, respectively, information about any such fraction of 30 hours worked for each employee.) The successor contractor must, however, treat any of the previously accrued paid sick leave as carried over from a prior accrual year, *i.e.,* under proposed § 13.5(b)(2), the previously accrued paid sick leave does not count toward any annual accrual limit in the accrual year designated by the successor contractor.

The Department invites comments on its interpretation of section 2(d) of the Executive Order to mean that the reinstatement requirement applies if an employee is rehired by a different contractor on or in connection with a covered successor contract after working on or in connection with the predecessor contract. The Department believes that the Executive Order's requirement to carry over previously accrued paid sick leave for employees ''rehired by a covered contractor'' should be interpreted to include different successor contractors who rehire employees from the predecessor contract. SCA-covered successor contractors generally are required by the Nondisplacement Executive Order to provide a right of first refusal of employment to employees on the predecessor contract in positions for which they are qualified. As a result, many covered successor contractors effectively ''rehire'' these employees, and thus, it is reasonable to interpret Executive Order 13706, particularly given its purpose of ensuring that employees have access to paid sick leave, to provide that such employees' accrued paid sick leave balances would carry over as well. Such an interpretation also ensures that the carryover of accrued, unused leave does not depend on whether the successor contract is awarded to the same contractor that performed on the predecessor contract (in which case the Executive Order clearly mandates carryover of unused paid sick leave).

The Department recognizes that the government must ensure that it spends money wisely, and it is imperative that contract actions result in the best value for the taxpayer. The Government understands contractors may include the costs of benefits in overhead and may not (except in cost-type contracts) pay contractors based on their actual costs. The Department therefore invites comments regarding the extent to which its interpretation of the reinstatement requirement may affect pricing and cost accounting, if at all, for covered contractors and contracting agencies, including any potential for paying twice for the same benefit—once to a predecessor contractor charging the Government for predicted use of paid sick leave during its contract term, and a second time to a successor contractor who would be obligated to pay for unused sick leave later used by its employees during the successor's contract, with the Government potentially bearing the added costs through higher contract prices. In one potential scenario, a contractor on a covered contract may have included in its bid the full cost of providing 56 hours of paid sick leave to every employee performing on or in connection with the contract, and the contracting agency may treat the full amount of such leave as an allowable cost. At the end of the contract term, some employees will likely have balances of accrued but unused paid sick which could be carried over to a successor contractor. The Department seeks comment on how the current contractor and any different contractors bidding for the successor contract would account for this situation in their bid pricing. The Department also invites comment as to the extent to which any potential impacts on pricing or cost accounting may be mitigated, including ways to mitigate any potential impact on subcontractors, small businesses, and prime contractors with covered supply chains. In providing comments on the feasibility of mitigation steps, commenters should consider that the requirement for paid sick leave flows down to all subcontract tiers and that in other than cost type contracts, the Government may not have insight into and does not pay contractors based on their actual costs.

Proposed § 13.5(b)(5) implements section 2(j) of the Executive Order by providing that nothing in the Order or part 13 shall require a contractor to make a financial payment to an employee for accrued paid sick leave that has not been used upon a separation from employment. Although the Executive Order does not prohibit a contractor from making such payments should the contractor so choose, under the regulatory text as proposed, doing so (whether voluntarily or pursuant to a collective bargaining agreement) does not affect that contractor's, or a successor contractor's, obligation to reinstate any accrued paid sick leave upon rehiring the employee within 12 months of the separation pursuant to proposed § 13.5(b)(4). In other words, under proposed § 13.5(b)(5), a contractor cannot avoid the requirement to reinstate paid sick leave when it rehires an employee by cashing out the leave at the time of the original separation from employment. This interpretation is consistent with the Department's understanding that the Executive Order is meant to ensure that employees of Federal contractors have access to paid sick leave rather than its cash equivalent. The Department requests comments, however, regarding the impact of this proposed provision on contractors and employees, as well as the incidence of cash-out for paid time off or paid sick time under contractors' current policies or relevant collective bargaining agreements.

Proposed § 13.5(c) describes the purposes for which an employee may use paid sick leave, thereby implementing section 2(c) of the Executive Order, and addresses the calculation of the use of paid sick leave.

Proposed § 13.5(c)(1) provides that subject to the conditions described in proposed § 13.5(d) and (e) and the amount of paid sick leave the employee has available for use, a contractor must permit an employee to use paid sick leave to be absent from work for that contractor on or in connection with a covered contract for four reasons.

First, under proposed § 13.5(c)(1)(i), an employee may use paid sick leave if she is absent because of her own physical or mental illness, injury, or medical condition. These terms are defined in proposed § 13.2 and, as explained above, are meant to be understood broadly.

Second, under proposed § 13.5(c)(1)(ii), an employee may use paid sick leave if she is absent because she is obtaining diagnosis, care, or preventive care from a health care provider. *Obtaining diagnosis, care, or preventive care from a health care provider* and *health care provider* are also defined in proposed § 13.2, and the Department also interprets those terms broadly.

Third, under proposed § 13.5(c)(1)(iii), an employee may use paid sick leave if she is absent because

she is caring for her child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions or needs for diagnosis, care, or preventive care described in proposed § 13.5(c)(1)(i) or (ii) or is otherwise in need of care. The terms *child*, *parent*, *spouse*, *domestic partner*, and *individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship* are defined in proposed § 13.2. As explained, the Department understands the use of these terms in the Executive Order to be an indication that the category of individuals for whom an employee can use paid sick leave to care is expansive. Furthermore, the individual for whom the employee is caring may have any of the broadly understood conditions or needs referred to in proposed § 13.5(c)(1)(i) or (ii). For example, an employee may use paid sick leave to be with a child home from school with a cold or to accompany his spouse to an appointment at a fertility clinic. Proposed § 13.5(c)(1)(iii) also refers to an individual who is ''otherwise in need of care,'' language that appears in section 2(c) of the Executive Order. The Department interprets this phrase to refer to non-medical caregiving for an individual who has a general need for assistance related to the individual's underlying health condition. For example, an employee may use paid sick leave to provide his grandfather, who has dementia, unpaid assistance with bathing, dressing, and eating if the grandfather's usual paid personal care attendant is unable to keep her regular schedule.

Fourth, under proposed § 13.5(c)(1)(iv), an employee may use paid sick leave if the absence is because of domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes otherwise described in proposed § 13.5(c)(1)(i) or (ii) or to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action, including preparation for or participation in any related civil or criminal legal proceeding, or assist an individual related to the employee as described in proposed § 13.5(c)(1)(iii) in engaging in any of these activities. The terms used in proposed § 13.5(c)(1)(iv) (*domestic violence*, which includes the terms *spouse*, *domestic partner*, *intimate partner,* and *family violence*; *sexual assault*; *stalking*; *obtain additional counseling, seek relocation, seek assistance from a victim services organization, or take related legal action; victim services organization;* and *related legal action* or *related civil or criminal legal proceeding*) are defined in proposed § 13.2. The Department reiterates that it interprets these terms broadly in keeping with the purpose of ensuring that victims of domestic violence, sexual assault, or stalking are able to obtain the care, safety, and legal protections they need without losing wages or their jobs and that employees can assist such victims who are family members or like family in doing so. For example, an employee who is a victim of domestic violence could use a day of paid sick leave to prepare for a meeting with an attorney, travel to the attorney's office, have the meeting to discuss her legal options, and travel home; a victim could use a day of paid sick leave to go to a courthouse to determine the process for filing a petition for a civil protection order, complete any necessary paperwork, and file that paperwork with the court, and another full day to attend proceedings at the court in support of that application, including mandatory mediation. For this purpose, assisting another individual who is a victim of domestic violence, sexual assault, or stalking includes, but is not limited to, accompanying the victim to see a health care provider, attorney, social worker, victim advocate, or other individual who provides services the victim needs as a result of the domestic violence, sexual assault, or stalking. If the individual the employee is assisting is a minor victim of domestic violence or child sexual abuse, the employee could use paid sick leave to, for example, seek legal protections for the victim (including filing a police report and/or seeking a civil protection order), medical treatment for the victim, or emergency relocation services.

Just as with the accrual of paid sick leave, use of paid sick leave is contractor, rather than contract, specific, meaning that an employee who has accrued paid sick leave working on or in connection with one covered contract may use the paid sick leave for time she would otherwise have been working on or in connection with another covered contract for the same contractor. For example, if an employee had accrued 2 hours of paid sick leave over the course of several workweeks during which she worked for a single contractor in connection with one covered contract for 30 hours and another two covered contracts for 15 hours each, she could use her accrued paid sick leave during time she was scheduled to perform work in connection with any of the three contracts, or any other covered contract, on behalf of the same contractor.

Additionally, the Department notes that under proposed § 13.5(c)(1), an employee need only be permitted to use paid sick leave during time the employee would otherwise have spent working on or in connection with a covered contract rather than time spent performing other work (such as on a private contract), even if that work is for the same contractor. As explained elsewhere in this preamble, it is the contractor's responsibility to keep adequate records distinguishing between an employee's covered and non-covered work, and any denial of a request to use paid sick leave because the leave would occur while an employee is performing work that is not covered by Executive Order 13706 or part 13 must be supported by records or other proof demonstrating that fact. As for an employee who falls within the 20 percent of hours worked exclusion created by proposed § 13.4(e) for some workweeks but not others, the employee must be permitted to use paid sick leave at any time the employee would be working on or in connection with covered contracts, regardless of whether they fall during workweeks in which the exclusion applies. This approach is designed to avoid complications that would otherwise arise in responding to requests to use paid sick leave accrued by such employees. Specifically, an employee could request to use paid sick leave during a week in which it was not clear at the time of the request (because it would not be known until the end of the week) whether the employee met the 20 percent threshold; under this approach, in such circumstances, the contractor must permit the use of paid sick leave (assuming all relevant requirements for use are met) rather than deny the request or provide an uncertain response to the employee.

Proposed § 13.5(c)(2) provides that a contractor shall account for an employee's use of paid sick leave in increments of no greater than 1 hour. In other words, although a contractor may choose to allow employees to use paid sick leave in increments of smaller than 1 hour (such as half an hour or 15 minutes), it may not require employees to use paid sick leave in increments of any more than 1 hour. For example, if an employee needs to be an hour late for work because she accompanied her sister to a chemotherapy appointment that morning, her employer must permit her to use 1 hour of paid sick leave (rather than, for instance, requiring her to take a full day off or use a full day's leave).

The Department requests comments regarding whether it should add to this proposed provision a physical impossibility exception to the 1-hour requirement as exists under the FMLA regulations at 29 CFR 825.205(a)(2). Under such a provision, in situations in which an employee is physically unable to access the worksite after the start of the shift or to depart from the workplace prior to the end of the shift, a contractor would be permitted to require the employee to continue to use paid sick leave for as long as the physical impossibility remains. Examples that arise in the FMLA context are flight attendants whose scheduled flight departs, train conductors whose scheduled train departs, and laboratory technicians who work in ''clean rooms'' that must remain sealed. The Department seeks comment regarding the categories of covered contracts and employees entitled to paid sick leave under Executive Order 13706 and part 13 with respect to which similar circumstances could arise and the implications of such a provision for contractors and employees who perform on or in connection with those contracts.

Proposed § 13.5(c)(2)(i) further explains that a contractor may not reduce an employee's accrued paid sick leave by more than the amount of leave the employee actually takes, and a contractor may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using an increment of no greater than 1 hour. This language is based on FMLA regulations regarding the use of FMLA leave. *See* 29 CFR 825.205(a). It means that if an employer chooses to waive its increment of leave policy in order to return an employee to work—for example, if an employee arrives a half hour late to work because she was at an appointment with a psychologist and the employer waives its normal one-hour increment of leave and puts the employee to work immediately—the contractor must treat the employee as having used no more than the amount of leave the employee actually used, half an hour. *See* The Family and Medical Leave Act; Final Rule, 78 FR 8867 (Feb. 6, 2013) (discussing relevant language codified in 20 CFR 825.205(a)). Under no circumstances may a contractor treat an employee as having used paid sick leave for any time that employee was working.

Proposed § 13.5(c)(2)(ii) explains that the amount of paid sick leave used may not exceed the hours an employee would have worked if the need for leave had not arisen. If, for example, an employee is scheduled to work from 9am to 3pm, and she is absent from work from 10:30am to 12:30pm to take her father to a doctor's appointment, a contractor may deduct no more than 2 hours of paid sick leave from her accrued paid sick leave. If the employee is scheduled to work from 9am to 3pm and she is absent from work for the entire day to care for her sick child, a contractor may deduct no more than 6 hours of paid sick leave from her accrued paid sick leave. If an employee is out on paid sick leave at a time when she could have worked beyond her scheduled hours but would not have been required to do so, the contractor may not treat the employee as having used paid sick leave for those optional hours. For example, if an employee scheduled to work from 9am to 3pm could have chosen to stay until 7pm that night to earn overtime, but she was absent for the entire day, a contractor may not deduct more than 6 hours of paid sick leave from her accrued paid sick leave. This provision is consistent with the FMLA regulation at 29 CFR 925.205(e) (''Voluntary overtime hours that an employee does not work due to an FMLA-qualifying reason may not be counted against the employee's FMLA leave entitlement.'').

Proposed § 13.5(c)(3) provides that a contractor shall provide to an employee using paid sick leave the same pay and benefits the employee would have received had the employee not used paid sick leave. In other words, while on paid sick leave, employees paid on a salary basis may not face any deduction in pay, and employees paid hourly must receive the same hourly rate of pay they would have earned had they been present at work. Furthermore, for time employees are using paid sick leave, contractors must continue to make contributions to any fringe benefit plan (for example, a health insurance or pension plan) and count time toward the earning of other benefits (for example, the accrual of vacation time) as they would were the employees working. In particular, employees whose wages are governed by the SCA or DBA must receive the same wages required under those statutes, including health and welfare and other fringe benefits or the cash equivalent thereof, as they would have earned had they been present at work instead of using paid sick leave. As discussed above, contractors must count employees' time using paid sick leave toward the accrual of paid sick leave. Under this proposal, employees who receive different pay and benefits for different portions of their work (for example, an employee who works as a carpenter on one DBA-covered contract and a skilled laborer on another DBA-covered contract on which she works for the same contractor), the pay and benefits due while the employee uses paid sick leave is to be determined based on which work she would have been doing at the time she uses the leave.

The Department proposes to include as § 13.5(c)(4) a restriction on limits to an employee's use of paid sick leave. Specifically, as proposed, § 13.5(c)(4) would provide that a contractor may not limit the amount of paid sick leave an employee may use per year or at once. In other words, although a contractor may limit an employee's accrual of paid sick leave to 56 hours per year, a contractor may not prohibit the employee from, for example, using 16 hours carried over from the previous accrual year, accruing 56 additional hours, and then using all 56 accrued hours even though her total use in the current accrual year would exceed 56 hours. Under the proposed text, an employer also cannot limit the amount of paid sick leave an employee may use at one time. For example, an employer cannot establish a policy prohibiting employees from using any particular number of hours of paid sick leave in a single workweek. Similarly, an employer may not deny an employee's request to use paid sick leave for 2 full days in a row based on the length of time requested (as long as the employee has accrued sufficient paid sick leave to cover the time).

Proposed § 13.5(c)(5) provides that a contractor may not make an employee's use of paid sick leave contingent on the employee's finding a replacement worker to cover any work time to be missed or the fulfillment of the contractor's operational needs. This language implements section 2(e) of the Executive Order and makes explicit the important point that the intent of the Executive Order can only be fulfilled if employees are entitled to use paid sick leave even if the need for such leave arises at a time that is inconvenient for a contractor.

Proposed § 13.5(d) implements section 2(h) of Executive Order 13706. Proposed § 13.5(d)(1) provides that a contractor shall permit an employee to use any or all of the employee's available paid sick leave upon the oral or written request of an employee that includes information sufficient to inform the contractor that the employee is seeking to be absent from work for a purpose described in proposed § 13.5(c)(1) and, to the extent reasonably feasible, the anticipated duration of the

leave. Proposed § 13.5(d)(1) further provides that the request shall be directed to the appropriate personnel pursuant to a contractor's policy or, in the absence of a formal policy, any personnel who typically receive requests for other types of leave or otherwise address scheduling issues on behalf of the contractor.

Under this proposed text, employees may request paid sick leave by any oral or written method, including in person, by phone, via email, or with a note reasonably calculated to provide timely notice of the employee's intent to take leave. Additionally, although the request must contain sufficient information for a contractor to determine whether it is a proper use of paid sick leave, and the contractor may ask questions tailored to making that determination, the request need not contain extensive or detailed information about the reason for the leave and a contractor may not require such information. Because the employee only needs to provide information sufficient to inform the contractor that she wishes to miss work for a reason that is a permissible use of paid sick leave, the employee need not specify all symptoms or details of the need for leave, nor need she specifically request to use paid sick leave required by the Executive Order or part 13 or even use the words ''sick leave'' or ''paid sick leave.'' The employee could simply state, for example, that the employee has a cold, a dentist appointment, or an appointment with an attorney regarding a domestic violence matter. In such cases, a contractor could not ask, for purposes of approving or rejecting the request to use paid sick leave, when the cold began or how severe it is, what type of doctor the employee is seeing or for what purpose, or for any detail regarding the circumstances of the domestic violence.

The request similarly need not provide extensive details regarding the employee's relationship with an individual for whom the employee is caring or will care; it need only inform the contractor that the employee has a family or family-like relationship with the individual. Simply stating, for example, that the employee's son has a stomach bug, the employee's wife was injured in a car accident, or the employee's father needs assistance going to a doctor's appointment is sufficient. If the employee's request for paid sick leave involves providing care for an individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, the employee need only assert that a family or family-like relationship exists, such as by stating that the employee needs to care for her ill grandmother or needs to accompany a man who is like a brother to him to a doctor's appointment. Although a contractor may ask questions to determine if the use of paid sick leave is justified, such as inquiring of an employee who asks to take leave to care for a close friend who was in a car accident whether that friend is someone whom the employee considers to be like family, the contractor may not demand intimate details upon receiving a positive response to such an inquiry. Although the Department recognizes that paid sick leave is available for only particular uses, it interprets Executive Order 13706 as intending to provide paid sick leave in a manner that is not burdensome for employees and does not allow significant intrusion into their personal lives by their employers.

To the extent reasonably feasible, the request should provide an estimate of the timing and amount of such leave needed; this requirement is satisfied by stating that the sick employee hopes only to be out for 1 day, that the child's dentist appointment is on a particular date at 10:00 a.m. and is not anticipated to take more than an hour, or that the appointment with the attorney is on a particular date at 2:00 p.m. and will likely continue for the remainder of the work day. The contractor may not hold an employee to the estimate provided in the request; for example, the sick employee could return to work in the afternoon if she recovers more quickly than she expected, and an employee can use more than an hour of paid sick leave (provided she has more than 1 hour available for use) if the dentist appointment runs longer than anticipated.

A request to use paid sick leave is acceptable if the employee directs it to the appropriate personnel pursuant to a contractor's policy or, in the absence of a formal policy, any personnel who typically receive requests for other types of leave on behalf of the contractor, such as a supervisor or human resources department staff. The Department notes that as explained elsewhere and required by §§ 13.5(e)(1)(ii) and 13.25(d), when an employee requests leave for the purposes described in proposed § 13.5(c)(1)(iv), *i.e.,* for absences related to being a victim of domestic violence, sexual assault, or stalking, the contractor shall maintain confidentiality about the domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

Proposed § 13.5(d)(2) provides that if the need to use paid sick leave is foreseeable, the employee's request shall be made at least 7 calendar days in advance, whereas if the employee is unable to request leave at least 7 calendar days in advance, the request shall be made as soon as is practicable. The term *as soon as is practicable* is defined in proposed § 13.2. Proposed § 13.5(d)(2) further provides that when an employee becomes aware of a need to take paid sick leave less than 7 calendar days in advance, it should typically be practicable for the employee to make a request for leave either the day the employee becomes aware of the need to take paid sick leave or the next business day, but notes that in all cases, the determination of when an employee could practicably make a request must take into account the individual facts and circumstances. The Department would consider any request made on the day the employee becomes aware of the need to take paid sick leave or the following business day to have been made as soon as was practicable. Although the Department will not presume that requests made beyond that time frame were made as soon as practicable, the facts and circumstances of the specific situation could be such that despite the longer delay, the employee did in fact notify the employer as soon as was possible and practical. For example, if an employee makes an appointment for his daughter to have an annual exam with her doctor 2 weeks in the future, the employee should ask to use paid sick leave to take the daughter to the appointment at least 7 calendar days before the date of the appointment. If instead the nurse at the employee's daughter's school called one afternoon to say the daughter had a high fever and he needed to take her out of school right away, he could plainly not have requested leave 7 days in advance, and he should instead request leave as soon as is practicable. Depending on the circumstances, such as how much attention the daughter needed, whether the employee had access to a phone or computer, and/or whether the person to whom the request would be directed was available, in this situation, as soon as practicable could be as the employee was preparing to leave work to get his daughter, when he got home with his daughter, later that evening (perhaps after she was asleep), or the next morning (assuming the next day was a business day). If, on the other hand, the employee himself was in a serious car accident, was taken to the hospital, and had surgery the next day, he could not practicably request leave the day of the accident or of the surgery (*i.e.,* the day

he became aware of the need for leave or the next day).

If an employee has not complied with the requirements of proposed § 13.5(d)(2), a contractor may properly deny the employee's request to use paid sick leave. For example, if an employee arranges a doctor's appointment for his son 3 weeks in advance but does not submit a request to use paid sick leave until 2 days before the appointment, the contractor may properly deny that request. Denial of the request would not be proper, however, if the need for leave was not foreseeable and the employee made the request as soon as was practicable, such as if upon making the request 2 days in advance, the employee explained that his husband had planned to take their son to the appointment, but the husband learned on the morning the employee submitted the request that the husband would be unavailable at the time of the appointment, and the couple decided that the employee would have to take the son instead.

Proposed § 13.5(d)(3) addresses a contractor's response to an employee's request to use paid sick leave. Proposed § 13.5(d)(3)(i) provides that a contractor may communicate its grant of a request to use paid sick leave either orally or in writing provided that the contractor also complies with the requirement in § 13.5(a)(2) to inform the employee in writing of the amount of paid sick leave the employee has available for use.

Proposed § 13.5(d)(3)(ii) provides that a contractor shall communicate any denial of a request to use paid sick leave in writing, with an explanation for the denial. It further provides that denial is appropriate if, for example, the employee did not provide sufficient information about the need for paid sick leave; the reason given is not consistent with the uses of paid sick leave described in proposed § 13.5(c)(1); the employee did not indicate when the need would arise; the employee has not accrued, and will not have accrued by the date of leave anticipated in the request, a sufficient amount of paid sick leave to cover the request (in which case, if the employee will have any paid sick leave available for use, only a partial denial is appropriate); or the request is to use paid sick leave during time the employee is scheduled to be performing non-covered work. The proposed text also explains that if the denial is based on insufficient information provided in the request, such as if the employee did not state the time of an appointment with a health care provider, the contractor must permit the employee to submit a new, corrected request. It further notes that if the denial is based on an employee's request to use paid sick leave during time she is scheduled to be performing non-covered work, the denial must be supported by records adequately segregating the employee's time spent on covered and non-covered contracts.

Proposed § 13.5(d)(3)(iii) provides that a contractor shall respond to any request to use paid sick leave as soon as is practicable after the request is made. As proposed, it further explains that although the determination of when it is practicable for a contractor to provide a response will take into account the individual facts and circumstances, it should in many circumstances be practicable for the contractor to respond to a request immediately or within a few hours. The proposed provision further explains that in some instances, such as if it is unclear at the time of the request whether the employee will be working on or in connection with a covered or non-covered contract at the time for which paid sick leave is requested, as soon as practicable could mean within a day or no longer than within a few days.

Proposed § 13.5(e) implements section 2(i) of the Executive Order, which addresses certification and documentation for leave of 3 or more consecutive workdays. Under proposed § 13.5(e)(1)(i), a contractor may require certification issued by a health care provider to verify the need for paid sick leave used for the purposes listed in proposed § 13.5(c)(1)(i), (ii), or (iii) only if the employee is absent for 3 or more consecutive full workdays. Under this provision, a contractor may not require certification to justify the use of paid sick leave for any amount of time shorter than 3 consecutive full workdays. For instance, if an employee is scheduled to work from 9am to 5pm on Monday, Tuesday, and Wednesday, and he is unable to come to work at all during those times because he is hospitalized due to a severe infection, his employer may require that he provide certification to show that he was in the hospital. If the employee instead uses 4 hours of paid sick leave on Monday because his daughter's school nurse calls in the early afternoon to say his daughter has a fever and must be taken home, all 8 hours on Tuesday because he stays home with his ill daughter, and another 2 hours on Wednesday because his daughter isn't well enough to go to school on time, his employer may not require certification because he has not used paid sick leave for all of his scheduled time on 3 consecutive full workdays. A proposed definition of *certification issued by a health care provider* appears in proposed § 13.2. Proposed § 13.5(e)(1)(i) further notes that the contractor must protect the confidentiality of any certification as required by proposed § 13.25(d).

Proposed § 13.5(e)(1)(ii) addresses documentation to verify the use of paid sick leave for the purposes listed in proposed § 13.5(c)(1)(iv), *i.e.,* for absences related to domestic violence, sexual assault, or stalking. Specifically, only if an employee uses paid sick leave on 3 or more consecutive full workdays for such purposes may a contractor require documentation from an appropriate individual or organization to verify the need for such leave. Such documentation may come from any person involved in providing or assisting with the care, counseling, relocation, assistance of a victim services organization, or related legal action, such as, but not limited to, a health care provider, counselor, employee of the victim services organization, or attorney.

Proposed § 13.5(e)(1)(ii) also provides that the contractor may only require that such documentation contain the minimum necessary information establishing the need for the employee to be absent from work. For example, the documentation could consist of a note from a social worker at a victim services organization stating that the employee received services from the organization related to being a victim of domestic violence and moved to a new home for reasons related to the domestic violence, as well as a receipt from a moving company or a note from a landlord that indicates the date(s) of the move; it need not name the perpetrator of the domestic violence, the nature of the acts that constitute domestic violence, the addresses of the old or new homes, or any other details beyond those sufficient to make clear that the time was used for a purpose that justifies the use of paid sick leave. As another example, documentation could consist of a letter from a legal services attorney or sexual assault victim advocate who is assisting an employee who is a victim of sexual assault in completing the paperwork and filing for a civil protection order or restraining order, explaining that the employee spent time (consisting of most business hours over 3 consecutive days) with the attorney or advocate preparing for the hearing, including completing the petition for the court's order and obtaining a time for the hearing, and attending the hearing, including waiting at the court house and attending the proceedings; the letter would not need to explain the circumstances of the sexual assault, name the person(s) accused of the sexual assault, or

otherwise provide any details beyond those sufficient to justify the need to use paid sick leave. Similarly, if the employee used 3 or more consecutive full workdays of paid sick leave to fly across the country to be with her daughter who is a victim of sexual assault to provide support related to an administrative hearing at the university the daughter attends, documentation could consist of the boarding passes from the employee's plane flights and emails from a university official to the daughter setting the date of the hearing, without providing details about the specific subject matter of the hearing.

Proposed § 13.5(e)(1)(ii) further provides that the contractor shall not disclose any verification information and shall maintain confidentiality about the domestic abuse, sexual assault, or stalking as required by § 13.25(d).

Proposed § 13.5(e)(2), which is derived from the FMLA regulations at 29 CFR 825.122(k), provides that if certification or documentation is to verify the illness, injury, or condition, need for diagnosis, care, or preventive care, or activity related to domestic violence, sexual assault, or stalking of an individual related to the employee as described in proposed § 13.5(c)(1)(iii), a contractor may also require the employee to provide reasonable documentation or a statement of the family or family-like relationship. Proposed § 13.5(e)(2) further explains that this documentation may take the form of a simple written statement from the employee or could be a legal or other document proving the relationship, such as a birth certificate or court order. As under the FMLA, a written statement from the employee need not be notarized. Additionally, the contractor is entitled to examine any legal or other documentation provided, but the employee is entitled to the return of any official document submitted for this purpose, such as a birth certificate. The Department also notes that if an employee has already submitted proof of a family or family-like relationship to the contractor for some other purpose, such as providing a marriage certificate in order to obtain health care benefits for the employee's spouse, such proof is sufficient to confirm the family relationship for purposes of paid sick leave, and the contractor may not require additional documentation.

Proposed § 13.5(e)(3) address timing with respect to certification and documentation. Proposed § 13.5(e)(3)(i) provides that a contractor may only require certification or documentation if the contractor informs an employee before the employee returns to work that certification or documentation will be required to verify the use of paid sick leave if the employee is absent for 3 or more consecutive full workdays. This time limit is necessary because without notice at the time the employee or individual cared for by the employee has the condition or need justifying the use of paid sick leave, it could become difficult or even impossible for the employee to obtain certification. For example, if an employee has the flu for 4 days, without knowing that the contractor wishes her to provide certification from a health care provider verifying that she was sick, she might well recover fully without contacting a doctor. A contractor's general policy, if made clear to employees (such as in an employee handbook), requiring certification of the use of paid sick leave for absences of 3 or more consecutive full workdays suffices to meet this requirement.

Proposed § 13.5(e)(3)(ii) further provides that a contractor may require the employee to provide certification or documentation within 30 days of the first day of the 3 or more consecutive full workdays of paid sick leave but may not set a shorter deadline for its submission. This requirement is set forth in section 2(i) of the Executive Order. 80 FR 54698.

The Department proposes to provide in § 13.5(e)(3)(iii) that while a contractor is waiting for or reviewing certification or documentation, it must treat the employee's otherwise proper request for 3 or more consecutive full workdays of paid sick leave as valid. Additionally, the proposed provision explains that if the contractor ultimately does not receive certification or documentation, or if the certification or documentation the employee provides is insufficient to verify the employee's need for paid sick leave, the contractor may, within 10 calendar days of the deadline for receiving the certification or documentation or within 10 calendar days of the receipt of the insufficient certification or documentation, whichever occurs first, retroactively deny the employee's request to use paid sick leave. Certification or documentation could be insufficient, for example, because it does not describe a need for leave consistent with the permitted reasons for using paid sick leave or because, if the reason for leave was for a purpose other than that described in proposed § 13.5(c)(1)(iv), it was not created or signed by a health care provider or a health care provider's representative. Proposed § 13.5(e)(3)(iii) further provides that if the contractor retroactively rejects the employee's request, the contractor may recover the value of the pay and benefits the employee received but to which the employee was not entitled, including through deduction from any sums due to the employee (*e.g.,* unpaid wages, vacation pay, profit sharing, etc.), provided such deductions do not otherwise violate applicable Federal or State wage payment or other laws. This language is derived from the FMLA regulations regarding the consequences of an employee's failure to return to work after an employer paid for health or non-health benefit premiums while an employee was on FMLA leave. *See* 29 CFR 825.213(f). If a contractor retroactively denies an employee's request to use paid sick leave as contemplated here, the amount of paid sick leave the employee was treated as having used must be reinstated to the employee.

Proposed § 13.5(e)(4) provides that a contractor may contact the health care provider or other individual who created or signed the certification or documentation only for purposes of authenticating the document or clarifying its contents and further explains that the contractor may not request additional details about the medical or other condition referenced, seek a second opinion, or otherwise question the substance of the certification. Authentication means verifying that the health care provider or other individual did in fact create or sign the certification. Clarifying means asking what illegible handwriting or other unreadable text says or asking for an explanation of the meaning of words used or information contained in the certification. Under this proposal, which is consistent with requirements regarding certification under the FMLA, *see* 29 CFR 825.307, a contractor may not ask the health care provider or other individual who created or signed the certification or other documentation for more information than is necessary to verify that the employee was justified in using paid sick leave. The specific information required will vary depending upon the reason for the leave. For example, although if an employee was home sick or injured for 3 days, any certification would need to contain some information about the medical condition (such as that it was the flu or a broken leg) to verify that the condition existed and lasted 3 or more days, if an employee was a patient in a hospital for 3 days, the certification would not need to specify the condition for which the employee was being treated, because she was clearly receiving care from a health care provider while using paid sick leave.

Proposed § 13.5(e)(4) further provides that to make contact with the health care provider or other individual who created or signed the certification or documentation, the contractor must use a human resources professional, a leave administrator, or a management official. This requirement is derived from a regulatory provision under the FMLA. *See* 29 CFR 825.307(a). The proposed text goes on to note that the employee's direct supervisor may not contact the employee's health care provider unless there is no other appropriate individual who can do so. This requirement is also based on a similar provision in the FMLA regulations, 29 CFR 825.307(a), but unlike that provision, it does not contain a complete prohibition on an employee's direct supervisor contacting the health care provider. Although the Department seeks to protect the privacy of employees who may not wish to share personal medical or other information with a supervisor to the extent possible, it recognizes that the Executive Order applies to contractors that are not covered by the FMLA because their businesses are not of the requisite size, so it believes the limited proposed exception is necessary.

Proposed § 13.5(e)(4) also addresses the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, Pub. L. 104–191, 110 Stat. 1936 (1996), which governs the privacy of individually identifiable health information created or held by HIPAA-covered entities and the requirements of which are set forth at 45 CFR parts 160 and 164. Specifically, it provides that the HIPAA Privacy Rule requirements must be satisfied when individually identifiable health information of an employee is shared with a contractor by a HIPAA-covered health care provider. As is true for purposes of the FMLA, if an employee's certification is unclear and the employee chooses not to provide the contractor with authorization allowing the contractor to clarify the certification with the health care provider (and does not otherwise clarify the certification), the contractor may deny an employee's request to use paid sick leave. *See* 29 CFR 825.307(a).

Proposed § 13.5(f) addresses the interaction between the paid sick leave required by Executive Order 13706 and part 13 with other laws as well as other paid time off policies. Proposed § 13.5(f)(1) implements section 2(l) of the Executive Order by providing that nothing in the Order or part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under the Executive Order and part 13.

Proposed § 13.5(f)(2) addresses the interaction between paid sick leave and the requirements of the SCA and DBA, thereby implementing section 2(f) of the Executive Order. Proposed § 13.5(f)(2)(i) explains that paid sick leave required by Executive Order 13706 and part 13 is in addition to a contractor's obligations under the SCA and DBA, and a contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of Executive Order 13706 and part 13. The SCA and DBA both provide that fringe benefits furnished to employees in compliance with their requirements do not include any benefits ''required by Federal, State, or local law.'' 41 U.S.C. 6703(2) (SCA); 40 U.S.C. 3141(2)(B) (DBA); *see also* 29 CFR 4.171(c) (''No benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security, is a fringe benefit for purposes of the [SCA].''); 29 CFR 5.29 (''The [DBA] excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the [DBA] for the payments made for such benefits. For example, payment[s] for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the [DBA].''). Because paid sick leave provided in accordance with the Executive Order and part 13 is required by law, such paid sick leave cannot count toward the fulfillment of SCA or DBA obligations.

Proposed § 13.5(f)(2)(ii) provides that a contractor may count the value of any paid sick time provided in excess of the requirements of Executive Order 13706 and part 13 (and any other law) toward its obligations under the SCA or DBA in keeping with the requirements of those Acts. In particular, a contractor may take credit for such paid sick time provided in compliance with the SCA requirements regarding fringe benefits as described in 29 CFR 4.170 through 4.177 or with the DBA requirements regarding fringe benefits as described in 29 CFR 5.20 through 5.32.

Proposed § 13.5(f)(3) addresses the interaction of paid sick leave required by Executive Order 13706 and part 13 with the FMLA. It provides that a contractor's obligations under the Executive Order and part 13 have no effect on its obligations to comply with, or ability to act pursuant to, the FMLA. It further provides that paid sick leave may be substituted for (that is, may run concurrently with) unpaid FMLA leave under the same conditions as other paid time off pursuant to 29 CFR 825.207. It also explains that as to time off that is designated as FMLA leave and for which an employee uses paid sick leave, all notices and certifications that satisfy the FMLA requirements set forth at 29 CFR 825.300 through 825.308 will satisfy the request for leave and certification requirements of proposed §§ 13.5(d) and (e). For example, although under the Executive Order and part 13 an employee's request to use paid sick leave need only be made at least 7 days in advance if the need for leave is foreseeable, under the FMLA, such notice must be made at least 30 days in advance pursuant to 29 CFR 825.302(a). If an employee seeks to use paid sick leave for an FMLA-qualifying reason (and thus both types of leave will run concurrently), such as if she needs surgery, the contractor may require that she comply with the FMLA's notice requirements, which will satisfy the requirements of the Executive Order and part 13; specifically, when she notifies the contractor of the date of her surgery (that is 30 days in the future) and likely recovery period, she will have complied with the requirements of § 13.5(d) to provide oral or written notice of a need for leave that justifies the use of paid sick leave, and the expected duration of the leave, at least 7 days in advance. Similarly, although under the Executive Order and part 13, a contractor may not require certification of the need to use paid sick leave unless the employee uses more than 3 consecutive full workdays of paid sick leave, a contractor is permitted to require certification from an employee for a shorter period of FMLA-designated leave as provided in 29 CFR 825.305. If an employee is concurrently using paid sick leave and FMLA leave, a contractor may require certification as permitted under the FMLA even if certification for paid sick leave would not be permitted under Executive Order 13706 and part 13 (such as, for example, if the employee only needed to use 1 day of leave). If that certification supported the use of FMLA leave for an employee's serious health condition, it would be more than sufficient to serve as the certification issued by a health care provider for use of 3 consecutive full workdays of paid sick leave should such certification become necessary. Even if the certification was insufficient to demonstrate that an employee was entitled to use FMLA leave (such as because although the employee is ill,

the illness did not meet the definition of a serious health condition), it could nevertheless be sufficient to meet the requirements of the Executive Order and part 13.

Proposed § 13.5(f)(4) addresses the interaction of paid sick leave required by Executive Order 13706 and part 13 with paid sick time required by State or local law. As proposed, it explains that a contractor's compliance with a State or local law requiring that employees be provided with paid sick time does not excuse the contractor from compliance with its obligations under the Executive Order 13706 or part 13. It further provides that a contractor may, however, satisfy its obligations under the Order and part 13 by providing paid sick time that fulfills the requirements of a State or local law provided that the paid sick time is accrued and may be used in a manner that meets or exceeds the requirements of the Order and part 13. In other words, a contractor whose employees perform work on or in connection with covered contracts in States, counties, or municipalities that have statutes or ordinances requiring that employees be provided with paid sick time must comply with both those laws and the Executive Order. But that contractor is permitted, at least for purposes of the Executive Order and part 13, to fulfill both obligations simultaneously. If, for example, a State law requires that employees receive up to 40 hours of paid sick time, a contractor is not necessarily required to provide employees performing on or in connection with covered contracts in that State an additional 56 hours of paid sick leave; if the contractor provides paid sick time in compliance with both the State law and the Executive Order and part 13, the contractor need only provide up to 56 hours total of paid sick leave. Because the requirements of State and local laws and the Order and part 13 will rarely be identical, to satisfy both, a contractor will likely need to comply with the requirements that are more generous to employees. For example, a contractor could satisfy both a county law that requires employees to earn at least 1 hour of paid sick time for every 40 hours worked and the Executive Order by allowing employees to earn 1 hour of paid sick leave for every 30 hours worked. Or a contractor could satisfy both a State statute that allows employers to limit employees' use of paid sick time to 40 hours per year and the Executive Order by not limiting use per year (although accrual and carryover limits, which would effectively limit use, might still apply). Similarly, a contractor could satisfy both a municipal ordinance that does not permit an employer to require certification of the reason for using paid sick time under any circumstances and the Executive Order and part 13 by choosing not to require certification for the use of paid sick time even if an employee uses such leave for more than 3 consecutive days.

Proposed § 13.5(f)(5) addresses the interaction between the paid sick leave requirements of Executive Order 13706 and part 13 and an employer's paid time off policies, explaining that the Order and part 13 need not have any effect on a contractor's voluntary paid time off policy, whether provided pursuant to a collective bargaining agreement or otherwise. Whether as a practical matter the requirement to provide paid sick leave under the Order and part 13 affects the amount or types of other leave a contractor provides or a union negotiates is not an issue within the Department's rulemaking authority.

Proposed § 13.5(f)(5) also provides that a contractor's existing paid time off policy (if provided in addition to the fulfillment of SCA or DBA obligations, if applicable) will satisfy the requirements of the Executive Order and part 13 if various conditions are met. First, the paid time off must be made available to all employees described in proposed § 13.3(a)(2) (other than those excluded by proposed § 13.4(e)). Second, employees must be permitted to use the paid time off for at least all of the purposes described in proposed § 13.5(c)(1). Third, the paid time off must be provided in a manner and an amount sufficient to comply with the rules and restrictions regarding the accrual of paid sick leave set forth in proposed § 13.5(a) and regarding maximum accrual, carryover, reinstatement, and payment for unused leave set forth in proposed § 13.5(b). Fourth, the paid time off must be provided pursuant to policies sufficient to comply with the rules and restrictions regarding use of paid sick leave set forth in proposed § 13.5(c), requests for leave set forth in proposed § 13.5(d), and certification and documentation set forth in proposed § 13.5(e), at least with respect to any paid time off used for the purposes described in proposed § 13.5(c)(1). Finally, the paid time off must be protected by the prohibitions against interference, discrimination, and recordkeeping violations described in proposed § 13.6 and the prohibition against waiver of rights described in proposed § 13.7, at least with respect to any paid time off used for the purposes described in proposed § 13.5(c)(1).

In other words, a contractor may use its paid time off policy to satisfy its obligations under the Order and part 13, but only if the policy complies with all of the accrual-related requirements of the Executive Order and part 13—including, but not limited to, allowing employees to accrue at least 1 hour of leave for every 30 hours worked as that term is defined for purposes of part 13, not limiting annual accrual at any less than 56 hours, allowing carryover of leave from the previous accrual year that does not count toward any limit on annual accrual in the new accrual year, and reinstating leave for an employee rehired by the same or a successor contractor within 12 months of a job separation. And a contractor may only use its paid time off policy to satisfy its obligations under the Order and part 13 if when an employee seeks to use or does use leave for the purposes described in proposed § 13.5(c)(1), all of which must be permissible uses of the paid leave, the request, any required certification, and use of the leave comply with all of the specifications of this proposed part. This requirement includes, but is not limited to, allowing employees to take leave in increments of no greater than 1 hour, not setting limits on the amount of leave that may be used per year or at once, not making the use of leave contingent on finding a replacement worker or fulfilling operational needs, requiring employees to make requests for leave no longer than 7 days in advance of the need or as soon as is practicable if the need for leave is not foreseeable, denying requests for leave in writing with an explanation for the denial that is in accordance with the permissible reasons for denial under this proposed rule, and requiring certification or documentation of the leave only if the employee uses leave for more than 3 or more consecutive full workdays and only requiring the minimum information necessary to verify the leave. Furthermore, a contractor may only use its paid time off policy to satisfy its obligations under the Order and part 13 if when an employee seeks to use or does use leave for the purposes described in proposed § 13.5(c)(1), that leave is treated as protected by the prohibitions on interference and discrimination in this proposed part (described below), meaning that, for example, the request for or use of leave cannot be used as a negative factor in any hiring or promotion decision and cannot be the basis for discipline, including by being counted in a no fault attendance policy.

The Department notes that if, for example, a contractor does not permit an employee to use the paid time off for the purposes described in proposed § 13.5(c)(1)(iv) related to domestic violence, sexual assault, or stalking, its paid time off policy would not satisfy its obligations under the Executive Order and part 13. Accordingly, the contractor could choose to amend its paid time off policy to address the omission or could provide paid sick leave in addition to paid time off. Similarly, if a contractor's policy allowed the contractor to deny an employee's request for leave to be used for one of the purposes described in proposed § 13.5(c)(1) based on operational needs, that policy would not satisfy the contractor's obligations under the Executive Order and part 13.

Although under this proposed provision, a contractor need not treat vacation or other uses of leave under its paid time off policy identically to the way it treats paid sick leave, the Department will consider any aspects of a paid time off policy that create significant barriers to an employee's using the time as paid sick leave as interference with the employee's accrual or use under the Order or part 13 in violation of proposed § 13.6(a) or, if appropriate, as discrimination in violation of proposed § 13.6(b). For example, although a contractor need not allow vacation time to be taken in no greater than 1-hour increments, it would constitute a violation of proposed § 13.6(a) if a contractor were to require employees to use all of the time provided in its paid time off policy at once should the employee ask to take vacation, such that any employee who took any vacation in an accrual year would automatically have no paid time off remaining for the purposes described in proposed § 13.5(c)(1). Similarly, it would constitute a violation of proposed § 13.6(a) if a contractor required employees to request leave for vacation 1 month in advance and would not allow an employee who had scheduled such leave and who became, or had a family member who became, unexpectedly ill to instead use paid time off for that purpose (and cancel the other upcoming leave, or take it as unpaid leave).

Section 13.6 Prohibited Acts

Proposed § 13.6 describes and prohibits acts that constitute violations of the requirements of Executive Order 13706 and part 13.

Proposed § 13.6(a)(1) provides that a contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or part 13. Proposed § 13.6(a)(2) includes a non-exclusive list of examples of interference. Interference includes miscalculating the amount of paid sick leave an employee has accrued, such as if a contractor does not include all of an employee's hours worked in calculating accrual. Interference also includes denying or unreasonably delaying a response to a proper request to use paid sick leave, such as if a contractor denies a request to use paid sick leave for a dentist's appointment because the contractor does not believe a dentist is a health care provider, a contractor denies a request to use paid sick leave to accompany the employee's sister to a court proceeding regarding stalking because the contractor does not believe an employee can use paid sick leave for a family member's legal proceeding related to stalking, or if a contractor does not respond to an employee's timely request for paid sick leave until after the need for leave has passed (provided the request was made sufficiently in advance of the need). In addition, interference includes discouraging an employee from using paid sick leave or reducing an employee's accrued paid sick leave by more than the amount of such leave used. Transferring the employee to work on non-covered contracts to prevent the accrual or use of paid sick leave, including scheduling an employee's non-covered work to fall at the time for which the employee has requested to use paid sick leave for the purpose of avoiding approving the request (rather than for a lawful reason, such as for a legitimate business purpose), also constitutes interference. Interference also includes disclosing confidential information provided in certification or other documentation provided to verify the need to use paid sick leave or making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the contractor's operational needs.

Proposed § 13.6(b) is an anti-discrimination provision implementing section 2(k) of Executive Order 13706. Proposed § 13.6(b)(1) provides that a contractor may not discharge or in any other manner discriminate against an employee for: (i) Using, or attempting to use, paid sick leave as provided for under Executive Order 13706 and part 13; (ii) filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 and part 13; (iii) cooperating in any investigation or testifying in any proceeding under Executive Order 13706 and part 13; or (iv) informing any other person about his or her rights under Executive Order 13706 and part 13. Proposed § 13.6(b)(2) addresses what constitutes discrimination, a term the Department intends to be understood broadly, by noting that discrimination includes, but is not limited to, a contractor's considering any of the actions described in proposed § 13.6(b)(1) as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions, or a contractor's counting paid sick leave under a no fault attendance policy. *See* 29 CFR 825.220(c) (analogous provision under FMLA regulations). Under this provision, a contractor may not, for example, reassign an employee to fewer or less preferable shifts, to a less well paid position, or to a non-covered contract because she used paid sick leave. This proposed provision would also prohibit a contractor, in deciding whether or not to hire an employee to work on or in connection with a covered contract, to consider as a factor that the contractor would be required to reinstate the employee's unused paid sick leave from prior covered work pursuant to proposed § 13.5(b)(3).

This provision will serve the important purpose of ensuring effective enforcement of the Executive Order, which will depend on complaints from employees. The Department wishes to note several interpretations of the provision, all of which it also noted in the Minimum Wage Executive Order rulemaking in connection with a comparable antidiscrimination provision. 79 FR 60666–67. First, consistent with the Supreme Court's interpretation of the FLSA's antiretaliation provision, proposed § 13.6(b) would protect employees who file oral as well as written complaints. *See Kasten* v. *Saint-Gobain Performance Plastics Corp.,* 131 S. Ct. 1325, 1336 (2011). Furthermore, as under the FLSA, the proposed anti-discrimination provision under part 13 would protect employees who complain to the Department as well as those who complain internally to their employers about alleged violations of the Order or part 13. *See, e.g., Minor* v. *Bostwick Laboratories,* 669 F.3d 428, 438 (4th Cir. 2012); *Hagan* v. *Echostar Satellite, LLC,* 529 F.3d 617, 626 (5th Cir. 2008); *Lambert* v. *Ackerley,* 180 F.3d 997, 1008 (9th Cir. 1999) (en banc); *Valerio* v. *Putnam Associates,* 173 F.3d 35, 43 (1st Cir. 1999); *EEOC* v. *Romeo Community Sch.,* 976 F.2d 985, 989 (6th Cir. 1992).

In addition, the anti-discrimination provision would apply in situations where there is no current employment relationship between the parties; for example, it would protect from

retaliation by a prospective or former employer that is a covered contractor. This position is consistent with the Department's interpretation of the FLSA's antiretaliation provision, which it considers to extend to job applicants. As explained in the Minimum Wage Executive Order, however, the Department recognizes that the U.S. Court of Appeals for the Fourth Circuit has disagreed with its interpretation with respect to the coverage of job applicants, *see Dellinger* v. *Science Applications Int'l Corp.,* 649 F.3d 226 (4th Cir. 2011), and the Department therefore would not enforce its interpretation on this issue in that circuit. *See* 79 FR 60667. To the extent that application of the FLSA's antiretaliation provision to job applicants or internal complaints is definitively resolved through the judicial process by the Supreme Court or otherwise, the Department would interpret the antiretaliation provision under the Executive Order in accordance with such precedent. *Id.*

Proposed § 13.6(c) provides that a contractor's failure to make and maintain or to make available to WHD records for inspection, copying, and transcription as required by proposed § 13.25, or any other failure to comply with the requirements of that proposed provision, constitutes a violation of Executive Order 13706, part 13, and the underlying contract. This proposed provision is derived from paragraph (g)(3) of the contract clause included in the Minimum Wage Executive Order Final Rule as well as analogous provisions in the SCA and DBA. 29 CFR 4.6(g)(3) (SCA); 29 CFR 5.5(a)(3)(iii) (DBA).

Section 13.7 Waiver of Rights

Proposed § 13.7 provides that employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706 or part 13. The Department included a provision prohibiting the waiver of rights in the regulations implementing the Minimum Wage Executive Order and believes it is appropriate to adopt the same policy here.

In the Minimum Wage Executive Order rulemaking, the Department noted that an employee's rights and remedies under the FLSA, including payment of minimum wage and back wages, cannot be waived or abridged by contract. 79 FR 60667 (citing *Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 302 (1985); *Barrentine* v. *Arkansas-Best Freight Sys., Inc.,* 450 U.S. 728, 740 (1981); *D.A. Schulte, Inc.* v. *Gangi,* 328 U.S. 108, 112–16 (1946); *Brooklyn Sav. Bank* v. *O'Neil,* 324 U.S. 697, 706–07 (1945)). The Supreme Court has explained that ''FLSA rights cannot be abridged by contract or otherwise waived because this would 'nullify the purposes' of the statute and thwart the legislative policies it was designed to effectuate,'' *Barrentine,* 450 U.S. at 740 (quoting *Brooklyn Sav. Bank,* 324 U.S. at 707), and that FLSA rights are not subject to waiver because they serve an important public interest by protecting employers against unfair methods of competition in the national economy, *see Tony & Susan Alamo Found.,* 471 U.S. at 302. Similarly, under the SCA regulations, releases and waivers executed by employees for unpaid SCA wages (and fringe benefits) are without legal effect. 29 CFR 4.187(d). Because the public policy interests underlying the issuance of Executive Order 13706 would be similarly thwarted by permitting employees to waive, or contractors to induce employees to waive, their rights under the Executive Order or part 13, proposed § 13.7 makes clear that such waiver of rights is impermissible.

Subpart B–Federal Government Requirements

Proposed subpart B of part 13, which is largely modeled on subpart B of the Minimum Wage Executive Order implementing regulations, 29 CFR 10.11–10.12, establishes the requirements for the Federal Government to implement and comply with Executive Order 13706. Proposed § 13.11 addresses contracting agency requirements, and proposed § 13.12 explains the requirements placed upon the Department of Labor.

Section 13.11 Contracting Agency Requirements

Proposed § 13.11(a) implements section 2(a) of Executive Order 13706 by directing that the contracting agency shall include the Executive Order paid sick leave contract clause set forth in appendix A of part 13 in all covered contracts and solicitations for such contracts, as described in proposed § 13.3, except for procurement contracts subject to the FAR. Proposed § 13.11(a) further provides that the required contract clause directs, as a condition of payment, that all employees performing work on or in connection with covered contracts must be permitted to accrue and use paid sick leave as required by Executive Order 13706 and part 13. It also provides that for procurement contracts subject to the FAR, contracting agencies shall use the clause that will be set forth in the FAR to implement part 13, and that the FAR clause will accomplish the same purposes as the clause set forth in appendix A and be consistent with the requirements set forth in part 13.

Proposed § 13.11(a) is effectively identical to 29 CFR 10.11(a), the analogous provision in the Minimum Wage Executive Order Final Rule. As explained in that rulemaking, *see* 79 FR 60668, inserting the full contract clause in a covered contract is an effective and practical means of ensuring that contractors receive notice of their obligations under the Executive Order and part 13, and the Department therefore prefers that covered contracts include the contract clause in full. The Department is aware, however, that there will be instances in which a contracting agency or contractor does not include the entire contract clause in a covered contract; in such cases, the facts and circumstances may establish that the contracting agency or contractor sufficiently apprised the prime or lower-tier contractor that the Executive Order applies to the contract. *See Nat'l Electro-Coatings, Inc.* v. *Brock,* No. C86–2188, 1988 WL 125784 (N.D. Ohio July 13, 1988); *In the Matter of Progressive Design & Build, Inc.,* WAB Case No. 87–31, 1990 WL 484308 (WAB Feb. 21, 1990). For example, the full contract clause will be deemed incorporated by reference in a covered contract if the contract provides that ''Executive Order 13706—Establishing Paid Sick Leave for Federal Contractors, and its implementing regulations, including the applicable contract clause, are incorporated by reference into this contract as if fully set forth in this contract'' and includes a citation to a Web page that contains the contract clause in full, to the provision of the Code of Federal Regulations containing the contract clause set forth at appendix A of part 13, or to the provision of the FAR containing the contract clause promulgated by the FARC to implement part 13.

Proposed § 13.11(b) explains a contracting agency's obligations in the event that it fails to include the contract clause in a covered contract. Proposed § 13.11(b) first provides that where the Department of Labor or the contracting agency discovers or determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that Executive Order 13706 and part 13 did not apply to a particular contract and/or failed to include the applicable contract clause in a contract to which the Executive Order and part 13 apply, the contracting agency, on its own initiative or within 15 calendar days of notification by an

authorized representative of the Department of Labor, shall incorporate the clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination). The Administrator possesses analogous authority under the DBA, *see* 29 CFR 1.6(f), and Executive Order 13658, *see* 29 CFR 10.11(b), and it believes a similar mechanism for addressing an agency's failure to include the contract clause in a contract subject to Executive Order 13706 would enhance its ability to obtain compliance with the Order.

Proposed § 13.11(c) provides that a contracting officer shall, upon his or her own action or upon written request of the Administrator, withhold or cause to be withheld from the prime contractor under the contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be necessary to pay employees the full amount owed to compensate for any violation of Executive Order 13706 or part 13. It further provides that in the event of any such violation, the agency may, after authorization or by direction of the Administrator and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Such amounts would be based on the estimated monetary relief, including any pay and/or benefits denied or lost by reason of the violation or other monetary losses sustained as a direct result of the violation, described in proposed § 13.44. The SCA, DBA, and the Minimum Wage Executive Order's implementing regulations provide for withholding to ensure the availability of monies for payment to covered workers when a contractor or subcontractor has failed to comply with its obligations to pay required wages (including fringe benefits) under those authorities. 29 CFR 4.6(i); 29 CFR 5.5(a)(2); 29 CFR 10.11(c). Withholding likewise is an appropriate remedy under this Executive Order for all covered contracts because the Order directs the Department to adopt SCA, DBA, and Minimum Wage Executive Order enforcement processes to the extent practicable and to exercise authority to obtain compliance with the Order. 80 FR 54699. Consistent with withholding procedures under the SCA and DBA, which were also adopted in the Minimum Wage Executive Order rulemaking, proposed § 13.11(c) allows the contracting agency and the Department to withhold or cause to be withheld funds from the prime contractor not only under the contract on which violations of the paid sick leave requirements of Executive Order 13706 and part 13 occurred, but also under any other contract that the prime contractor has entered into with the Federal Government. 29 CFR 4.6(i); 29 CFR 5.5(a)(2); 29 CFR 10.11(c). Finally, a withholding remedy is consistent with the requirement in section 2(a) of the Executive Order that compliance with the specified obligations is an express ''condition of payment'' to a contractor or subcontractor. 80 FR 54699.

Proposed § 13.11(c) also provides that any failure to comply with the requirements of Executive Order 13706 or part 13 may be grounds for termination of the right to proceed with the contract work. In such event, the contracting agency may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. This language is essentially identical to language included in the analogous provision in the Minimum Wage Executive Order rulemaking. *See* 79 FR 60724 (codified at 29 CFR 10.11(c)).

Proposed § 13.11(d) describes a contracting agency's responsibility to suspend further payment or advance of funds to a contractor that fails to make available for inspection, copying, and transcription any of the records identified in proposed § 13.25. The proposal requires contracting agencies to take action to suspend payment or advance of funds under these circumstances upon their own action, or upon the direction of the Administrator and notification of the contractor. Proposed § 13.11(d) is derived from paragraph (g)(3) of the Minimum Wage Executive Order contract clause, 79 FR 60731, and is consistent with the analogous provisions of the SCA and DBA regulations, 29 CFR 4.6(g)(3); 29 CFR 5.5(a)(3)(iii).

Proposed § 13.11(e) describes a contracting agency's responsibility to forward to the WHD any complaint alleging a contractor's non-compliance with Executive Order 13706 or part 13, as well as any information related to the complaint. Although the Department proposes in § 13.41 that complaints be filed with the WHD rather than with contracting agencies, the Department recognizes that some employees or other interested parties nonetheless may file formal or informal complaints concerning alleged violations of the Executive Order or part 13 with contracting agencies. Proposed § 13.11(e)(1) therefore specifically requires the contracting agency to transmit the complaint-related information identified in proposed § 13.11(e)(2) to the WHD's Office of Government Contracts Enforcement within 14 calendar days of receipt of a complaint alleging a violation of the Executive Order or part 13, or within 14 calendar days of being contacted by the WHD regarding any such complaint.

Proposed § 13.11(e)(2) describes the contents of any transmission under proposed § 13.11(e)(1). Specifically, it provides that the contracting agency shall forward to the Office of Government Contracts Enforcement any: (i) Complaint of contractor noncompliance with Executive Order 13706 or part 13; (ii) available statements by the worker, contractor, or any other person regarding the alleged violation; (iii) evidence that the Executive Order paid sick leave contract clause was included in the contract; (iv) information concerning known settlement negotiations between the parties, if applicable; and (v) any other relevant facts known to the contracting agency or other information requested by the Wage and Hour Division.

Proposed § 13.11(e) is nearly identical to 29 CFR 10.11(d) as promulgated by the Minimum Wage Executive Order Final Rule, which was derived from analogous provisions in the Department's regulations implementing the Nondisplacement Executive Order. 79 FR 60669 (citing 29 CFR 9.11(d)). As in the Minimum Wage Executive Order rulemaking, the Department believes proposed § 13.11(e), which includes an obligation to send such complaint-related information to WHD even absent a specific request (*e.g.,* when a complaint is filed with a contracting agency rather than with the WHD), is appropriate because prompt receipt of such information from the relevant contracting agency will allow the Department to fulfill its charge under the Order to implement enforcement mechanisms for obtaining compliance with the Order. 80 FR 54699.

Proposed § 13.11(f) would provide that a contracting officer shall provide to a successor contractor any predecessor contractor's certified list, provided to the contracting officer pursuant to proposed § 13.26, of the amounts of unused paid sick leave that employees have accrued. This requirement would facilitate compliance by successor contractors with proposed § 13.5(b)(3), which requires that paid sick leave be reinstated for employees rehired by a

successor contractor within 12 months of the job separation from the predecessor contractor. The terms predecessor contract and successor contract are defined in proposed § 13.2.

Section 13.12 Department of Labor Requirements

Proposed § 13.12 addresses the Department's obligations under the Executive Order. Specifically, proposed § 13.12(a)(1) states that the Administrator will publish and maintain on Wage Determinations OnLine (WDOL), *http://www.wdol.gov,* or any successor Web site, a notice that Executive Order 13706 creates a requirement to allow employees performing work on or in connection with contracts covered by Executive Order 13706 and part 13 to accrue and use paid sick leave, as well as an indication of where to find more complete information about that requirement.

Proposed § 13.12(a)(2) provides that the Administrator will also publish a notice on all wage determinations issued under the DBA and SCA that Executive Order 13706 creates a requirement to allow employees performing work on or in connection with contracts covered by Executive Order 13706 and part 13 to accrue and use paid sick leave, as well as an indication of where to find more complete information about that requirement.

Proposed § 13.12(b), which is modeled on 29 CFR 10.12(d), addresses the Department's obligation to notify a contractor of a request to the contracting agency for the withholding of funds or a request for the suspension of payment or advance of funds. Under proposed § 13.11(c), the Administrator may direct that payments due on the covered contract or any other contract between the contractor and the Federal Government be withheld as may be considered necessary to provide for monetary relief for violations of Executive Order 13706 or part 13. Under proposed § 13.11(d), the Administrator may direct that the contracting agency suspend payment or advance of funds. If the Administrator makes the requests contemplated by proposed § 13.11(c) or (d), proposed § 13.12(b) would require the Administrator and/or the contracting agency to notify the affected prime contractor of the Administrator's withholding request to the contracting agency. Although it is only necessary that one party—either the Administrator or the contracting agency—provide the notice, the other may choose in its discretion to provide notice as well.

Subpart C—Contractor Requirements

Proposed subpart C describes the requirements with which contractors must comply under Executive Order 13706 and part 13. It sets forth the obligation to include the applicable Executive Order paid sick leave contract clause in subcontracts and lower-tier contracts to comply with the contract clause. Proposed subpart C also sets forth contractor requirements pertaining to deductions, kickbacks, recordkeeping, a list of employees' accrued paid sick leave at the time a contract concludes, notice, and timing of pay.

Section 13.21 Contract Clause

Proposed § 13.21(a), which is adopted from 29 CFR 10.21 as promulgated by the Minimum Wage Executive Order Final Rule, requires the contractor, as a condition of payment, to abide by the terms of the applicable Executive Order paid sick leave contract clause referred to in proposed § 13.11(a). The applicable contract clause will contain the obligations with which the contractor must comply on the covered contract and will reflect the contractor's obligations as described in part 13.

Proposed § 13.21(b) states that contractors must include the applicable contract clause in any covered subcontracts and shall require, as a condition of payment, that subcontractors include the clause in all lower-tier subcontracts. Under the proposal, the prime contractor and upper-tier contractors will be responsible for compliance by any subcontractor or lower-tier subcontractor with Executive Order 13706 and part 13, regardless of whether the contract clause was included in the subcontract. This responsibility on the part of prime and upper-tier contractors for subcontractor compliance parallels that of the SCA and DBA. *See* 29 CFR 4.114(b) (SCA); 29 CFR 5.5(a)(6) (DBA).

Section 13.22 Paid Sick Leave

Proposed § 13.22 requires contractors to allow all employees performing work on or in connection with a covered contract to accrue and use paid sick leave as required by the Executive Order and part 13. Although contractors must comply with the Order and part 13 in its entirety, the Department notes that contractors' paid sick leave obligations are described in detail in proposed subpart A (particularly proposed § 13.5, which addresses the accrual and use of paid sick leave, and proposed § 13.6, which describes prohibited acts).

Section 13.23 Deductions

Proposed § 13.23 states that contractors may only make deductions from the pay and benefits of an employee who is using paid sick leave under the limited circumstances set forth in the proposed provision. The reference to ''pay and benefits'' in proposed § 13.23 has the same meaning as the reference to pay and benefits in proposed § 13.5(c)(3), discussed above.

Proposed § 13.23 permits deductions required by Federal, State, or local law, including Federal or State withholding of income taxes. *See* 29 CFR 531.38 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA); 29 CFR 10.23(a) (Executive Order 13658). This proposed provision would also permit deductions for payments made to third parties pursuant to court orders. *See* 29 CFR 531.39 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA); 29 CFR 10.23(b) (Executive Order 13658). Permissible deductions made pursuant to a court order may include such deductions as those made for child support. The proposed section also permits deductions directed by a voluntary assignment of the employee or his or her authorized representative. *See* 29 CFR 531.40 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA); 29 CFR 10.23(c) (Executive Order 13658). Deductions directed by a voluntary assignment include, but are not limited to, deductions for the purchase of U.S. savings bonds, donations to charitable organizations, and the payment of union dues. Deductions made for voluntary assignments must be made for the employee's account and benefit pursuant to the request of the employee or his or her authorized representative. *See* 29 CFR 531.40 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA). Finally, the Department proposes to permit deductions made for the reasonable cost or fair value of board, lodging, and other facilities. *See* 29 CFR part 531 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA); 29 CFR 10.23(d) (Executive Order 13658). Deductions made for the reasonable cost or fair value of board, lodging and other facilities must be in compliance with the regulations in 29 CFR part 531. The Department notes that a contractor may take credit for the reasonable cost or fair value of board, lodging, or other facilities against an employee's wages, rather than taking a deduction for the reasonable cost or fair value of these items. *See* 29 CFR part 531.

Section 13.24 Anti-Kickback

Proposed § 13.24 requires that all paid sick leave used by employees

performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (unless as set forth in proposed § 13.23), rebate, or kickback on any account. It further provides that kickbacks directly or indirectly to the contractor or to another person for the benefit of the contractor for the whole or part of the paid sick leave are also prohibited. This anti-kickback proposal, which the Department derived from the Executive Order 13658 implementing regulations at 29 CFR 10.27, aims to ensure that employees actually receive the full pay and benefits to which they are entitled under the Executive Order and part 13 when they use paid sick leave.

Section 13.25 Records To Be Kept by Contractors

Proposed § 13.25 explains the recordkeeping and related requirements for contractors. The obligations set forth in proposed § 13.25 are derived from the FLSA, SCA, DBA, FMLA and Executive Order 13658. *See* 29 CFR part 516 (FLSA); 29 CFR 4.6(g) (SCA); 29 CFR 5.5(a)(3) (DBA); 29 CFR 825.500(c) (FMLA); 29 CFR 10.26 (Executive Order 13658). Proposed § 13.25(a) states that contractors and subcontractors shall make and maintain during the course of the covered contract, and preserve for no less than 3 years thereafter, records containing the information enumerated in proposed § 13.25(a)(1)–(15) for each employee. It also requires contractors to make such records available to the WHD for inspection, copying and transcription.

Proposed § 13.25(a)(1)–(6) require contractors to make and maintain for each employee: Name, address, and Social Security number; the employee's occupation(s) or classification(s); the rate or rates of wages paid to the employee; the number of daily and weekly hours worked by the employee; any deductions made; and the total wages paid each pay period. Contractor obligations to maintain the categories of records set forth in § 13.25(a)(1)–(6) derive from and are consistent across the FLSA, SCA, and DBA (with the exception of the requirement to preserve records for no less than 3 years after the contact expires, which applies under the DBA and SCA but not the FLSA). An exception to the requirement in proposed § 13.25(a)(4) to keep records of an employee's hours worked is provided in proposed § 13.25(c), as described below. Therefore, in conjunction with proposed § 13.25(c), these recordkeeping requirements impose almost no new burdens on contractors. Moreover, with respect to both the categories of records set forth in proposed § 13.25(a)(1)–(6) and those set forth in proposed § 13.25(a)(7)–(15) below, the recordkeeping requirements set forth in this section are necessary and appropriate for the enforcement of Executive Order 13706 and part 13 because they require the maintenance and preservation of records necessary to investigate potential violations of and obtain compliance with the Order, consistent with sections 3(a) and 4(a) of the Order.

Proposed § 13.25(a)(7) requires contractors to make and maintain copies of notifications to employees of the amount of paid sick leave the employees have accrued as required under proposed § 13.5(a)(2). Proposed § 13.25(a)(8) requires contractors to maintain copies of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records of employees' requests.

Proposed § 13.25(a)(9) requires contractors to make and maintain records of the dates and amounts of paid sick leave used by employees and further specifies that unless a contractor's paid time off policy satisfies the requirements of Executive Order 13706 and part 13 as described in proposed § 13.5(f)(5), contractors must designate the leave in their records as paid sick leave pursuant to Executive Order 13706. Proposed § 13.25(a)(10) requires contractors to make and maintain copies of any written denials of employees' requests to use paid sick leave, including explanations for such denials, as required under proposed § 13.5(d)(3). Proposed § 13.25(a)(11) requires contractors to make and maintain records relating to the certification and documentation a contractor may require an employee to provide under proposed § 13.5(e), including copies of any certification or documentation provided by an employee. Proposed § 13.25(a)(12) requires contractors to make and maintain any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave.

Proposed § 13.25(a)(13) requires contractors to make and maintain copies of any certified list of employees' accrued, unused paid sick leave provided to a contracting officer in compliance with proposed § 13.26. Proposed § 13.25(a)(14) requires contractors to maintain any certified list of employees' accrued, unused paid sick leave received from the contracting agency in compliance with proposed § 13.11(f). Finally, proposed § 13.25(a)(15) requires contractors to maintain a copy of the relevant covered contract.

Proposed § 13.25(b) relates to the segregation of employees' covered and non-covered work for a single contractor. It provides that if a contractor wishes to distinguish between an employee's covered and non-covered work (such as time spent performing work on or in connection with a covered contract versus time spent performing work on or in connection with non-covered contracts or time spent performing work on or in connection with a covered contract in the United States versus time spent performing work outside the United States, or to establish that time spent performing solely in connection with covered contracts constituted less than 20 percent of an employee's hours worked during a particular workweek), the contractor must keep records or other proof reflecting such distinctions. It further provides that only if the contractor adequately segregates the employee's time will time spent on non-covered contracts be excluded from hours worked counted toward the accrual of paid sick leave, and that similarly, only if that contractor adequately segregates the employee's time may a contractor properly deny an employee's request to take leave under proposed § 13.5(d) on the ground that the employee was scheduled to perform non-covered work during the time she asked to use paid sick leave. This language reflects the policies described in the discussions of §§ 13.3(c), 13.4(e), 13.5(a)(1)(i), 13.5(c)(1), and 13.5(d)(3)(ii) with regard to a contractor's segregation of hours worked for purposes of coverage as well as accrual and use of paid sick leave. As explained with regard to those sections, requiring contractors who wish to distinguish between covered and non-covered time to keep adequate records reflecting that distinction is consistent with the treatment of hours worked on SCA- and non-SCA-covered contracts, *see* 29 CFR 4.178, 4.179, as well as the treatment of covered versus non-covered time under the Minimum Wage Executive Order rulemaking, *see* 79 FR 60659, 60660–61, 60672.

Proposed § 13.25(c) excuses a contractor from maintaining records of the employee's number of daily and weekly hours worked as otherwise required under proposed § 13.25(a)(4), if the SCA, DBA, and FLSA do not require the contractor to keep records of the employee's hours worked, such as because the employee is employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541, and the

contractor elects to use the assumption permitted by proposed § 13.5(a)(1)(iii).

Proposed § 13.25(d) addresses requirements related to the confidentiality of records. Proposed § 13.25(d)(1) requires a contractor to maintain as confidential in separate files/records from the usual personnel files any records relating to medical histories or domestic violence, sexual assault, or stalking created by or provided to a contractor for purposes of Executive Order 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. Proposed § 13.25(d)(2) requires records or documents created to comply with the recordkeeping requirements in part 13 that are subject to the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), Pub. L. 110–233, 122 Stat. 881 (2008), and/or Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.,* to be maintained in compliance with the confidentiality requirements of those statutes as described in 29 CFR 1635.9 and 29 CFR 1630.14(c)(1), respectively.

Proposed § 13.25(d)(3) prohibits the disclosure of any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in proposed § 13.5(c)(1)(iv), and requires the contractor to maintain confidentiality about any domestic violence, sexual assault, or stalking, unless the employee consents or the disclosure is required by law.

Proposed § 13.25(e) requires contractors to permit authorized representatives of WHD to conduct interviews with employees at the worksite during normal working hours. This provision is derived from similar provisions under the SCA and DBA, 29 CFR 4.6(g)(4) (SCA); 29 CFR 5.5(a)(3)(iii), and will facilitate WHD's ability to enforce the Order and part 13.

Proposed § 13.25(f) states that nothing in part 13 limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the DBA, SCA, FLSA, FMLA, Executive Order 13658, their implementing regulations, or other applicable law.

Section 13.26 Certified List of Employees' Accrued Paid Sick Leave

Proposed § 13.26 provides that upon completion of a covered contract, a predecessor prime contractor shall provide to the contracting officer a certified list of the names of all employees entitled to paid sick leave under Executive Order 13706 and part 13 who worked on or in connection with the covered contract or any covered subcontract(s) at any point during the 12 months preceding the date of completion of the contract, the date each such employee separated from the contract or any covered subcontract(s) if prior to the date of the completion of the contract, and the amount of paid sick leave each such employee had available for use as of the date of completion of the contract or the date each such employee separated from the contract or subcontract. This requirement would (in conjunction with proposed § 13.11(f)) facilitate compliance by successor contractors with proposed § 13.5(b)(3), which requires that paid sick leave be reinstated for employees rehired by a successor contractor within 12 months of the job separation from the predecessor contractor. The terms predecessor contract and successor contract are defined in proposed § 13.2.

Section 13.27 Notice

Proposed § 13.27 addresses the obligations of contractors with respect to notice to employees of their rights under Executive Order 13706 and part 13. Proposed § 13.27(a) requires that contractors notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706 and part 13 by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. The Department derived this proposal from the Executive Order 13658 implementing regulations at 29 CFR 10.29(b); *see also* 79 FR 60670 (describing the Department's decision to create a notice poster for the Minimum Wage Executive Order). This proposal differs from the Minimum Wage Executive Order regulations, however, in that it requires all covered contractors, including those whose contracts are DBA- or SCA-covered, to display the poster rather than allowing DBA and SCA contractors to provide notice solely on wage determinations. The Department believes that because the Order's paid sick leave requirements, in particular the rules and restrictions regarding accrual and use, require lengthier explanation than the minimum wage requirements of Executive Order 13658, and because those requirements are sufficiently detailed that the Department is not proposing under § 13.12(a) to describe them in full on wage determinations, employees working on or in connection with DBA- and SCA-covered contracts will be more adequately informed about the paid sick leave requirements by a poster. The Department will make a poster, which it will model on the Minimum Wage Executive Order poster, available on the WHD Web site.

Proposed § 13.27(b), derived from the Executive Order 13658 implementing regulations at 29 CFR 10.29(c), permits contractors that customarily post notices to employees electronically to post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

Section 13.28 Timing of Pay

Proposed § 13.28 describes the time by which a contractor must compensate employees for hours during which they used paid sick leave. Under the proposed provision, a contractor shall provide such compensation no later than one pay period following the end of the regular pay period in which the paid sick leave was used. The timing of the payment obligation imposed is consistent with both the SCA's and Executive Order 13658's implementing regulations, *see* 29 CFR 4.165(a) (SCA); 29 CFR 10.25 (Executive Order 13658).

Subpart D—Enforcement

Proposed subpart D implements section 4 of Executive Order 13706, which grants the Secretary ''authority for investigating potential violations of and obtaining compliance with'' the Order and complies with section 3(c) of the Order, which directs that the regulations the Secretary issues should, to the extent practicable, incorporate existing procedures, remedies, and enforcement processes under the FLSA, SCA, DBA, FMLA, VAWA, and Executive Order 13658. 79 FR 54699. Proposed subpart D is substantially similar to subpart D of 29 CFR part 10, which sets forth the remedies, procedures, and enforcement processes under the Minimum Wage Executive Order.

Specifically, proposed subpart D incorporates many of the provisions of the Minimum Wage Executive Order regulations, which in turn incorporate FLSA, SCA, and DBA remedies, procedures, and enforcement processes, as well as certain enforcement procedures set forth in the Department's regulations implementing the Nondisplacement Executive Order. Proposed subpart D differs in some respects from the analogous provisions under the Minimum Wage Executive Order rulemaking because of the differences between minimum wage

requirements and paid sick leave requirements as well as because Executive Order 13706 contemplates that the Department would incorporate remedies, procedures, and enforcement processes from the FMLA to the extent practicable. The Department believes proposed subpart D will facilitate investigations of potential violations of the Order, allow for violations of the Order to be addressed and remedied, and promote compliance with the Order.

Section 13.41 Complaints

The Department proposes a procedure for filing complaints in § 13.41 identical to that which appears in 29 CFR 10.41, the section of the Minimum Wage Executive Order regulations that addresses complaints. Proposed § 13.41(a) provides that any employee, contractor, labor organization, trade organization, contracting agency, or other person or entity that believes a violation of the Executive Order or part 13 has occurred may file a complaint with any office of the WHD. It also provides that no particular form of complaint is required; a complaint may be filed orally or in writing, and the WHD will accept a complaint in any language if the complainant is unable to file in English. Proposed § 13.41(b) states the well-established policy of the Department with respect to confidential sources. *See* 29 CFR 4.191(a); 29 CFR 5.6(a)(5). Specifically, it would provide that it is the Department's policy to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy, and accordingly, the identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual. The proposed provision further provides that disclosure of such statements shall be governed by the provisions of the Freedom of Information Act (5 U.S.C. 552, *see* 29 CFR part 70) and the Privacy Act of 1974 (5 U.S.C. 552a).

Section 13.42 Wage and Hour Division Conciliation

Proposed § 13.42, which is identical to 29 CFR 10.42, establishes an informal complaint resolution process for complaints filed with the WHD. The provision allows WHD, after obtaining the necessary information from the complainant regarding the alleged violations, to contact the party against whom the complaint is lodged and attempt to reach an acceptable resolution through conciliation.

Section 13.43 Wage and Hour Division Investigation

Proposed § 13.43, which outlines WHD's investigative authority, is identical to 29 CFR 10.43. That section of the Minimum Wage Executive Order regulations was derived primarily from regulations implementing the SCA and DBA. *See* 79 FR 60679 (citing 29 CFR 4.6(g)(4), 29 CFR 5.6(b)). Proposed § 13.43 permits the Administrator to initiate an investigation either as the result of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator is entitled to conduct interviews with the contractor, as well as the contractor's employees at the worksite during normal work hours; inspect the relevant contractor's records (including contract documents and payrolls, if applicable); make copies and transcriptions of such records; and require the production of any documentary or other evidence the Administrator deems necessary to determine whether a violation, including conduct warranting imposition of debarment, has occurred. The section would also require Federal agencies and contractors to cooperate with authorized representatives of the Department in the inspection of records, in interviews with employees, and in all aspects of investigations.

Section 13.44 Remedies and Sanctions

In § 13.44, the Department sets forth proposed remedies and sanctions for violations of the Order and part 13. Proposed § 13.44(a) provides for remedies for violations of the prohibition on interference with the accrual or use of paid sick leave described in proposed § 13.6(a). Proposed § 13.44(a) provides that when the Administrator determines that a contractor has interfered with an employee's accrual or use of the paid sick leave in violation of § 13.6(a), the Administrator will notify the contractor and the relevant contracting agency of the interference and request the contractor to remedy the violation. It additionally proposes that if the contractor does not remedy the violation, the Administrator shall direct the contractor to provide any appropriate relief to the affected employee(s) in the Administrator's investigation findings letter issued pursuant to proposed § 13.51. The Department further proposes that § 13.44(a) provide that such relief may include any pay and/or benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation; or appropriate equitable or other relief. Furthermore, as proposed, relief would include an amount equaling any monetary relief as liquidated damages unless such amount is reduced by the Administrator because the violation was in good faith and the contractor had reasonable grounds for believing it had not violated the Order or part 13. The types of relief available under proposed § 13.44(a) are derived from the FMLA, 29 U.S.C. 2617(a)(1), 2617(b)(2), and its implementing regulations, 29 CFR 825.400(c). Important aspects of these FMLA remedies, such as the inclusion of liquidated damages, are also part of the FLSA scheme. *See* 29 U.S.C. 216(b), 260. The Department notes that under the FLSA and FMLA—and by extension, for purposes of Executive Order 13706 and part 13—liquidated damages serve the purpose of compensating employees for the delay in receiving wages they are owed rather than punishing the employer who violated the statute. *See, e.g., Herman* v. *RSR Sec. Servs. Ltd.,* 172 F.3d 132, 142 (2d Cir. 1999) (FLSA); *Jordan* v. *U.S. Postal Serv.,* 379 F.3d 1196, 1202 (10th Cir. 2004) (FMLA).

Under the proposed regulatory text, an example of a possible remedy includes payment for time for which a contractor improperly denied a request to use paid sick leave such that the employee took unpaid leave that should have been treated as paid sick leave; in that case, the damages would be the pay and benefits the employee would have received for that time pursuant to proposed § 13.5(c)(3), and the award would include an equal amount of liquidated damages unless the violation was made in good faith and the contractor had reasonable grounds for believing it had not violated the Order or part 13. As another example, if a contractor improperly denied a request to use paid sick leave such that an employee came to work and hired a babysitter to care for a sick child with whom the employee wished to stay home, the remedy would be the amount the employee spent on the child care, and the award would include an equal amount of liquidated damages unless the violation was made in good faith and the contractor had reasonable grounds for believing it had not violated the Order or part 13. In this example, relief would not include lost pay or benefits because the employee did not lose pay or benefits due to the violation. Equitable relief for violations of proposed § 13.6(a) could include, but would not be limited to, requiring the contractor to allow for accrual and use

of paid sick leave by an employee it erroneously treated as not covered by the Executive Order or requiring the contractor to restore paid sick leave it improperly deducted from an employee's accrued paid sick leave.

Proposed § 13.44(a) also provides that the Administrator may direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief, and that, upon the final order of the Secretary that the monetary relief is due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department for disbursement. These portions of the proposed provision are identical to language in the Minimum Wage Executive Order final rule. *See* 29 CFR 10.44(a).

Proposed § 13.44(b) sets out remedies for violations of the prohibition on discrimination in proposed § 13.6(b). It provides that when the Administrator determines that a contractor has discriminated against an employee in violation of proposed § 13.6(b), the Administrator will notify the contractor and the relevant contracting agency of the discrimination and request that the contractor remedy the violation. If the contractor does not remedy the violation, the Administrator shall direct the contractor to provide any appropriate relief, including but not limited to employment, reinstatement, promotion, restoration of leave, or lost pay and/or benefits, in the Administrator's investigation findings letter issued pursuant to proposed § 13.51. As proposed, § 13.44(a) also provides that an amount equaling any monetary relief may be awarded as liquidated damages unless such amount is reduced by the Administrator because the violation was in good faith and the contractor had reasonable grounds for believing the contractor had not violated the Order or part 13. This language is derived from the FMLA remedies at 29 U.S.C. 2617(a)(1) and 29 CFR 825.400(c); *see also* 29 U.S.C. 2617(b)(2). It is similar to the analogous provision in the Minimum Wage Executive Order rulemaking, 79 FR 60728 (codified at 29 CFR 10.44(b)), which was derived from the remedies provided for under the FLSA's antiretaliation provision, *see* 29 U.S.C. 216(b), except that it allows for liquidated damages, a remedy available under the FMLA and the FLSA, *see* 29 U.S.C. 2617(a)(1); 29 U.S.C. 216(b), 260. Proposed § 13.44(b) further notes that the Administrator may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief and that upon the final order of the Secretary that monetary relief is due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

Proposed § 13.44(c) addresses the remedies for violations of the recordkeeping requirements in proposed subpart C. It provides that when a contractor fails to comply with the requirements of proposed § 13.25 in violation of proposed § 13.6(c), the Administrator will request that the contractor remedy the violation. Proposed § 13.44(c) further provides that if a contractor fails to produce required records upon request, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds on the contract until such time as the violations are discontinued. Proposed § 13.44(c) is derived from paragraph (g)(3) of the Minimum Wage Executive Order contract clause, the analogous provision of the SCA regulations, 29 CFR 4.6(g)(3), and the analogous provision of the DBA regulations, 29 CFR 5.5(a)(3)(iii).

Proposed § 13.44(d), which is effectively identical to the corresponding provision in the Minimum Wage Executive Order rulemaking, 29 CFR 10.44(c), allows for the remedy of debarment. Specifically, it provides that whenever a contractor is found by the Secretary to have disregarded its obligations under Executive Order 13706 or part 13, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, shall be ineligible to be awarded any contract or subcontract subject to the Executive Order for a period of up to three years from the date of publication of the name of the contractor or responsible officer on the excluded parties list currently maintained on the System for Award Management Web site, *http://www.SAM.gov.* The ''disregarded its obligations'' standard, which also is used in the Minimum Wage Executive Order rulemaking, is derived from the DBA implementing regulations at 29 CFR 5.12(a)(2). *See* 79 FR 60680. Proposed § 10.44(d) further provides that neither an order of debarment of any contractor or its responsible officers from further Government contracts nor the inclusion of a contractor or its responsible officers on a published list of noncomplying contractors under this section would be carried out without affording the contractor or responsible officers an opportunity for a hearing before an Administrative Law Judge.

Debarment is a long-established remedy for a contractor's failure to fulfill its labor standards obligations under the SCA and the DBA, *see* 41 U.S.C. 6706(b); 40 U.S.C. 3144(b); 29 CFR 4.188(a); 29 CFR 5.5(a)(7); 29 CFR 5.12(a)(2), and one that, as noted, was adopted in the Minimum Wage Executive Order rulemaking, *see* 79 FR 60728 (codified at 29 CFR 10.44(c)). The possibility that a contractor will be unable to obtain Government contracts for a fixed period of time due to debarment promotes contractor compliance with the SCA, DBA, and Minimum Wage Executive Order, and the Department intends inclusion of the remedy in this rulemaking to incentivize compliance with Executive Order 13706 as well.

Proposed § 13.44(e) allows for initiation of an action, following a final order of the Secretary, against a contractor in any court of competent jurisdiction to collect underpayments when the amounts withheld under proposed § 13.11(c) are insufficient to reimburse all monetary relief due. Proposed § 13.44(e) also authorizes initiation of an action, following the final order of the Secretary, in any court of competent jurisdiction when there are no payments available to withhold. Such circumstances could arise, for example, if at the time the Administrator discovers a contractor owes pay and/or benefits to employees, no payments remain owing under the contract or another contract between the same contractor and the Federal Government, or if the covered contract is a concessions contract under which the contractor does not receive payments from the Federal Government. Proposed § 13.44(e) additionally provides that any sums the Department recovers shall be paid to affected employees to the extent possible, but that sums not paid to employees because of an inability to do so within three years would be transferred into the Treasury of the United States. Proposed § 13.44(e) is derived from the analogous provision of the Minimum Wage Executive Order rulemaking, 29 CFR 10.44(d), which in turn was derived from the SCA, 41 U.S.C. 6705(b)(2).

In proposed § 13.44(f), the Department addresses what remedy is available when a contracting agency fails to include the contract clause in a contract

subject to the Executive Order. It would provide that the contracting agency, on its own initiative or within 15 calendar days of notification by the Department, shall incorporate the clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination). This provision is identical to 29 CFR 10.44(e); in promulgating that provision during the Minimum Wage Executive Order rulemaking, the Department explained that this clause would provide the Administrator authority to collect underpayments on behalf of affected employees on the applicable contract retroactive to commencement of performance under the contract. 79 FR 60681. The Department also noted in that rulemaking that the Administrator possesses comparable authority under the DBA, 29 CFR 1.6(f). *Id.* The Department believes here, as it did with respect to the Minimum Wage Executive Order, that a mechanism for addressing a failure to include the contract clause in a contract subject to Executive Order 13706 will further the interest in both remedying violations and obtaining compliance with the Order. Furthermore, as also noted in the Minimum Wage Executive Order rulemaking, the provision includes language reflecting the Department's belief that a contractor is entitled to an adjustment where necessary to pay any necessary additional costs when a contracting agency initially omits and then subsequently includes the contract clause in a covered contract. *Id.* (citing 29 CFR 4.5(c), the SCA regulation with which this position is consistent).

Subpart E—Administrative Proceedings

Pursuant to section 4 of Executive Order 13706, proposed subpart E establishes and describes the administrative proceedings to be conducted under the Order. In compliance with section 3(c) of the Order, subpart E incorporates, to the extent practicable, the DBA, SCA and Executive Order 13658 administrative procedures necessary to remedy potential violations and ensure compliance with the Executive Order. Indeed, the Department has substantially modeled this subpart E on subpart E of the Minimum Wage Executive Order regulations, which was primarily derived from the rules governing administrative proceedings conducted under the DBA and SCA. 79 FR 60682. The administrative procedures included in this subpart also closely adhere to existing procedures of the Department's Office of Administrative Law Judges and Administrative Review Board (ARB).

Section 13.51 Disputes Concerning Contractor Compliance

Proposed § 13.51, which the Department derived primarily from the DBA's implementing regulations at 29 CFR 5.11, addresses how the Administrator will process disputes regarding a contractor's compliance with part 13. Proposed § 13.51(a) provides that the Administrator or a contractor may initiate a proceeding. Proposed § 13.51(b)(1) provides that when it appears that relevant facts are at issue in a dispute covered by proposed § 13.51(a), the Administrator will notify the affected contractor(s) and the prime contractor, if different, of the investigative findings by certified mail to the last known address. If the Administrator determines there are reasonable grounds to believe the contractor(s) should be subject to debarment, the investigative findings letter would so indicate.

Proposed § 13.51(b)(2) requires a contractor desiring a hearing concerning the investigative findings letter to request a hearing by letter postmarked within 30 calendar days of the date of the Administrator's letter. It further requires the request to set forth those findings that are in dispute with respect to the violation(s) and/or debarment, as appropriate, and to explain how such findings are in dispute, including by reference to any applicable affirmative defenses.

Proposed § 13.51(b)(3) requires the Administrator, upon receipt of a timely request for hearing, to refer the matter to the Chief Administrative Law Judge by Order of Reference for designation of an Administrative Law Judge (ALJ) to conduct such hearings as may be necessary to resolve the disputed matter in accordance with the procedures set forth in 29 CFR part 6. It also requires the Administrator to attach a copy of the Administrator's letter, and the response thereto, to the Order of Reference that the Administrator sends to the Chief Administrative Law Judge.

Proposed § 13.51(c)(1) applies when it appears there are no relevant facts at issue and there is not at that time reasonable cause to institute debarment proceedings. It requires the Administrator to notify the contractor, by certified mail to the contractor's last known address, of the investigative findings and to issue a ruling on any issues of law known to be in dispute. Proposed § 13.51(c)(2)(i) applies when a contractor disagrees with the Administrator's factual findings or believes there are relevant facts in dispute. It allows the contractor to advise the Administrator of such disagreement by letter postmarked within 30 calendar days of the date of the Administrator's letter. The response must explain in detail the facts alleged to be in dispute and attach any supporting documentation.

Proposed § 13.51(c)(2)(ii) requires that the information submitted in the response alleging the existence of a factual dispute must be timely in order for the Administrator to examine such information. Where the Administrator determines there is a relevant issue of fact, the Administrator will refer the case to the Chief Administrative Law Judge as under proposed § 13.51(b)(3). If the Administrator determines there is no relevant issue of fact, the Administrator will so rule and advise the contractor accordingly.

Proposed § 13.51(c)(3) applies where a contractor desires review of an Administrator's ruling under proposed § 13.51(c)(1) or the final sentence of proposed § 13.51(c)(2)(ii). It requires a contractor to file any petition for review with the ARB postmarked within 30 calendar days of the Administrator's ruling, with a copy thereof to the Administrator. It further requires the petitioner to file its petition in accordance with the procedures set forth in 29 CFR part 7.

Proposed § 13.51(d) provides that the Administrator's investigative findings letter will become the final order of the Secretary if a timely response to the letter is not made or a timely petition for review is not filed. It additionally provides that if a timely response or a timely petition for review is filed, the investigative findings letter will be inoperative unless and until the decision is upheld by an ALJ or the ARB, or the letter otherwise becomes a final order of the Secretary.

Section 13.52 Debarment Proceedings

Proposed § 13.52, which is identical to the analogous provision in the Minimum Wage Executive Order regulations, 29 CFR 10.52, which the Department primarily derived from the DBA implementing regulations at 29 CFR 5.12, 79 FR 60683, addresses debarment proceedings. Proposed § 13.52(a)(1) provides that whenever any contractor is found by the Secretary of Labor to have disregarded its obligations to employees or subcontractors under Executive Order or part 13, such contractor and its responsible officers,

and any firm, corporation, partnership, or association in which such contractor or responsible officers have an interest, will be ineligible for a period of up to three years to receive any contracts or subcontracts subject to the Executive Order from the date of publication of the name or names of the contractor or persons on the excluded parties list currently maintained on the System for Award Management Web site, *http://www.SAM.gov.*

Proposed § 13.52(b)(1) provides that where the Administrator finds reasonable cause to believe a contractor has committed a violation of the Executive Order or part 13 that constitutes a disregard of its obligations to its employees or subcontractors, the Administrator will notify by certified mail to the last known address, the contractor and its responsible officers (and any firms, corporations, partnerships, or associations in which the contractor or responsible officers are known to have an interest) of the finding. Pursuant to proposed § 13.52(b)(1), the Administrator would additionally furnish those notified a summary of the investigative findings and afford them an opportunity for a hearing regarding the debarment issue. Those notified would have to request a hearing on the debarment issue, if desired, by letter to the Administrator postmarked within 30 calendar days of the date of the letter from the Administrator. The letter requesting a hearing would need to set forth any findings that are in dispute and the reasons therefore, including any affirmative defenses to be raised. Proposed § 13.52(b)(1) also requires the Administrator, upon receipt of a timely request for hearing, to refer the matter to the Chief Administrative Law Judge by Order of Reference, to which would be attached a copy of the Administrator's investigative findings letter and the response thereto, for designation to an ALJ to conduct such hearings as may be necessary to determine the matters in dispute. Proposed § 13.52(b)(2) provides that hearings under § 13.52 will be conducted in accordance with 29 CFR part 6. If no timely request for hearing is received, the Administrator's findings will become the final order of the Secretary.

Section 13.53 Referral to Chief Administrative Law Judge; Amendment of Pleadings

Proposed § 13.53, as well as proposed §§ 13.54–13.57, are largely identical to the corresponding provisions in the Minimum Wage Executive Order rulemaking, 29 CFR 10.53-.57, and are derived from the SCA and DBA rules of practice for administrative proceedings contained in 29 CFR part 6. Proposed § 13.53(a) provides that upon receipt of a timely request for a hearing under proposed § 13.51 (where the Administrator has determined that relevant facts are in dispute) or proposed § 13.52 (debarment), the Administrator will refer the case to the Chief Administrative Law Judge by Order of Reference, to which would be attached a copy of the investigative findings letter from the Administrator and the response thereto, for designation of an ALJ to conduct such hearings as may be necessary to decide the disputed matters. It further provides that a copy of the Order of Reference and attachments thereto will be served upon the respondent and that the investigative findings letter and the response thereto will be given the effect of a complaint and answer, respectively, for purposes of the administrative proceeding.

Proposed § 13.53(b) states that at any time prior to the closing of the hearing record, the complaint or answer may be amended with permission of the ALJ upon such terms as the ALJ shall approve, and that for proceedings initiated pursuant to proposed § 13.51, such an amendment could include a statement that debarment action is warranted under proposed § 13.52. It further provides that such amendments will be allowed when justice and the presentation of the merits are served thereby, provided no prejudice to the objecting party's presentation on the merits will result. It additionally states that when issues not raised by the pleadings were reasonably within the scope of the original complaint and were tried by express or implied consent of the parties, they will be treated as if they had been raised in the pleadings, and such amendments could be made as necessary to make them conform to the evidence. Proposed § 13.53(b) further provides that the presiding ALJ may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events that have happened since the date of the pleadings and that are relevant to any of the issues involved. It also authorizes the ALJ to grant a continuance in the hearing, or leave the record open, to enable the new allegations to be addressed.

Section 13.54 Consent Findings and Order

Proposed § 13.54(c) provides that parties may at any time prior to the ALJ's receipt of evidence or, at the ALJ's discretion, at any time prior to issuance of a decision, agree to dispose of the matter, or any part thereof, by entering into consent findings and an order disposing of the proceeding. Proposed § 13.54(b) provides that any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide: (1) That the order shall have the same force and effect as an order made after full hearing; (2) that the entire record on which any order may be based shall consist solely of the Administrator's findings letter and the agreement; (3) a waiver of any further procedural steps before the ALJ and the ARB regarding those matters which are the subject of the agreement; and (4) a waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement. Proposed § 13.54(c) provides that within 30 calendar days of receipt of any proposed consent findings and order, the ALJ will accept the agreement by issuing a decision based on the agreed findings and order, provided the ALJ is satisfied with the proposed agreement's form and substance. It further provides that if the agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

Section 13.55 Proceedings of the Administrative Law Judge

Proposed § 13.55 addresses the ALJ's proceedings and decision. Proposed § 13.55(a) provides that the Office of Administrative Law Judges has jurisdiction to hear and decide appeals concerning questions of law and fact from the Administrator's investigative findings letters issued under proposed § 13.51 and/or proposed § 13.52.

Proposed § 13.55(b) provides that each party may file with the ALJ proposed findings of fact, conclusions of law, and a proposed order, together with a supporting brief expressing the reasons for such proposals, within 20 calendar days of filing of the transcript (or a longer period if the ALJ permits). It also provides that each party will serve such documents on all other parties.

Proposed § 13.55(c)(1) requires an ALJ to issue a decision within a reasonable period of time after receipt of the proposed findings of fact, conclusions of law, and order, or within 30 calendar days after receipt of an agreement containing consent findings and an order disposing of the matter in whole. It further provides that the decision will contain appropriate findings, conclusions of law, and an order and be served upon all parties to the

proceeding. Proposed § 13.55(c)(2) provides that if the Administrator requests debarment, and the ALJ concludes the contractor has violated the Executive Order or part 13, the ALJ will issue an order regarding whether the contractor is subject to the excluded parties list that will include any findings related to the contractor's disregard of its obligations to employees or subcontractors under the Executive Order or part 13.

Proposed § 13.55(d) provides that the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. 504, does not apply to proceedings under part 13. The proceedings proposed are not required by an underlying statute to be determined on the record after an opportunity for an agency hearing. Therefore, an ALJ has no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the EAJA for any proceeding under part 13.

Proposed § 13.55(e) provides that if an ALJ concludes that a violation of the Executive Order or part 13 occurred, the final order shall mandate action to remedy the violation, including any monetary or equitable relief described in proposed § 13.44. It also requires an ALJ to determine whether an order imposing debarment is appropriate, if the Administrator has sought debarment.

Proposed § 13.55(f) provides that the ALJ's decision will become the final order of the Secretary, provided a party does not timely appeal the matter to the ARB.

Section 13.56 Petition for Review

The Department proposes § 13.56 as the process to apply to petitions for review to the ARB from ALJ decisions. Proposed § 13.56(a) provides that within 30 calendar days after the date of the decision of the ALJ, or such additional time as the ARB grants, any party aggrieved thereby who desires review must file a petition for review with supporting reasons in writing to the ARB with a copy thereof to the Chief Administrative Law Judge. It further requires the petition to refer to the specific findings of fact, conclusions of law, and order at issue and that a petition concerning a debarment decision state the disregard of obligations to employees and subcontractors, or lack thereof, as appropriate. It additionally requires a party to serve the petition for review, and all supporting briefs, on all parties and on the Chief Administrative Law Judge. It also states that a party must timely serve copies of the petition and all supporting briefs on the Administrator and the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor.

Proposed § 13.56(b) provides that if a party files a timely petition for review, the ALJ's decision will be inoperative unless and until the ARB issues an order affirming the decision, or the decision otherwise becomes a final order of the Secretary. It further provides that if a petition for review concerns only the imposition of debarment, the remainder of the ALJ's decision will be effective immediately. It additionally states that judicial review will not be available unless a timely petition for review to the ARB is first filed. Failure of the aggrieved party to file a petition for review with the ARB within 30 calendar days of the ALJ decision will render the decision final, without further opportunity for appeal.

Section 13.57 Administrative Review Board Proceedings

Proposed § 13.57 outlines the ARB proceedings under the Executive Order. Proposed § 13.57(a)(1) states the ARB has jurisdiction to hear and decide in its discretion appeals from the Administrator's investigative findings letters issued under proposed § 13.51(c)(1) or the final sentence of proposed § 13.51(c)(2)(ii), Administrator's rulings issued under proposed § 13.58, and from ALJ decisions issued under proposed § 13.55. It further provides that in considering the matters within its jurisdiction, the ARB will be the Secretary's authorized representative and will act fully and finally on behalf of the Secretary. Proposed § 13.57(a)(2)(i) identifies the limitations on the ARB's scope of review, including a restriction on passing on the validity of any provision of part 13 and a general prohibition on receiving new evidence in the record, because the ARB is an appellate body and must decide cases before it based on substantial evidence in the existing record. Proposed § 13.57(a)(2)(ii) prohibits the ARB from granting attorney's fees or other litigation expenses under the EAJA.

Proposed § 13.57(b) requires the ARB to issue a final decision within a reasonable period of time following receipt of the petition for review and to serve the decision by mail on all parties at their last known address, and on the Chief ALJ, if the case involved an appeal from an ALJ's decision. Proposed § 13.57(c) directs the ARB's order to mandate action to remedy a violation, including any monetary or equitable relief described in proposed § 13.44, if the ARB concludes a violation occurred. If the Administrator has sought debarment, the ARB will determine whether a debarment remedy is appropriate.

Finally, proposed § 13.57(d) provides that the ARB's decision will become the Secretary's final order in the matter.

Section 13.58 Administrator Ruling

Proposed § 13.58 sets forth a procedure for addressing questions regarding the application and interpretation of the rules contained in part 13. Proposed § 13.58(a), which the Department derived primarily from the DBA's implementing regulations at 29 CFR 5.13, provides that such questions can be referred to the Administrator. It further provides that the Administrator will issue an appropriate ruling or interpretation related to the question. Additionally, under proposed § 13.58(a), requests for rulings under this section shall be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

Any interested party can, pursuant to proposed § 13.58(b), appeal a final ruling of the Administrator issued pursuant to proposed § 13.58(a) to the ARB within 30 calendar days of the date of the ruling.

**Appendix A (Contract Clause)**

Because Executive Order 13706 requires inclusion of a contract clause in covered contracts, the Department has set forth the text of a proposed contract clause in appendix A to part 13. As required by the Order, the proposed contract clause specifies employees must earn not less than 1 hour of paid sick leave for every 30 hours worked. Consistent with the Secretary's authority to obtain compliance with the Order, as well as the Secretary's responsibility to issue regulations implementing the requirements of the Order that incorporate, to the extent practicable, existing procedures, remedies, and enforcement processes under the FLSA, SCA, DBA, FMLA, VAWA and Executive Order 13658, the additional provisions of the contract clause are based on the statutory text or implementing regulations of these five statutes and Executive Order 13658 and are intended to obtain compliance with the Order.

The introduction to the contract clause provides that the proposed clause must be included by the contracting agency in all contracts, contract-like instruments, and solicitations to which Executive Order 13706 applies, except for procurement contracts subject to the Federal Acquisition Regulation (FAR). For procurement contracts subject to the FAR, contracting agencies shall use the

clause set forth in the FAR developed to implement part 13. Such clause shall accomplish the same purposes as the clause set forth in appendix A and shall be consistent with the requirements set forth in the Secretary's regulations.

Proposed paragraph (a) of the contract clause set forth in appendix A provides that the contract in which the clause is included is subject to Executive Order 13706, the regulations issued by the Secretary of Labor at 29 CFR part 13 to implement the Order's requirements, and all the provisions of the contract clause.

Proposed paragraph (b) identifies the contractor's general paid sick leave obligations. Paragraph (b)(1) stipulates that contractors must permit each employee engaged in the performance of the contract by the prime contractor or any subcontractor, regardless of any contractual relationship that may be alleged to exist between the contractor and the employee, to earn not less than 1 hour of paid sick leave for every 30 hours worked. It further provides that the contractor must allow accrual and use of paid sick leave as required by the Executive Order and 29 CFR part 13, particularly the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in the contract.

The first sentence of proposed paragraph (b)(2), which reflects requirements in proposed §§ 13.23 and 13.24 and was derived from the contract clauses applicable to contracts subject to the SCA, DBA and Executive Order 13706, *see* 29 CFR 4.6(h) (SCA); 29 CFR 5.5(a)(1) (DBA); 79 CFR 60731 (Executive Order 13658), aims to ensure that employees actually receive the full pay and benefits to which they are entitled under the Executive Order and 29 CFR part 13 when they use paid sick leave. It requires a contractor to provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account. Proposed paragraph (b)(2)'s second sentence clarifies that employees that have used paid sick leave must receive the full pay and benefits to which they are entitled for the period of leave used no later than one pay period following the end of the regular pay period in which the employee used the sick leave. This requirement appears in proposed § 13.28.

Proposed paragraph (b)(3) provides that the prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the requirements of Executive Order 13706, 29 CFR part 13, and this clause. This responsibility on the part of prime and upper-tier contractors for subcontractor compliance parallels that of the SCA, DBA and Executive Order 13658. *See* 29 CFR 4.114(b) (SCA); 29 CFR 5.5(a)(6) (DBA); 29 CFR 10.21(b) (Executive Order 13658). It also appears in proposed § 13.21(b).

Proposed paragraphs (c) and (d) of the contract clause are derived primarily from the contract clauses applicable to contracts subject to the SCA, DBA and Executive Order 13658, *see* 29 CFR 4.6(i) (SCA); 29 CFR 5.5(a)(2), (7) (DBA); 79 FR 60731 (Executive Order 13658). Paragraph (c) provides that the contracting officer shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the prime contractor under the contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of Executive Order 13706, 29 CFR part 13, or this clause, including any pay and/or benefits denied or lost by reason of its violation; other actual monetary losses sustained as a direct result of the violation; and liquidated damages. Consistent with withholding procedures under the SCA, DBA and Executive Order 13658, paragraph (c) would allow the contracting agency and the Department to effect withholding of funds from the prime contractor on not only the contract covered by the Executive Order but also on any other contract that the prime contractor has entered into with the Federal Government.

Proposed paragraph (d) states the circumstances under which the contracting agency and/or the Department may suspend or terminate a contract, or debar a contractor, for violations of the Executive Order. It provides that in the event of a failure to comply with any term or condition of the Executive Order, 29 CFR part 13, or the clause, the contracting agency may on its own action, or after authorization or by direction of the Department and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Paragraph (d) additionally provides that any failure to comply with the contract clause may constitute grounds for termination of the right to proceed with the contract work and, in such event, for the Federal Government to enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. Paragraph (d) also provides that a breach of the contract clauses may be grounds to debar the contractor as provided in proposed 29 CFR part 13.52.

Proposed paragraph (e), which implements section 2(f) of the Executive Order, provides that the paid sick leave required by the Executive Order, 29 CFR part 13, and the clause is in addition to a contractor's obligations under the SCA and DBA, and that a contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of the Executive Order and 29 CFR part 13.

Proposed paragraph (f), which implements section 2(l) of the Executive Order, provides that nothing in Executive Order 13658 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under Executive Order 13760 and 29 CFR part 13. Proposed § 13.5(f)(2)(i) and proposed § 13.1(b) also implement sections 2(f) and 2(l) of the Executive Order, and the preamble discussions related to proposed § 13.5(f)(2)(i) and proposed § 13.1(b) accordingly describe the operation of paragraphs (e) and (f) in greater detail.

Proposed paragraph (g) sets forth recordkeeping and related obligations that are consistent with the Secretary's authority under section 4 of the Order to obtain compliance with the Order, and that the Department views as essential to determining whether the contractor has satisfied its obligations under the Executive Order. The Department derived the obligations set forth in paragraph (g) from the FLSA, SCA, DBA, FMLA and Executive Order 13658. The recordkeeping obligations proposed in paragraph (g) duplicate those in proposed § 13.25; a description of those obligations accordingly appears in the preamble related to § 13.25.

Proposed paragraph (h) requires the contractor to both insert the contract clause in all its covered subcontracts and to require its subcontractors to include the clause in any covered lower–tier subcontracts.

Proposed paragraph (i), which is derived from the SCA contract clause, 29 CFR 4.6(n), and the Executive Order 13658 contract clause, 79 FR 60731, sets forth the certifications of eligibility the contractor makes by entering into the contract. Paragraph (i)(1) stipulates that

by entering into the contract, the contractor and its officials certify that neither the contractor nor any person or firm with an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the SCA, section 3(a) of the DBA, or 29 CFR 5.12(a)(1). Paragraph (i)(2) constitutes a certification that no part of the contract shall be subcontracted to any person or firm on the list of persons or firms ineligible to receive Federal contracts currently maintained on the System for Award Management Web site, *http://www.SAM.gov.* Paragraph (i)(3) contains an acknowledgement by the contractor that the penalty for making false statements is prescribed in the U.S. Criminal Code at 18 U.S.C. 1001.

Proposed paragraph (j) implements section 2(k) of the Executive Order. The text of paragraph (j) mirrors the proposed regulatory text at proposed §§ 13.6(a) and § 13.6(b). A full description of the operation of the proposed contractor obligations not to interfere with or discriminate against employees with respect to the accrual or use of paid sick leave accordingly appears in the preamble related to proposed §§ 13.6(a) and § 13.6(b).

Proposed paragraph (k) provides that employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706, 29 CFR part 13, or the clause. As discussed in greater detail in the preamble related to proposed § 13.7, the Department included a provision prohibiting the waiver of rights in the regulations implementing the Minimum Wage Executive Order and believes it is appropriate to adopt the same policy here.

Proposed paragraph (l) requires that contractors notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706, 29 CFR part 13, and the clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. It additionally permits contractors that customarily post notices to employees electronically to post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment. The notice obligations contained in paragraph (l) mirror those contained in proposed § 13.27(a)–(b), which the Department derived from the Minimum Wage Executive Order implementing regulations at 29 CFR 10.29(b)–(c). The preamble related to those sections contains a discussion of the Department's rationale for including the particular notice obligation it is proposing. Proposed paragraph (m) is based on section 5(b) of the Executive Order and provides that disputes related to the application of the Executive Order to the contract shall not be subject to the contract's general disputes clause. Instead, such disputes shall be resolved in accordance with the dispute resolution process set forth in 29 CFR part 10. Paragraph (m) also provides that disputes within the meaning of the clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

## IV. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. Persons are not required to respond to the information collection requirements until they are approved by OMB under the PRA at the final rule stage.

*Purpose and use:* This NPRM, which implements the paid sick leave requirements of Executive Order 13706, contains provisions that are considered collections of information under the PRA. Pursuant to proposed § 13.21, the contractor and any subcontractors shall include in any covered subcontracts the applicable Executive Order paid sick leave contract clause referred to in proposed § 13.11(a) and shall require, as a condition of payment, that the subcontractor include the contract clause in any lower-tier subcontracts. Pursuant to proposed § 13.25, contractors and each subcontractor performing work subject to Executive Order 13706 and these proposed regulations shall make and maintain during the course of the covered contract, and preserve for no less than three years thereafter, records containing the information specified in paragraphs (a)(1) through (15) of proposed § 13.25 for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division. These include: (1) Name, address, and Social Security number of each employee; (2) The employee's occupation(s) or classification(s); (3) The rate or rates of wages paid; (4) The number of daily and weekly hours worked; (5) Any deductions made; (6) The total wages paid each pay period; (7) A copy of notifications to employees of the amount of paid sick leave the employees have accrued as required under § 13.5(a)(2); (8) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests; (9) Dates and amounts of paid sick leave used by employees; (10) A copy of any written denials of employees' requests to use paid sick leave, including explanations for such denials, as required under § 13.5(d)(3); (11) Any records reflecting the certification and documentation a contractor may require an employee to provide under § 13.5(e), including copies of any certification or documentation provided by an employee; (12) Any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; (13) A copy of any certified list of employees' accrued, unused paid sick leave provided to a contracting officer in compliance with § 13.26; (14) Any certified list of employees' accrued, unused paid sick leave received from the contracting agency in compliance with § 13.11(f); and (15) The relevant covered contract.

Additionally, under proposed § 13.25, if a contractor wishes to distinguish between an employee's covered and non-covered work, the contractor must keep records reflecting such distinctions.

The Department notes that many of the proposed recordkeeping requirements in this NPRM related to paid sick leave are new requirements. As a result, the Department will create a new information collection titled ''Government Contractor Paid Sick Leave'' and submit it to OMB for approval under OMB control number 1235–0NEW. A new information collection request (ICR) has been submitted to the OMB that would provide PRA authorization for control

number 1235–0NEW to incorporate the recordkeeping provisions in this proposed rule and to incorporate burdens associated with the new recordkeeping requirements. Additionally, the Department will submit to OMB for approval a revision to ICR 1235–0018 incorporating certain recordkeeping provisions in this proposed rule even though the proposed rule does not increase a paperwork burden on the regulated community of the information collection provisions contained in ICR 1235–0018. The ICR under OMB control number 1235–0018 contains the general FLSA recordkeeping requirements and burdens. Overlapping recordkeeping requirements are located in proposed § 13.25(a)(1)—(6) (including an overlapping exemption located in proposed § 13.25(c)). Such burden is already captured in the ICR for all employers.

The WHD obtains PRA clearance under control number 1235–0021 for an information collection covering complaints alleging violations of various labor standards that the agency administers and enforces. An ICR has been submitted to revise the approval to incorporate the provisions in this proposed rule applicable to complaints and adjust burden estimates to reflect any increase in the number of complaints filed against contractors who fail to comply with the paid sick leave requirements of Executive Order 13706 and 29 CFR part 13.

Subpart E of this proposed rule establishes administrative proceedings to resolve investigation findings. Particularly with respect to hearings, the rule imposes information collection requirements. The Department notes that information exchanged between the respondent in a civil or an administrative action and the agency in order to resolve the action would be exempt from PRA requirements. *See* 44 U.S.C. 3518(c)(1)(B); 5 CFR 1320.4(a)(2). This exemption applies throughout the civil or administrative action (such as an investigation and any related administrative hearings); therefore, the Department has determined the administrative requirements contained in subpart E of this proposed rule are exempt from needing OMB approval under the PRA.

Information and technology: There is no particular order or form of records prescribed by the proposed regulations. A contractor may meet the requirements of this proposed rule using paper or electronic means. The WHD, in order to reduce burden caused by the filing of complaints that are not actionable by the agency, uses a complaint filing process that has complainants discuss their concerns with WHD professional staff. This process allows agency staff to refer complainants raising concerns that are not actionable under wage and hour laws and regulations to an agency that may be able to offer assistance.

Public comments: The Department seeks comments on its analysis that this NPRM creates a slight paperwork burden associated with ICR 1235–0021 but does not create a paperwork burden on the regulated community of the information collection provisions contained in ICR 1235–0018. Additionally, the Department seeks comments on its analysis that this NPRM creates a new paperwork burden on the regulated community as described in the new information collection provisions contained in ICR 1235–0NEW. Commenters may send their views to the Department in the same way as all other comments (*e.g.,* through the *http://www.regulations.gov* Web site). While much of the information provided to OMB in support of the information collection request appears in the preamble, interested parties may obtain a copy of the full recordkeeping and complaint process supporting statements by sending a written request to the mail address shown in the **ADDRESSES** section at the beginning of this preamble. In addition to having an opportunity to file comments with the Department, comments about the paperwork implications of the proposed regulations may be addressed to the OMB. Comments to the OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the Wage and Hour Division, Office of Management and Budget, Room 10235, Washington, DC 20503; Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers). The OMB will consider all written comments that agency receives within 30 days of publication of this proposed rule. As previously indicated, written comments directed to the Department may be submitted within 30 days of publication of this proposed rule.

The OMB and the Department are particularly interested in comments that:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Total burden for the recordkeeping and complaint process information collections, including the burdens that will be unaffected by this proposed rule and any changes are summarized as follows:

*Type of Review:* Revision to currently approved information collections.
*Agency:* Wage and Hour Division, Department of Labor.
*Title:* Records to be Kept by Employers—Fair Labor Standards Act.
*OMB Control Number:* 1235–0018.
*Affected Public:* Private sector businesses or other for-profits, farms, not-for-profit institutions, state, local and tribal governments, and individuals or households.
*Estimated Number of Respondents:* 3,911,600 (unaffected by this rulemaking).
*Estimated Number of Responses:* 40,998,533 (unaffected by this rulemaking).
*Estimated Burden Hours:* 1,250,164 (unaffected by this rulemaking).
*Estimated Time per Response:* Various (unaffected by this rulemaking).
*Frequency:* Various (unaffected by this rulemaking).
*Other Burden Cost:* 0.
*Title:* Employment Information Form.
*OMB Control Number:* 1235–0021.
*Affected Public:* Businesses or other for-profit, not-for-profit institutions, state and local governments, and individuals or households.
*Total Respondents:* 35,511 (161 from this rulemaking).
*Estimated Number of Responses:* 35,511 (161 from this rulemaking).
*Estimated Burden Hours:* 11,837 (54 from this rulemaking).
*Estimated Time per Response:* 20 minutes (unaffected by this rulemaking).
*Frequency:* once.
*Other Burden Cost:* 0.

*Type of Review:* Approval of New Information Collection.
*Agency:* Wage and Hour Division, Department of Labor.
*Title:* Government Contractor Paid Sick Leave.
*OMB Control Number:* 1235–0NEW.
*Affected Public:* Businesses or other for-profit, farms, not-for-profit institutions, state, local and tribal governments, and individuals or households.
*Total Respondents:* 322,067.
*Estimated Number of Responses:* 6,326,198.
*Estimated Burden Hours:* 134,263.

*Estimated Time per Response:* various.
*Frequency:* on occasion.
*Other Burden Cost:* $246,713 (maintenance and operations).

## V. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of an intended regulation and to propose or adopt a regulation only upon a reasoned determination that the intended regulation's net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity) justify its costs. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits where possible, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether a regulatory action is a ''significant regulatory action,'' which includes an action that has an annual effect of $100 million or more on the economy. Significant regulatory actions are subject to review by OMB. As described below, this proposed rule is economically significant. Therefore, the Department has prepared a Preliminary Regulatory Impact Analysis (PRIA) in connection with this proposed rule as required under section 6(a)(3) of Executive Order 12866, and OMB has reviewed the proposed rule.

### *A. Introduction*

#### i. Background and Need for Rulemaking

Executive Order 13706 (EO) provides that employees can earn up to seven days of paid sick leave annually on specified categories of contracts with the Federal Government where either the solicitation has been issued, or the contract has been awarded outside the solicitation process, on or after January 1, 2017. The Executive Order states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that allow their employees to earn paid sick leave.[2] This rulemaking implements the Executive Order, consistent with the authorization in section 3 of the Order.

#### ii. Summary of Affected Employees, Costs, Benefits, and Transfers

The Department estimated the number of employees who would as a result of the Executive Order and this proposed rule receive some amount of paid sick leave, *i.e.,* ''affected employees.'' There are accordingly two categories of affected employees: Those covered employees who currently receive no paid sick leave, and those covered employees who currently receive paid sick leave in an amount less than they would be entitled to receive under the Executive Order (up to 7 days annually). As discussed in detail below, because the proposed rule only applies to ''new contracts,'' and the Department has estimated it will take five years for the universe of possibly covered contracts to become ''new,'' the full impact of the rulemaking will not likely occur before Year 5. In Year 5, the Department estimates there will be 828,200 affected employees (Table 1).[3] This includes approximately 436,700 employees who currently receive no paid sick leave and 391,400 employees who receive some paid sick leave but would be entitled to receive additional paid sick leave under the proposed rulemaking.

The Department also estimated costs and transfer payments associated with this rulemaking. During the first 10 years the rule is in effect, average annualized direct employer costs are estimated to be $18.4 million. (This estimation assumes a 7 percent real discount rate; hereafter, unless otherwise specified, average annualized values will be presented using a 7 percent real discount rate.) This estimated annualized cost includes $6.0 million for regulatory familiarization, $5.6 million for initial implementation costs, $2.5 million for recurring implementation costs, and $4.3 million for administrative costs. For a discussion of how the Department estimated these numbers, please *see* Section C.ii.

Transfer payments are transfers of income from employers to employees. Estimated average annualized transfer payments are $250.1 million per year over 10 years. Lastly, the Department estimated deadweight loss (DWL). DWL occurs when a market operates at less than optimal equilibrium output, which happens anytime the conditions for a perfectly competitive market are not met, including due to a labor market intervention. The Department estimated that average annualized DWL will be $526,000 per year during the first ten years of the rule. This will be primarily due to a decrease in employment that may be caused by the proposed rule.

TABLE 1—SUMMARY OF AFFECTED EMPLOYEES, REGULATORY COSTS, AND TRANSFERS

| | Year 1 (1,000s) | Future years (1,000s) | | | Average annualized value (1,000s) | |
|---|---|---|---|---|---|---|
| | | Year 2 | Year 5 | Year 10 | 3% Real rate | 7% Real rate |
| Affected employees | 153.8 | 322.0 | 828.2 | 909.1 | ..... | ..... |
| Direct employer costs (2014$) | $92,148 | $6,398 | $9,960 | $6,205 | $16,674 | $18,362 |
| Regulatory familiarization | $45,132 | $0 | $0 | $0 | $5,137 | $6,005 |
| Initial implementation | $41,765 | $0 | $0 | $0 | $4,754 | $5,557 |
| Recurring implementation | $4,201 | $4,201 | $4,201 | $0 | $2,255 | $2,452 |
| Administrative | $1,050 | $2,198 | $5,759 | $6,205 | $4,528 | $4,347 |
| Transfers (2014$) | $58,897 | $123,977 | $323,299 | $364,109 | $260,761 | $250,051 |
| DWL (2014$) | $127 | $266 | $684 | $751 | $548 | $526 |

#### iii. Terminology and Abbreviations

The following terminology and abbreviations will be used throughout this Regulatory Impact Analysis (RIA).

ATUS: American Time Use Survey.

BLS: Bureau of Labor Statistics.

CPI–U: Consumer Price Index for all urban consumers.

CPS: Current Population Survey.

DWL: Deadweight loss, which is the loss of economic efficiency that can occur when the market equilibrium for a good or service is not achieved.

[2] The phrase ''economy and efficiency'' is used here only in the sense implied by the Federal Property and Administrative Services Act.

[3] This includes projected net job growth and so is somewhat larger than five times the number of affected employees in Year 1. Net job growth takes into account both workers entering government contracting and workers leaving government contracting.

ECEC: Employer Costs for Employee Compensation.

FY: Fiscal year. The Federal fiscal year is from October 1 through September 30.

NCS: National Compensation Survey.

OES: Occupational Employment Statistics.

PTO: Paid time-off.

Price elasticity of labor demand (with respect to wage): The percentage change in labor hours demanded in response to a one percent increase in wages.

Real dollars (2014$): Dollars adjusted using the CPI–U to reflect their purchasing power in 2014.

RIA: Regulatory Impact Analysis. This will be used to reference the analysis conducted to assess the impact of this regulation.

SAM: System for Award Management

SBA: Office of Advocacy of the U.S. Small Business Administration.

*B. Methodology To Determine the Number of Affected Employees*

i. Overview and Data

This section explains the methodology the Department used to estimate the number of affected employees. The first step in estimating the number of affected employees is determining the total number of employees working on Federal contracts (''Federal contract employees''). However, there are no data on the number of Federal contract employees. To estimate the number of Federal contract employees, the Department employed the approach used in the Department's final rule implementing Executive Order 13658.[4]

After determining the total number of Federal contract employees, the Department estimated the share who will receive additional days of paid sick leave due to the rulemaking. The 2015 NCS provides data on the percentage of employees with paid sick leave and the annual number of days of leave that each employee receives. This distribution allowed the Department to estimate the number of employees who receive less than the amount of paid sick leave required under the proposed rule. Note that the Executive Order generally measures paid sick leave in hours but because the NCS tabulates paid sick leave in days, the Department converted sick leave hours to days to use the NCS. The Department assumes 8 hours worked per day, so the Executive Order provides a maximum accrual of 7 days of paid sick leave annually. The 2015 NCS does not provide data for the agriculture industry. Therefore, the Department supplemented the 2015 NCS data on paid sick leave with data from the 2011 ATUS Leave Module.

ii. Number of Affected Employees

First, the Department estimated the number of employees who work on federal contracts that will be covered by the Executive Order. This represents the number of ''potentially affected workers.'' Then the Department estimated the share of potentially affected workers who will receive new or additional paid sick leave as a result of the EO. These workers are referred to as ''affected.''

The Department estimated the number of potentially affected employees by taking the ratio of Federal contracting expenditure to total output, by industry, and applying this ratio to total employment in that industry (Table 2). This analysis was conducted at the 2-digit NAICS level. The Department derived total Federal contracting expenditure from USASpending.gov data, which tabulates data on Federal contracting through the Federal Procurement Data System—Next Generation (FPDS–NG). The Congressional Budget Office (CBO) has stated that this is the ''only comprehensive source of information about federal spending on contracts.'' [5] According to data from USASpending.gov, the government spent $619 billion on procurement contracts in FY2014. The Department excluded expenditures to state and local governments both because government employees generally receive at least seven days of paid sick leave and because the DBA does not apply to construction performed by state or local government employees. The Department also excluded contracts performed outside the U.S. because the proposed rule only covers contracts to the extent they are performed in the U.S. These two adjustments reduce the relevant Federal government's expenditures to $407 billion. Next, the Department excluded expenditures on goods purchased by the Federal government because the proposed rule does not apply to contracts subject to the Walsh-Healey Public Contracts Act (PCA) and hence would not apply to contracts for the manufacturing and furnishing of materials and supplies.[6] Subtracting Federal expenditures on goods purchased, the Department found that the Federal government spent $230.2 billion on services (including construction) provided by government contractors in FY2014.[7] To determine the share of all output associated with government contracts the Department divided industry level contracting expenditures by that industry's gross output.[8] For example, in the information industry, $6.6 billion in contracting expenditures was divided by $1.5 trillion in total output, resulting in an estimate that covered government contracts compose 0.43 percent of every dollar of total output in the information industry.

The Department multiplied the ratio of covered-to-gross output by private sector employment at the industry level to estimate the share of employees working on covered contracts. The Department combined these ratios and employment figures from the 2014 OES for each 2-digit NAICS industry.[9] For example, in the information industry, there were approximately 2.7 million private sector employees in 2014. The Department multiplied 2.7 million by 0.43 percent to estimate that 12,000 employees in the information industry will be potentially affected by the EO.[10] [11]

[4] *See* 79 FR 60634, 60692–60720.

[5] Congressional Budget Office. (2015). Federal Contracts and the Contracted Workforce. P. 3. Available at: *https://www.cbo.gov/publication/49931.*

[6] For example, the government purchases pencils; however, a contract solely to purchase pencils would be subject to the PCA and accordingly would not be covered by the Executive Order.

[7] USASpending.gov does not capture certain types of concessions contracts and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents or the general public that will be covered by this proposed rule. However, a portion of contracts in some product service codes will not be covered by this proposed rule. Therefore, while the Department's estimate of the number of affected workers may be somewhat imprecise, the overinclusion of contracts from the applicable product service codes and the exclusion of some concessions contracts and contracts in connection with Federal property or lands related to offering services will offset each other to some degree in calculating the total number of affected workers.

[8] Bureau of Economic Analysis, National Income and Product Accounts (NIPA) Tables, Gross output. 2014.

[9] Bureau of Labor Statistics. Occupational Employment Statistics. May 2014. Available at: *http://www.bls.gov/oes/.*

[10] The North American Industry Classification System is a method by which Federal statistical agencies classify business establishments in order to collect, analyze, and publish data about certain industries. Each industry is categorized by a 2–6 digit number. United States Census Bureau. ''North American Industry Classification System: Introduction to NAICS.'' U.S. Department of Commerce. *http://www.census.gov/eos/www/naics/.*

[11] Note that number of employees aggregated across industry analysis does not match the total number of employees derived using totals due to the order of multiplying and summing.

TABLE 2—NUMBER OF POTENTIALLY AFFECTED EMPLOYEES

| Industry | NAICS | Private employees (1,000s) [a] | Total output (billions) [b] | Covered contracting output (millions) [c] | Share output from covered contracting (percent) | Total contract employees (1,000s) [d] | Potentially affected in first year (1,000s) [e] |
|---|---|---|---|---|---|---|---|
| Agriculture, forestry, fishing and | 11 | 410 | $463 | $242 | 0.05 | 0 | 0 |
| Mining | 21 | 824 | 687 | 82 | 0.01 | 0 | 0 |
| Utilities | 22 | 548 | 413 | 2,993 | 0.73 | 4 | 1 |
| Construction | 23 | 6,094 | 1,217 | 22,263 | 1.83 | 111 | 22 |
| Manufacturing | 31–33 | 12,101 | 6,144 | 18,965 | 0.31 | 37 | 7 |
| Wholesale trade | 42 | 5,780 | 1,590 | 237 | 0.01 | 1 | 0 |
| Retail trade | 44–45 | 15,473 | 1,553 | 2,189 | 0.14 | 22 | 4 |
| Transportation and warehousing | 48–49 | 4,590 | 1,057 | 8,733 | 0.83 | 38 | 8 |
| Information | 51 | 2,736 | 1,517 | 6,590 | 0.43 | 12 | 2 |
| Finance and insurance | 52 | 5,619 | 2,152 | 17,651 | 0.82 | 46 | 9 |
| Real estate and rental and leasing | 53 | 2,018 | 3,142 | 952 | 0.03 | 1 | 0 |
| Professional, scientific, and | 54 | 8,232 | 1,888 | 106,347 | 5.63 | 464 | 93 |
| Management of companies and | 55 | 2,207 | 601 | 1 | 0.00 | 0 | 0 |
| Administrative and waste services | 56 | 8,627 | 820 | 27,884 | 3.40 | 293 | 59 |
| Educational services | 61 | 2,728 | 335 | 2,500 | 0.75 | 20 | 4 |
| Health care and social assistance | 62 | 17,370 | 2,131 | 9,576 | 0.45 | 78 | 16 |
| Arts, entertainment, and recreation | 71 | 2,199 | 295 | 52 | 0.02 | 0 | 0 |
| Accommodation and food services | 72 | 12,549 | 891 | 1,307 | 0.15 | 18 | 4 |
| Other services | 81 | 3,938 | 619 | 1,592 | 0.26 | 10 | 2 |
| Total private | ..... | 114,039 | 27,514 | 230,155 | 0.84 | 1,157 | 231 |

[a] **Source:** OES May 2014.
[b] **Source:** Bureau of Economic Analysis, NIPA Tables, Gross output. 2014.
[c] **Source:** USASpending.gov. Contracting expenditures for covered contracts in FY2014.
[d] Assumes share of expenditure on contracting is same as share of employment. Assumes all employees work exclusively on Federal contracts. Thus this may be an underestimate if some employees are not working entirely on Federal contracts.
[e] 20 percent of employees on Federal contracts are considered new in Year 1.

Because the EO only applies to ''new contracts,'' coverage of the estimated total number of potentially affected employees (1.2 million) will occur on a staggered year-by-year basis. The Department accordingly needed to devise a method to estimate at what rate the staggered coverage would occur. The Executive Order defines a new contract to be either one for which a solicitation has been issued, or for which the contract has been awarded outside the solicitation process, on or after January 1, 2017. Consistent with the Department's approach in the rulemaking implementing Executive Order 13658, *see* 79 FR 34568, 34596; 79 FR 60693, the Department estimated that twenty percent of contracts will qualify as ''new'' in Year 1. If approximately twenty percent of contracts are new each year, then almost all contracts should qualify as new for purposes of the Executive Order by Year 5.[12] The Department assumed employee coverage would also occur on a uniform twenty percent year-by-year basis. The Department accordingly multiplied the 1.2 million total potentially affected employees by 0.2 to estimate that 231,300 employees may be impacted in Year 1.

Next the Department used the 2015 NCS to determine how many of the potentially affected employees already receive paid sick leave. The 2015 NCS estimates that nationally 61 percent of all private sector employees currently receive some paid sick leave.[13] [14] However, this average can vary substantially by industry and hours worked. To account for these differences the Department performed its analysis by industry and full-time/part-time status.[15] In general, the BLS reports the share of employees who receive paid leave disaggregated by industry (Table 3). The NCS does not publish data by industry and full-time status; however, for this proposed rulemaking BLS provided this breakdown using the NCS microdata for industries with sufficient observations to meet their publication criteria. For industries not available from the NCS by part-time status, the Department estimated the rates.[16] The NCS does not include employees in the agriculture, forestry, fishing and hunting industries; therefore, the Department estimated the share of employees with access to paid sick leave in those industries based on the 2011 ATUS Leave Module.[17]

[12] If some contracts last longer than 5 years, then not all contracts will be covered by Year 5.

[13] National Compensation Survey, March 2015, ''Table 32. Leave benefits: Access, private industry employees''.

[14] Data on paid sick leave are not available specifically for Federal contractors. The Department assumes rates of paid sick leave for Federal contractors are similar to all private sector workers.

[15] The Department's analysis categorizes as full-time those individuals who work 32 hours or more per workweek, and as part-time those individuals who work less than 32 hours per workweek (rounded to the nearest integer). This represents the line of demarcation between workers who would and would not accrue 56 hours of paid sick leave a year if they work a full year. The Department's designation herein of certain individuals as ''full-time'' and other individuals as ''part-time'' based on their usual hours worked is solely for purposes of facilitating the economic analysis in this rulemaking.

[16] The Department used the share of employees with sick leave, for all employees and full-time employees, and the ratio of full-time to part-time employees in each industry to estimate the shares for part-time employees in those industries without part-time employees' shares. The Department used data from the CPS to calculate the ratio of full- to part-time employees.

[17] The 2011 ATUS Leave Module is a special supplement to the annual ATUS survey sponsored by the BLS and conducted by the U.S. Census Bureau. It surveys employees nationally on use of leave. The Department estimated the number of hours of leave taken the previous week by employees in the agriculture, forestry, fishing and hunting industries who (1) receive paid sick leave and (2) took leave for ''own illness or medical care'' or ''illness or medical care of another family member''. The weekly number of hours was multiplied by 52 weeks to estimate annual number of hours of sick leave taken.

TABLE 3—SHARE OF EMPLOYEES WITH PAID SICK LEAVE BY INDUSTRY AND FULL-TIME STATUS

| Industry | NAICS | % With Some Paid Sick Leave | | |
|---|---|---|---|---|
| | | Total [a] | Full-Time [b] | Part-Time [b] |
| Agriculture, forestry, fishing and hunting [c] | 11 | 26 | 30 | 10. |
| Mining | 21 | 64 | 65 | [d] 23. |
| Utilities | 22 | 89 | 89 | [d] 89. |
| Construction | 23 | 41 | 42 | 25. |
| Manufacturing | 31–33 | 65 | 67 | [d] 21. |
| Wholesale trade | 42 | 77 | 80 | [d] 35. |
| Retail trade | 44–45 | 50 | 73 | 27. |
| Transportation and warehousing | 48–49 | 74 | 75 | 73. |
| Information | 51 | 92 | 95 | 51. |
| Finance and insurance | 52 | 90 | 93 | 57. |
| Real estate and rental and leasing | 53 | 72 | 80 | [d] 36. |
| Professional, scientific, and technical services | 54 | 78 | 85 | [d] 25. |
| Management of companies and enterprises | 55 | 90 | 91 | [d] 85. |
| Administrative and waste services | 56 | 44 | 53 | 15. |
| Educational services | 61 | 73 | 90 | 24. |
| Health care and social assistance | 62 | 72 | 85 | 36. |
| Arts, entertainment, and recreation | 71 | 48 | 71 | 29. |
| Accommodation and food services | 72 | 25 | 46 | 11. |
| Other services | 81 | 57 | 73 | 24. |
| Total private | ..... | 61 | 73 | 25. |

[a] **Source:** National Compensation Survey, March 2015, ''Table 32. Leave benefits: Access, private industry workers'' (unless otherwise noted). Assumes distribution of paid leave is similar for Federal contractors and other private employees.

[b] The NCS does not publish data by industry and full-time status; however, for this proposed rulemaking the BLS provided this breakdown using the NCS microdata for industries with sufficient observations to meet their publication criteria. Full-time is defined as 32 or more hours per week, as explained above.

[c] NCS does not include information for this industry. Used 2011 ATUS Leave Module to estimate share of employees in this industry with paid sick leave. Assumes distribution of paid leave is similar for Federal contractors and other private sector employees.

[d] NCS does not include information for this industry and part-time status. The Department estimated these rates.

The Department separated the 231,300 employees potentially impacted in Year 1 into approximately 198,200 full-time employees and 33,100 part-time employees.[18] For full-time employees, across all industries, 73 percent receive some paid sick leave and 27 percent currently receive no paid sick leave. For part-time employees, 25 percent receive some paid sick leave and 75 percent receive no paid leave. All employees with no paid sick leave will be affected regardless of how many hours per week they work (assuming they work a sufficient number of hours to accrue paid sick leave).

Additionally, some employees who currently receive paid sick leave will also be affected by the proposed rule if they receive less than the required number of days. To determine how many of these employees are affected the Department used NCS data on the distribution of days of leave. The 2015 NCS provides the share of employees with a range of days of paid sick leave (*e.g.,* 5 to 9 days per year).[19] The NCS publishes these data aggregated across all industries. However, since this analysis is conducted by industry, the BLS provided the Department these ranges of days disaggregated by industry based on the NCS (*see* Appendix A). The Department then used the categorical distribution of days for all workers and full-time workers to approximate these values for both full-time and part-time workers.[20] This results in a distribution by categories of days of sick leave by industry and full-time status.

The Department distributed the share of employees within each NCS category (*e.g.,* 5 to 9 days per year) of paid sick leave days across the individual number of days in that category (*e.g.,* 5, 6, 7, 8, 9) using a Poisson distribution that approximates the entire distribution of days of paid sick leave provided to workers with this benefit.[21] For example, using the NCS data the Department estimates that 53 percent of full-time employees with paid sick leave receive 5 to 9 days of leave. Applying the Poisson distribution, the Department estimated 10 percent of employees with paid sick leave currently receive 5 sick days, 13 percent currently receive 6 sick days, etc.[22] The percent distributions of days of paid sick leave are presented in Appendix A.

To estimate the number of affected employees the Department summed the number of employees with less than 7 days of paid sick leave (7 days with 8 hours of paid leave per day is equal to the maximum of 56 hours of paid sick leave). The Department estimates 72,700 contract employees have access to paid sick leave but receive fewer than 7 days of paid sick leave (48.4 percent of workers with some paid sick leave) and are thus classified as affected employees. Next, the Department estimated the number of additional paid sick leave days these employees would need to receive to meet Executive Order 13706. This was done somewhat differently for full-time and part-time employees. For full-time employees with no paid sick leave the Department estimated they will receive 7 additional

[18] These estimates were calculated based on NCS data when possible. Otherwise, the Department used 2014 CPS data. The estimates assume the share of government contractors that are full-time is similar to private industry overall. As noted, full-time is defined for purposes of this analysis as 32 or more hours per week.

[19] Table 35. Paid sick leave: Number of annual days by service requirement, private industry workers, National Compensation Survey, March 2015. Available at: *http://www.bls.gov/ncs/ebs/benefits/2015/ownership/private/table35a.htm.*

[20] The distribution is available for all workers and full-time workers but not part-time workers. Combining these data with the share of workers who are full-time allowed the Department to approximate the distribution for part-time workers.

[21] The Poisson distribution is frequently used for discrete count data. The data were consistent with a Poisson distribution. The distribution of days of sick leave is continuous but was approximated using integers to allow use of the Poisson distribution and to simplify the analysis. Aggregate findings would be highly comparable if a continuous distribution had been used instead.

[22] Some additional manipulations were made to the data in cases where the Poisson distribution resulted in numbers contradictory to the reported medians (*see* Appendix A).

days of paid sick leave. For full-time employees with between 1 and 6 days of leave the Department estimated the number of additional days they would need to receive to reach 7 days of paid leave (*e.g.,* if currently receive 1 day then will receive an additional 6 days).

To estimate the additional number of paid sick days per year that would accrue to part-time employees as a result of the rule, the Department first had to estimate hours of paid sick leave per year currently available to these workers.

To estimate paid sick leave hours currently available to part-time employees required additional calculations because the NCS reports *days* of paid sick leave per year, not hours. Therefore the Department adjusted part-time employees' days of paid sick leave by assuming that the number of hours of paid sick leave associated with ''one day'' of leave is equivalent to average hours worked in a day. For example, if a part-time worker averages 6 hours of work per day, then one day of paid sick leave will also be equal to 6 hours. To do this, the Department divided part-time workers' average hours worked per week by 5 to calculate their average hours worked per day by industry. The Department then multiplied average work hours per day by NCS reported paid days of sick leave per year to estimate part-time employees' hours of paid sick leave currently available per year.

Next, the Department calculated the total hours of paid sick leave per year that might accrue to a part-time worker as a result of this EO. Because paid sick leave is accrued at a rate of 1 hour per every 30 hours worked, the Department divided mean annual hours worked for part-time workers in an industry by 30 to estimate the number of hours of paid sick leave required under the EO. The difference between hours of paid sick leave currently available per year and hours of paid sick leave per year required under the EO results in the additional hours that accrue to part-time workers. This was then divided by 8 to express the additional paid sick hours in terms of standardized 8-hour days. Table 6 presents the adjusted numbers for part-time employees.

A total of 153,800 employees were estimated to be affected in Year 1 (Table 4). The total number of additional days of paid sick leave is then calculated by multiplying the number of employees affected by the number of additional days of paid sick leave provided by the proposed rulemaking (Table 5 and Table 6). The Department estimated that the proposed rulemaking will result in a total of 681,700 additional days of paid sick leave provided (563,000 days for full-time workers and 118,700 days for part-time workers).[23]

TABLE 4—NUMBER OF AFFECTED EMPLOYEES IN YEAR 1

| Industry | Affected Employees | | | | |
|---|---|---|---|---|---|
| | Total | Full-time [a] | Part-time [a] | With no paid sick leave | With some paid sick leave |
| Agriculture, forestry, fishing and hunting | 37 | 29 | 9 | 32 | 5 |
| Mining | 13 | 13 | 0 | 7 | 6 |
| Utilities | 101 | 98 | 2 | 87 | 13 |
| Construction | 19,071 | 17,332 | 1,739 | 13,255 | 5,816 |
| Manufacturing | 5,538 | 5,238 | 300 | 2,615 | 2,923 |
| Wholesale trade | 122 | 112 | 10 | 40 | 82 |
| Retail trade | 3,051 | 1,993 | 1,059 | 1,741 | 1,311 |
| Transportation and warehousing | 4,022 | 3,545 | 476 | 1,914 | 2,108 |
| Information | 918 | 715 | 203 | 254 | 663 |
| Finance and insurance | 2,465 | 2,158 | 307 | 845 | 1,620 |
| Real estate and rental and leasing | 78 | 60 | 18 | 34 | 44 |
| Professional, scientific, and technical services | 56,571 | 47,074 | 9,497 | 20,403 | 36,168 |
| Management of companies and enterprises | 0 | 0 | 0 | 0 | 0 |
| Administrative and waste services | 47,336 | 36,748 | 10,588 | 31,861 | 15,475 |
| Educational services | 1,360 | 700 | 661 | 954 | 407 |
| Health care and social assistance | 8,415 | 6,196 | 2,219 | 3,724 | 4,691 |
| Arts, entertainment, and recreation | 56 | 33 | 23 | 34 | 22 |
| Accommodation and food services | 3,270 | 1,827 | 1,443 | 2,514 | 756 |
| Other services | 1,421 | 934 | 487 | 818 | 603 |
| Total private | 153,846 | 124,803 | 29,042 | 81,132 | 72,713 |

[a] Part-time is defined as working less than 32 hours per week.

TABLE 5—CURRENT DISTRIBUTION OF DAYS OF PAID LEAVE, ADDITIONAL DAYS OF LEAVE, AND AFFECTED EMPLOYEES IN YEAR 1, FULL-TIME EMPLOYEES

| Industry | Number of full-time potentially affected employees accruing annually the following number of days of sick leave | | | | | | | | Affected employees | Days additional sick leave available |
|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7+ | | |
| Agriculture, forestry, fishing | 24 | 0 | 0 | 1 | 2 | 1 | 1 | 5 | 29 | 180 |
| Mining | 7 | 0 | 0 | 0 | 0 | 1 | 5 | 6 | 13 | 54 |
| Utilities | 85 | 0 | 0 | 0 | 0 | 3 | 10 | 678 | 98 | 614 |
| Construction | 11,826 | 144 | 445 | 918 | 1,419 | 1,356 | 1,224 | 3,058 | 17,332 | 97,737 |

[23] The following estimate is based on the marginal number of paid sick days employers would have to provide due to this regulation. To the extent employers that currently provide paid sick leave do not modify their existing paid sick leave policies in accordance with section 2(g) of the Executive Order and proposed section 13.5(f), and to the extent SCA- or DBA-covered employers provide paid sick leave as an SCA or DBA fringe benefit, this estimate may not entirely reflect the total marginal number of days employers would have to provide. However, the Department assumes firms will be able to and will choose to apply the currently provided days of paid sick leave toward the requirements of the Executive Order and this rule, and the Department similarly understands that contractors generally do not provide paid sick leave as an SCA or DBA fringe benefit.

TABLE 5—CURRENT DISTRIBUTION OF DAYS OF PAID LEAVE, ADDITIONAL DAYS OF LEAVE, AND AFFECTED EMPLOYEES IN YEAR 1, FULL-TIME EMPLOYEES—Continued

| Industry | Number of full-time potentially affected employees accruing annually the following number of days of sick leave | | | | | | | | Affected employees | Days additional sick leave available |
|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7+ | | |
| Manufacturing | 2,358 | 48 | 197 | 542 | 1,119 | 487 | 487 | 1,907 | 5,238 | 24,764 |
| Wholesale trade | 32 | 1 | 5 | 14 | 28 | 16 | 15 | 49 | 112 | 444 |
| Retail trade | 847 | 21 | 64 | 133 | 205 | 356 | 367 | 1,145 | 1,993 | 8,601 |
| Transportation and warehousing | 1,680 | 20 | 92 | 283 | 657 | 319 | 494 | 3,176 | 3,545 | 16,575 |
| Information | 103 | 3 | 13 | 41 | 94 | 181 | 280 | 1,353 | 715 | 1,893 |
| Finance and insurance | 606 | 7 | 41 | 168 | 520 | 267 | 550 | 6,504 | 2,158 | 7,801 |
| Real estate and rental and leasing | 20 | 1 | 3 | 6 | 9 | 11 | 11 | 40 | 60 | 242 |
| Professional, scientific, and | 12,280 | 307 | 1,266 | 3,481 | 7,181 | 9,498 | 13,060 | 34,794 | 47,074 | 161,657 |
| Management of companies | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Administrative and waste services | 22,266 | 271 | 1,119 | 3,077 | 6,347 | 1,739 | 1,927 | 10,627 | 36,748 | 199,845 |
| Educational services | 324 | 2 | 13 | 49 | 140 | 59 | 112 | 2,538 | 700 | 3,194 |
| Health care and social assistance | 1,918 | 65 | 267 | 735 | 1,516 | 714 | 981 | 6,591 | 6,196 | 25,047 |
| Arts, entertainment, and recreation | 15 | 0 | 1 | 3 | 5 | 4 | 4 | 18 | 33 | 151 |
| Accommodation and food services | 1,179 | 18 | 55 | 113 | 175 | 142 | 146 | 356 | 1,827 | 10,036 |
| Other services | 397 | 8 | 32 | 88 | 182 | 96 | 132 | 537 | 934 | 4,207 |
| Total private | 55,968 | 915 | 3,614 | 9,652 | 19,598 | 15,250 | 19,806 | 73,382 | 124,803 | 563,043 |

**Note:** Numbers do not always add to total due to rounding.

TABLE 6—CURRENT DISTRIBUTION OF DAYS OF PAID LEAVE, ADDITIONAL DAYS OF LEAVE, AND AFFECTED EMPLOYEES IN YEAR 1, PART-TIME EMPLOYEES

| Industry | Number of part-time potentially affected employees accruing annually the following number of days of sick leave | | | | | | | | Affected employees | Days additional sick leave available [a] |
|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7+ | | |
| Agriculture, forestry, fishing and hunting | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 9 | 34 |
| Mining | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| Utilities | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 16 | 2 | 8 |
| Construction | 1,429 | 10 | 28 | 52 | 70 | 78 | 72 | 166 | 1,739 | 7,453 |
| Manufacturing | 257 | 1 | 3 | 8 | 15 | 8 | 8 | 27 | 300 | 1,269 |
| Wholesale trade | 7 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 10 | 35 |
| Retail trade | 894 | 4 | 11 | 20 | 27 | 54 | 49 | 165 | 1,059 | 4,373 |
| Transportation and warehousing | 234 | 3 | 14 | 38 | 78 | 46 | 63 | 390 | 476 | 1,552 |
| Information | 151 | 0 | 1 | 4 | 7 | 17 | 23 | 105 | 203 | 719 |
| Finance and insurance | 239 | 0 | 2 | 8 | 21 | 14 | 24 | 248 | 307 | 1,265 |
| Real estate and rental and leasing | 14 | 0 | 0 | 1 | 1 | 1 | 1 | 4 | 18 | 69 |
| Professional, scientific, and technical | 8,123 | 16 | 58 | 141 | 256 | 409 | 494 | 1,375 | 9,497 | 36,921 |
| Management of companies and | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Administrative and waste services | 9,595 | 25 | 89 | 215 | 389 | 129 | 146 | 700 | 10,588 | 45,055 |
| Educational services | 630 | 0 | 1 | 4 | 10 | 5 | 9 | 169 | 661 | 2,631 |
| Health care and social assistance | 1,806 | 8 | 30 | 74 | 133 | 76 | 92 | 603 | 2,219 | 8,977 |
| Arts, entertainment, and recreation | 19 | 0 | 0 | 1 | 1 | 1 | 1 | 4 | 23 | 83 |
| Accommodation and food services | 1,336 | 4 | 10 | 19 | 25 | 24 | 25 | 57 | 1,443 | 6,353 |
| Other services | 421 | 1 | 5 | 11 | 20 | 13 | 16 | 66 | 487 | 1,894 |
| Total private | 25,164 | 74 | 255 | 594 | 1,054 | 876 | 1,025 | 4,097 | 29,042 | 118,693 |

**Note:** Numbers do not always add to total due to rounding.
[a] This is expressed in terms of standardized 8-hour days, as described in the text.

To estimate the number of affected employees in later years, the Department calculated the average annual geometric growth rate in employment based on the ten-year employment projection for 2012 to 2022 from BLS' Employment Projections program. Table 7 shows the number of affected employees in Years 1 through 10, along with the number of employees with no paid sick leave, with some paid sick leave, and by full-time/part-time status. The share of employees working full-time in 2014 and the share of employees with no paid sick leave were applied to projected years.

TABLE 7—AFFECTED EMPLOYEES IN YEARS 1 THROUGH 10

| Year | Affected employees (1,000s) | | | | |
|---|---|---|---|---|---|
| | Total | Full-time | Part-time | With no paid sick leave | With some paid sick leave |
| Year 1 | 153.8 | 124.8 | 29.0 | 81.1 | 72.7 |
| Year 2 | 322.0 | 261.2 | 60.8 | 169.8 | 152.2 |
| Year 3 | 490.4 | 397.8 | 92.6 | 258.6 | 231.8 |
| Year 4 | 659.1 | 534.7 | 124.4 | 347.6 | 311.5 |
| Year 5 | 828.2 | 671.8 | 156.3 | 436.7 | 391.4 |
| Year 6 | 843.7 | 684.4 | 159.3 | 444.9 | 398.8 |

TABLE 7—AFFECTED EMPLOYEES IN YEARS 1 THROUGH 10—Continued

| Year | Affected employees (1,000s) | | | | |
|---|---|---|---|---|---|
| | Total | Full-time | Part-time | With no paid sick leave | With some paid sick leave |
| Year 7 | 859.5 | 697.3 | 162.3 | 453.3 | 406.3 |
| Year 8 | 875.7 | 710.4 | 165.3 | 461.8 | 413.9 |
| Year 9 | 892.2 | 723.8 | 168.4 | 470.5 | 421.7 |
| Year 10 | 909.1 | 737.5 | 171.6 | 479.4 | 429.7 |

*C. Impacts of Proposed Rule*

i. Overview

This section presents direct employer costs, transfer payments and DWL associated with the proposed rulemaking. These impacts were projected for 10 years. The Department estimated average annualized direct employer costs of $18.4 million, transfer payments of $250.1 million and DWL of $526,000. As these numbers demonstrate, the largest impact of the proposed rulemaking will be the transfer of income from employers to employees.

ii. Costs

The Department quantified three direct employer costs: (1) Regulatory familiarization costs; (2) implementation costs; and (3) recurring administrative costs. Other employer costs are considered qualitatively. Certain key inputs to the cost calculations, such as the amount of time required for regulatory familiarization and other compliance-related activities, are uncertain due to lack of data, and we therefore request comment and data that would allow for refinement of these estimates.

1. Regulatory Familiarization Costs

The proposed rulemaking would impose regulatory familiarization costs on contractors that have or expect to have EO-covered contracts because such contractors will need to determine whether they are in compliance with the paid sick leave requirements. According to the General Services Administration's (GSA) System for Award Management (SAM) in August 2015 there were 543,900 Federal contracting firms.[24] The Department understands that many entities listed in SAM provide not only prime contracting, but also subcontracting, services on (distinct) Federal government contracts. However, we were unable to determine the prevalence of subcontractors in the SAM database because SAM only includes information on prime contractor awards. Therefore, the Department examined five years of USASpending data [25] and found 20,600 first-tier subcontractors who do not hold contracts as primes (and thus may not be included in SAM), and added these firms to the total from SAM to obtain a total estimate of 564,400 contracting firms. The Department believes this is an overestimate of the number of covered contracting firms because it includes contractors that strictly provide materials and supplies to the government (and other firms with no Federal contracts covered by the Executive Order). However, information was not available to eliminate these firms.[26]

The Department drafted this proposed rule consistent with the directive in section 3(c) of the Executive Order that any regulations issued pursuant to the Order should, to the extent practicable, incorporate existing definitions and procedures from the FLSA, SCA, DBA, FMLA, VAWA and Executive Order 13658. As a result, contractors will likely already be familiar with many of the requirements the proposed rule imposes. For example, the Department expects that most, if not all, contractors that Executive Order 13706 will cover are either parties to contracts that Executive Order 13658 already covers, or will be parties to contracts Executive Order 13658 covers by the time the contractor enters into a contract that Executive Order 13706 covers. Contract, and employee, coverage under Executive Order 13658 and Executive Order 13706 are virtually identical, and the difference in coverage in Executive Order 13706, *i.e.,* inclusion of employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions, should cause no additional familiarization costs because covered contractors already need to differentiate between FLSA-exempt employees and employees not exempt from the FLSA. Furthermore, covered contractors will need to familiarize themselves with the application of the proposed rule's requirements to employees whose wages are governed by the FLSA, SCA or DBA, and these requirements apply essentially identically to employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions. Thus, costs with respect to familiarization with the Executive Order's coverage requirements should be minimal.

In addition, the proposed rule's fundamental obligations are to allow covered employees to accrue an hour of paid sick leave for every thirty hours worked on covered contracts, and to use such accrued sick leave for the reasons specified in section 2(c) of Executive Order 13706. Once contract coverage is established, familiarization with these obligations is not overly complicated. The Department accordingly believes, as it similarly believed in the Executive Order 13658 proposed rulemaking, that to understand Executive Order's 13706 basic obligations, contractors will generally only need to review the contract clause, which the Department expects will constitute approximately two pages in the **Federal Register**.

The Department understands that the proposed rule imposes requirements beyond the fundamental obligations described above, and that contractors should seek to familiarize themselves with these requirements. However, the contract clause specifically describes some of these other obligations, including recordkeeping and notice requirements, the obligation not to interfere with an employee's use or accrual of paid sick leave, and the obligation not to discriminate against an employee for exercising certain rights. Moreover, to the extent contractors seek

[24] Data released in monthly files. Available at: *https://www.sam.gov/portal/SAM/#1.*

[25] The Department identified subawardees from the USASpending.gov data between FY 2010 and FY 2014 who did not perform work as a prime during those years.

[26] This may also be an overestimate because some firms in the SAM database do not currently have contracts with the Federal government, and the Department did not exclude firms that might be registered on SAM solely to apply for grants. Conversely, some covered firms may be excluded from this estimate. For example, the SAM database may not include some concessions contractors, and some contractors offering services for Federal employees, their dependents or the general public in connection with Federal property or lands. We invite comments and data that would facilitate refinement our estimates of affected entities.

additional guidance on the contract clause's operation or on a subject the contract clause may not directly address, they are likely to consult the compliance assistance materials the Department will produce in conjunction with this rulemaking, which will be available on the Department's Web site. Because the Department will design the compliance materials to succinctly and clearly address what it expects to be the most common contractor inquiries, the Department expects that contractors will not spend a considerable amount of time in those instances when they consult the compliance materials for information related to the Executive Order and the Department's rulemaking.

For these reasons, the Department estimated that contractors will, on average, use one hour of a human resources manager's time for regulatory familiarization purposes.[27] The Department further estimated the cost of this time to be the mean wage for a human resource manager of $79.96 per hour.[28] The Department understands, however, that public stakeholders may believe that regulatory familiarization costs will differ from the Department's estimate. The Department accordingly invites any comments related to its estimate of regulatory familiarization costs.

Using the estimate of one hour of a human resources manager's time for regulatory familiarization purposes, the Department estimated regulatory familiarization costs to be $45.1 million ($79.96 per hour x 1 hour x 564,400 contractors) (Table 8). A contractor likely would only familiarize itself with the rule once it is poised to have a covered contract (*i.e.,* a new contract within one of the 4 covered categories). However, since many contractors will have at least one new contract in Year 1, and the Department has no data on when contractors will first be affected, the Department has modeled these costs as if each contractor will have at least one covered ''new contract'' in 2017. Therefore, all regulatory familiarization costs occur in Year 1.[29]

TABLE 8—YEAR 1 COSTS

| Variable | Regulatory familiarization costs | Initial implementation costs (no current policy) | Initial implementation costs (current policy) | Recurring implementation costs | Recurring administrative costs |
|---|---|---|---|---|---|
| Hours per affected firm | 1 | 10 | 1 | N/A | N/A |
| Hours per employee | N/A | N/A | N/A | 1 | 0.25 |
| Affected firms[a] | 564,440 | 107,244 | 457,197 | N/A | N/A |
| Newly affected employees | N/A | N/A | N/A | 153,846 | N/A |
| Total affected employees | N/A | N/A | N/A | N/A | 153,846 |
| Loaded wage rate | $79.96 | $27.30 | $27.30 | $27.30 | $27.30 |
| *Base wage*[b] | *$54.88* | *$18.74* | *$18.74* | *$18.74* | *$18.74* |
| *Benefits adj. factor*[c] | *1.46* | *1.46* | *1.46* | *1.46* | *1.46* |
| Cost ($1,000s) | $45,132 | $29,282 | $12,483 | $4,201 | $1,050 |

[a] Total number of firms from the GSA's System for Award Management (SAM) August 2014 and subcontractors from USASpending.gov. Split between firms with and without a sick leave policy based on results from SHRM survey.

[b] Regulatory familiarization uses OES mean wage for human resource managers in 2014. Available at: *http://www.bls.gov/oes/current/oes113121.htm.* Other costs use OES mean wage for human resources assistants, except payroll and timekeeping in 2014. Available at: *http://www.bls.gov/oes/current/oes434161.htm.*

[c] Ratio of loaded wage to unloaded wage. Source: 2014 Employer Costs for Employee Compensation (ECEC).

2. Implementation Costs

Firms will incur implementation costs. The Department believes some of these costs may be incurred in Year 1 but others will be incurred as workers become covered. Therefore, the Department modeled this in two parts. First, firms will incur upfront implementation costs (*e.g.,* costs associated with adjusting accounting and payroll software). Second, because this proposed rule will only apply to employees on new contracts, the Department estimates it will take approximately five years to phase in the coverage over nearly all affected employees. Therefore, implementation costs will generally be spread over the first five years that the regulation is in effect. As each contract becomes affected, the covered contractors will need to spend some time updating the accounting systems used to track paid sick leave and training managers responsible for implementing the requirements of the E.O. and this rule. Therefore, the Department modeled implementation costs as a function of newly affected employees for the first five years.

Thus, implementation costs comprise both a fixed cost (*i.e.,* the initial implementation costs) and a second component that is a function of the number of affected employees within a contracting firm (*i.e.,* recurring implementation costs). Therefore, costs are partially related to the size of the firm, but a firm twice as large as another firm will have costs somewhat less than twice the other's costs.

As noted above, the Department estimated there are 564,400 Federal contracting firms. The Department estimated initial implementation costs separately for firms with a paid sick leave policy in place and firms who would need to create a policy.

[27] As discussed below, the Department is calculating the costs attendant to accounting for the accrual and use of paid sick leave in its costs of implementation. The Department is also including as implementation costs the ten hours it estimates covered contractors will need to develop a sick leave policy that complies with the Executive Order, if such contractors currently have no paid sick leave policy. Therefore, the one hour the Department expects contractors' human resources managers will spend familiarizing themselves with the rule does not include time related to adjusting payroll systems to account for accrual and use of EO-required paid sick leave, or to creating paid sick leave policies.

[28] This includes the mean base wage of $54.88 from the Occupational Employment Statistics (OES) plus benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's Employer Costs for Employee Compensation (ECEC) data. OES data available at: *http://www.bls.gov/oes/current/oes113121.htm.* The inclusion of only fringe benefits, rather than both fringe benefits and overhead costs, in the loaded wage would have a relatively small impact on the overall cost estimate for this proposed rule. However, the Department invites comment on both the propriety of including overhead costs in this particular regulatory impact analysis and the appropriate quantitative adjustment to base wages to account for overhead.

[29] The Department has not estimated the additional marginal cost for new entrants to familiarize themselves with this requirement because the Department believes this cost to be small. We invite comment on this assumption.

According to a survey conducted by the Survey of Human Resource Management, 81 percent of companies provided some form of paid sick leave.[30] Therefore, the Department estimated 107,200 firms will need to create a sick leave policy (19 percent of 564,400 firms). The Department assumed these firms will spend on average 10 hours of time developing this policy. For the remaining 457,200 firms, the Department assumed on average one hour of a human resources worker's time will be spent implementing the necessary changes per affected firm.[31] The cost of this time is the mean wage for a human resource worker of $27.30 per hour.[32] Initial implementation costs in Year 1 were estimated to be $41.8 million ($27.30 per hour × 10 hours × 107,200 contractors plus $27.30 per hour × 1 hour × 457,200 contractors) (Table 8). The Department assumes recurring implementation costs will use one hour of a human resource worker's time per newly affected employee. As stated above, the Department found that the average wage with benefits for a human resources worker is $27.30 per hour. The estimated number of newly affected employees in Year 1 is 153,800 (Table 8). Therefore, total Year 1 recurring implementation costs were estimated to equal $4.2 million ($27.30 × 1 hour × 153,800 employees).

3. Recurring Administrative Costs

Firms may incur recurring administrative costs associated with maintaining records of paid sick leave and adjusting scheduling. The Department assumed an HR worker will spend on average an additional fifteen minutes per affected employee annually on ongoing administrative costs. We believe these costs will be negligible because employers already have systems in place and already incur many of these costs for employees who take sick leave (both paid or unpaid). For example, managers may need to adjust scheduling when workers take time off due to illness regardless of whether that sick leave is paid or unpaid. Under these assumptions, administrative costs in Year 1 will total $1.1 million ($27.30 × (15 minutes/60 minutes) × 153,800 employees). Although these costs are relatively small in Year 1, they will occur annually and thus be a significant share of costs in the long run.

4. Projected Costs

Table 9 shows estimated costs for each of the first 10 years as well as average annualized costs over the same period. Regulatory familiarization and initial implementation costs will only accrue in Year 1 but recurring implementation costs and recurring administrative costs will accrue in multiple years. Recurring implementation costs are incurred over the first 5 years since the Department has estimated it will take five years for the universe of covered contracts to become ''new.''

When estimating projected costs the Department used the same method used for Year 1 but used projected wages and numbers of affected employees. The Department calculated the average annual geometric growth rate in median nominal wages from CPS data between 2005 and 2014. The geometric growth rate is the constant annual growth rate that when compounded yields the last historical year's wage. The CPI–U was then used to convert this nominal growth rate to a real growth rate. The employment growth rate was calculated as the geometric annual growth rate based on the ten-year employment projection for 2012 to 2022 from BLS' Employment Projections program.

TABLE 9—DIRECT EMPLOYER COSTS IN YEARS 1 THROUGH 10

[Millions of 2014$]

| Year/Discount rate | Regulatory familiarization costs | Initial implementation costs | Recurring implementation costs [a] | Recurring administrative costs | Total |
|---|---|---|---|---|---|
| **Years 1 Through 10** | | | | | |
| Year 1 | $45.1 | $41.8 | $4.2 | $1.1 | $92.1 |
| Year 2 | 0.0 | 0.0 | 4.2 | 2.2 | 6.4 |
| Year 3 | 0.0 | 0.0 | 4.2 | 3.3 | 7.5 |
| Year 4 | 0.0 | 0.0 | 4.2 | 4.5 | 8.7 |
| Year 5 | 0.0 | 0.0 | 4.2 | 5.7 | 9.9 |
| Year 6 | 0.0 | 0.0 | 0.0 | 5.8 | 5.8 |
| Year 7 | 0.0 | 0.0 | 0.0 | 5.9 | 5.9 |
| Year 8 | 0.0 | 0.0 | 0.0 | 6.0 | 6.0 |
| Year 9 | 0.0 | 0.0 | 0.0 | 6.1 | 6.1 |
| Year 10 | 0.0 | 0.0 | 0.0 | 6.2 | 6.2 |
| **Average Annualized Amounts** | | | | | |
| 3% discount rate | 5.1 | 4.8 | 2.3 | 4.5 | 16.7 |
| 7% discount rate | 6.0 | 5.6 | 2.5 | 4.3 | 18.4 |

[a] Recurring implementation costs are incurred for the first 5 years as since the Department has estimated it will take five years for the universe of possibly covered contracts to become ''new.''

[30] Available at: *https://www.shrm.org/Research/SurveyFindings/Articles/Documents/09-0228_Paid_Leave_SR_FNL.pdf.*

[31] The Department identified little applicable data from which to estimate the amount of time required to make these adjustments. One source, based on a small sample, finds the average one-time implementation costs of 0.125 percent of revenue. *See* Romich, J., et al. (2014). Implementation and Early Outcomes of the City of Seattle Paid Sick and Safe Time Ordinance.

[32] This includes the mean base wage of $18.74 from the Occupational Employment Statistics (OES) plus benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's Employer Costs for Employee Compensation (ECEC) data. OES data available at: *http://www.bls.gov/oes/current/oes113121.htm.*

5. Other Potential Costs

In addition to the costs discussed above, there may be additional costs that have not been quantified. These include potential costs to consumers and reduced production. However, based on similar rules in states and municipalities, the Department expects these costs to be small.[33]

*Consumer costs:* The relevant consumer is the Federal government. If, as expected, contractors pass along part or all of the increased cost to the government, in the form of higher contract prices, then government expenditures may rise (though, as discussed later, benefits of the Executive Order are expected to accompany any such increase in expenditures). Because direct costs to employers and transfers are relatively small compared to Federal covered contract expenditures, the Department believes that any potential increase in contract prices will be negligible. In 2014 Federal expenditures for covered contracting service firms were $230.2 billion. Employer costs and transfers (estimated below) in Year 5 (the year when all employees are affected) are estimated to be $333.3 million. Therefore, employer costs are 0.14 percent of contracting revenue (assuming no growth in contracting expenditures and without accounting for the benefits of the proposed rule).

*Production costs:* If the number of days of sick leave taken remains unchanged by the proposed rulemaking, then production should not be affected by the rule (unless productivity changes which will be discussed below and in the section on benefits). However, employees may take more sick days if the number of compensated sick days available to them increases; it is via this path that the rule might result in production costs to employers.[34] If these hours are not transferred to another worker then the employer (or the consumer) incurs costs associated with this lost production and the employee receives benefits associated with the paid sick leave. Conversely, if employers hire workers to cover these lost hours of production, then the additional cost of hiring a worker is offset by the increased production attributed to this worker. This results in a zero net additional cost to the employer (because the cost of providing the paid sick leave has already been quantified). In both cases, costs and benefits should offset each other to the extent that workers are paid according to their marginal productivity, and the productivity of the replacement worker matches that of the original worker. Although these assumptions are not likely to be exactly met, conceptually small deviations from the assumptions should result in only small deviations of net costs or benefits. In addition, there are no data available on which to estimate these net costs or benefits.

*Replacement costs:* As demonstrated above, if the worker who takes sick leave is temporarily replaced by another worker, the marginal cost of hiring the additional worker is offset by the productivity of the replacement worker. Therefore, the Department estimates there will be very few additional costs associated with hiring workers to cover work normally performed by workers on sick leave (in addition to the cost of paying the sick worker). If workers are more likely to take off when sick days are paid, and replacement workers must be hired, and can only be hired at their overtime wage rate, then there may be some additional cost associated with hiring the other worker. A 2010 survey of employers providing paid sick days in San Francisco found 8.4 percent reported ''always'' or ''frequently'' hiring a replacement for a sick worker and 23.6 percent saying they ''rarely'' hire replacement workers''.[35]

iii. Transfer Payments

1. Calculating Transfer Payments

To calculate transfer payments, the Department has assumed solely for purposes of discussion and ease of presentation that no offsetting cost- and productivity-related benefits will be realized as a result of the Executive Order and this proposed rule. As discussed in Section C.v, however, numerous benefits of providing paid sick leave under in the Executive Order can be expected, and such benefits can be expected to accompany the transfer payments and other costs discussed above and below.

The most important factor in determining transfer payments is the number of additional days of paid sick leave for which employees will be compensated. In order to estimate transfer payments the Department needed to:

- Assign a monetary value to these days of paid sick leave taken.
- Determine what share of the additional 681,700 days of paid sick leave accrued (calculated above in Section B.ii) will be taken.

The proposed rule requires contractors to provide an employee the same pay and benefits for hours of paid sick leave used that the employee would have received had he been working. Thus, the Department needed to estimate both a base hourly wage for affected employees and a base hourly benefit rate. The Department assumed an eight hour work day to place a monetary value on the transfer payment associated with a day of paid sick leave used. The Department used data from the 2014 CPS to estimate base hourly wage rates by industry and full-time status. The Department is not aware of a data source to precisely determine an average base hourly benefit rate of affected employees. The SCA nationwide fringe benefit rate, which applies to most contracts covered by the SCA, currently is $4.27 per hour. Because many of the contracts covered by the Executive Order will be subject to the SCA, and many employees performing on or in connection with contracts covered by the Executive Order but not covered by the SCA will nonetheless be performing service-related work similar in character to work performed by SCA-covered service employees, the Department estimated that most affected employees will average a base hourly benefit rate of $4.27.[36] The exception is the construction industry, for which the Department used the benefits to wage ratio from the ECEC because employees in the construction industry will be performing on or in connection with DBA contracts rather than SCA contracts.

Although the Executive Order will allow employees to accrue up to 56 hours of paid sick leave annually, many employees will not use all paid sick leave that they accrue (and many others will not work a sufficient number of hours on covered contracts to accrue 56 hours of paid sick leave in an accrual year). If employees take less than the full amount of paid sick leave accrued, then transfer payments must be adjusted to include only some of the additional days accrued. The Department expects employees on average to use fewer days than allocated. To estimate the share of accrued days employees will use, the

[33] *See: http://www.dol.gov/featured/PaidLeave/get-the-facts-sicktime.pdf.*

[34] There is some evidence that workers take more sick leave when it is paid. Using the ATUS 2011 Leave Module, the Department estimated workers with paid sick leave take on average an additional 9 hours of paid sick leave annually. Using the National Health Interview Survey (NHIS) the Department found workers with paid sick leave took on average 0.77 more days of sick leave.

[35] Drago, R. and Lovell, V. (2011). San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees. Institute for Women's Policy Research.

[36] The rate in Year 1 is for 2015. This analysis generally uses data from 2014 for year 1 because it is often the most recently available data. However, Year 1 will likely occur in 2017. Therefore, the most recent data available is most appropriate.

Department used data from the 2015 NCS and ECEC by industry (provided by the BLS and reported in Table 10). While the numbers vary by industry, over all industries, these data show that employees with paid sick leave take an average of 4 days of sick leave annually.[37] Employees with access to a fixed number of paid sick leave days per year accrued an average of 8 days annually. Dividing the average hours of paid sick leave taken by the average hours of paid sick leave accrued annually, the Department estimated that employees use on average 50 percent of days allotted.[38] This may be an overestimate in Year 1 when workers may have fewer days available since they will not start to accrue paid sick leave until they commence work on a covered contract, nor carry over any days from the previous year.[39]

TABLE 10—RATIO OF DAYS OF SICK LEAVE AVAILABLE THAT ARE TAKEN

| Industry | Average number of days [a] | | Ratio of days available taken | Total additional days of paid sick leave [c] | |
|---|---|---|---|---|---|
| | Available | Taken | | Available | Taken |
| Agriculture, forestry, fishing [b] | ..... | ..... | 0.50 | 214 | 107 |
| Mining | 27 | 2 | 0.07 | 56 | 4 |
| Utilities | 21 | 6 | 0.29 | 622 | 178 |
| Construction | 6 | 2 | 0.33 | 105,190 | 35,063 |
| Manufacturing | 8 | 3 | 0.38 | 26,033 | 9,762 |
| Wholesale trade | 8 | 3 | 0.38 | 480 | 180 |
| Retail trade | 6 | 2 | 0.33 | 12,974 | 4,325 |
| Transportation and warehousing | 9 | 4 | 0.44 | 18,127 | 8,056 |
| Information | 9 | 4 | 0.44 | 2,612 | 1,161 |
| Finance and insurance | 12 | 5 | 0.42 | 9,066 | 3,778 |
| Real estate and rental and leasing | 6 | 4 | 0.67 | 310 | 207 |
| Professional, scientific, and | 8 | 4 | 0.50 | 198,578 | 99,289 |
| Management of companies and | 12 | 4 | 0.33 | 1 | 0 |
| Administrative and waste services | 8 | 2 | 0.25 | 244,900 | 61,225 |
| Educational services | 11 | 5 | 0.45 | 5,825 | 2,648 |
| Health care and social assistance | 8 | 4 | 0.50 | 34,024 | 17,012 |
| Arts, entertainment, and recreation | 6 | 3 | 0.50 | 235 | 117 |
| Accommodation and food services | 6 | 2 | 0.33 | 16,389 | 5,463 |
| Other services | 8 | 3 | 0.38 | 6,101 | 2,288 |
| Total private | 8 | 4 | 0.50 | 681,736 | 250,863 |

[a] For this proposed rulemaking the BLS provided this breakdown using NCS and ECEC data for industries with sufficient observations to meet their publication criteria.
[b] NCS does not include information for this industry. Used average across all private employees.
[c] Total additional days of paid sick leave taken is not equal to the number of paid sick leave days available multiplied by the share of 50 percent. This is because the analysis was conducted at the industry level and days were aggregated to estimate the total. Due to rounding by the BLS of the number of days, the aggregated total number of days taken and the total using aggregated number of days available and taken differ.

Therefore, of the 681,700 days of additional paid sick leave accrued, 250,900 days are estimated to be taken and result in transfer payments. Using wage data by industry results in Year 1 transfer payments of $58.9 million (Table 11). This is 0.03 percent of revenue from federal contracts for these firms (since many covered contractors garner revenue from private work, the transfer payment estimate is almost certainly a lower percentage of their total revenues). If all days of paid sick leave were used, transfers would be $151.5 million in Year 1 or 0.07 percent of federal contracting revenues.

TABLE 11—TRANSFER PAYMENTS IN YEAR 1

| Industry | NAICS | Adjusted transfer ($1,000s) | Covered contracting revenue (Millions) [a] | Transfer as share of contracting revenue (percent) |
|---|---|---|---|---|
| Agriculture, forestry, fishing and hunting | 11 | $16 | $242 | 0.01 |
| Mining | 21 | 1 | 82 | 0.00 |
| Utilities | 22 | 46 | 2,993 | 0.00 |
| Construction | 23 | 8,837 | 22,263 | 0.04 |
| Manufacturing | 31–33 | 2,142 | 18,965 | 0.01 |
| Wholesale trade | 42 | 40 | 237 | 0.02 |
| Retail trade | 44–45 | 699 | 2,189 | 0.03 |
| Transportation and warehousing | 48–49 | 1,631 | 8,733 | 0.02 |
| Information | 51 | 274 | 6,590 | 0.00 |

[37] BLS calculated this using the ECEC data based on workers in paid sick leave plans where a cost was incurred by the employer in the reference period.

[38] Although it seems likely that a higher percentage would be used at the low end of the accrual distribution, we have limited data with which to estimate the distribution and therefore invite comment and data that would allow for refinement of this aspect of the analysis.

[39] This assumes employees with sick leave in the NCS are allowed to carry over sick days. The larger the share of these employees without carryover privileges, the more appropriate the number is for Year 1 and the less appropriate it is for future years.

TABLE 11—TRANSFER PAYMENTS IN YEAR 1—Continued

| Industry | NAICS | Adjusted transfer ($1,000s) | Covered contracting revenue (Millions) [a] | Transfer as share of contracting revenue (percent) |
|---|---|---|---|---|
| Finance and insurance | 52 | 955 | 17,651 | 0.01 |
| Real estate and rental and leasing | 53 | 44 | 952 | 0.00 |
| Professional, scientific, and technical | 54 | 28,543 | 106,347 | 0.03 |
| Management of companies and | 55 | 0 | 1 | 0.01 |
| Administrative and waste services | 56 | 10,336 | 27,884 | 0.04 |
| Educational services | 61 | 574 | 2,500 | 0.02 |
| Health care and social assistance | 62 | 3,554 | 9,576 | 0.04 |
| Arts, entertainment, and recreation | 71 | 21 | 52 | 0.04 |
| Accommodation and food services | 72 | 764 | 1,307 | 0.06 |
| Other services | 81 | 419 | 1,592 | 0.03 |
| Total private | ..... | 58,897 | 230,155 | 0.03 |

[a] **Source:** USASpending.gov. Contracting expenditures for covered contracts.

To project transfers, the Department projected wage growth (as discussed in Section C.ii.4) and employment growth (as discussed in Section B.ii). The real growth rate for benefit payments was calculated using the geometric growth rate in nominal SCA benefit rates between 2006 and 2015 and converted to a real rate using the CPI–U.[40] For projected transfers the Department used the same method used for Year 1 but used the projected number of employees and wages. Table 12 shows projected transfers through Year 10. It also contains average annualized transfers using both 3 percent and 7 percent discount rates.

TABLE 12—TRANSFERS IN YEARS 1 THROUGH 10

| Year/Discount rate | Transfers millions of 2014$) |
|---|---|
| **Years 1 through 10** | |
| Year 1 | $58.9 |
| Year 2 | 124.0 |
| Year 3 | 189.7 |
| Year 4 | 256.2 |
| Year 5 | 323.3 |
| Year 6 | 331.0 |
| Year 7 | 338.9 |
| Year 8 | 347.1 |
| Year 9 | 355.5 |
| Year 10 | 364.1 |
| **Average Annualized Amounts** | |
| 3% discount rate | 260.8 |
| 7% discount rate | 250.1 |

[40] Growth rate based on 10 previous years. Generally data for 2014 was used for year 1 because it is often the most recently available data; projections are then based on 2005–2014. However, the SCA benefit rate in 2015 was available and used; projections are then based on 2006–2015.

2. Additional Considerations

The Department based its method of calculating transfers on the number of full-time-equivalent (FTE) employees working on Federal contracts. To the extent that Federal contract work is conducted by part-time employees or split between employees, these transfer estimates may be overestimates. The current method attributes the full-time hours worked on a Federal contract to one employee. For example, if that employee currently receives five paid sick leave days per year, he or she would receive a transfer of two additional days of paid sick leave. If instead half this work was completed by one employee and half by another employee, the Executive Order would require that each receive 3.5 sick days per year; however, since each employee already receives 5 days of paid sick leave, there would be no incremental transfer. The Department estimated that the maximum size of the overestimate due to the assumption of FTE employees is $18.1 million in Year 1 (30.7 percent of the $58.9 million in total transfers).[41]

Another consideration is that some of the transfers may be reduced by employer responses to the rule. Employers may reduce vacation time, reduce wages, or increase health insurance premiums in order to diminish some of their increased costs. (These outcomes may be unlikely in the short run due to stickiness of wages.) Employers may also reallocate days of leave to keep benefits the same. For example, an employer who used to provide 5 sick days and 5 vacation days could now provide 5 sick days, 3 vacation days, and 2 days that can be used for any purpose. This would leave exactly zero employer-employee transfers because an employee could take 7 days paid sick leave if necessary but could still only take a maximum of 5 days of vacation. (Provided the policy met the requirements of section 2 of the Order and this proposed rule and employees could use paid sick leave accrued for the same purposes and under the same conditions as described in the Order and this proposed rule, the employer would be in compliance and transfers would be zero). We invite comment that would allow for these potential employer responses to be incorporated into our quantitative estimates of the rule's impact.

Finally the Department notes that regardless of the direct impact on contract costs, there are other important channels through which the proposed rule might affect government expenditures. The transfer of income resulting from this proposed rulemaking may result in the reduction of social assistance, and thus decreased government expenditures, although the effects are likely to be small. Studies have shown that the more paid family leave an employee receives, the less likely he/she is to utilize various social assistance programs. For example, a 2012 study by Rutgers University's Center for Women and Work showed that women who received paid maternity leave reported spending $413 less in public assistance in the year after their child was born than women who took no leave after childbirth.[42] Similarly, providing access to paid sick leave to these employees may reduce eligibility for government social assistance programs, leading to lower government expenditures.

[41] The maximum possible overestimate was calculated by eliminating transfers associated with employees who currently receive any paid sick leave.

iv. Deadweight Loss

Deadweight loss (DWL) occurs when a market operates at less than optimal equilibrium output. This typically results from an intervention that sets, in the case of a labor market, compensation above their equilibrium level.[43] The higher cost of labor leads to a decrease in the total number of labor hours that are purchased on the market. DWL is a function of the difference between the compensation the employers were willing to pay for the hours lost and the compensation employees were willing to take for those hours. In other words, DWL represents the total loss in economic surplus resulting from a ''wedge'' between the employer's willingness to pay and the employee's willingness to accept work arising from the proposed change. DWL may vary in magnitude depending on market parameters, but it is typically small when wage changes are small or when labor supply and labor demand are relatively inelastic with respect to compensation.

The DWL resulting from this proposed rulemaking was estimated based on the average decrease in hours worked and increase in average hourly compensation (again, without accounting for offsetting benefits of the Executive Order and the proposed rule). As the cost of labor rises due to the requirement to pay sick leave, the demand for labor decreases, which results in fewer hours worked. To calculate the DWL, the annual increase in compensation (*i.e.,* transfers per worker) was divided by the total number of hours worked to estimate the average hourly increase in compensation.[44] Using the estimated percent change in compensation and the elasticity of labor demand with respect to wage (as a proxy for compensation), the Department estimated the percent decrease in average hours per employee.[45] To estimate the percent decrease in average hourly wages associated with labor supply, the Department used the decrease in average hours per employee and the elasticity of labor supply with respect to wage (again, as a proxy for compensation).[46]

Using these values the Department calculated DWL per affected employee (Table 13). This was multiplied by the number of affected employees to estimate total DWL; $126,900 in Year 1. Projected DWL is shown in Table 14. Average annualized DWL during the first ten years the rule is in effect is estimated to be $526,000.

TABLE 13—DEADWEIGHT LOSS CALCULATION

| Industry | Average base hourly wage | Percent change in age from base[a] | | Average annual hours per employee | Percent change in hours | DWL per affected employee | Affected employees | Total DWL |
|---|---|---|---|---|---|---|---|---|
| | | Change in Ld wage | Change in Ls wage | | | | | |
| Ag., forestry, fish. and hunting | $14.37 | 1.47 | −1.96 | 2,146 | −0.29 | $1.56 | 37 | $58 |
| Mining | 27.35 | 0.12 | −0.16 | 2,530 | −0.02 | 0.02 | 13 | 0 |
| Utilities | 28.38 | 0.75 | −1.00 | 2,168 | −0.15 | 0.81 | 101 | 82 |
| Construction | 21.66 | 1.01 | −1.35 | 2,124 | −0.20 | 1.10 | 19,071 | 21,009 |
| Manufacturing | 23.12 | 0.78 | −1.04 | 2,157 | −0.16 | 0.71 | 5,538 | 3,939 |
| Wholesale trade | 23.34 | 0.68 | −0.90 | 2,152 | −0.14 | 0.54 | 122 | 65 |
| Retail trade | 15.86 | 0.83 | −1.11 | 1,805 | −0.17 | 0.46 | 3,051 | 1,406 |
| Transportation and warehousing | 20.92 | 0.91 | −1.21 | 2,156 | −0.18 | 0.87 | 4,022 | 3,494 |
| Information | 25.83 | 0.63 | −0.85 | 1,972 | −0.13 | 0.48 | 918 | 439 |
| Finance and insurance | 27.46 | 0.70 | −0.94 | 2,082 | −0.14 | 0.66 | 2,465 | 1,617 |
| Real estate and rental and leasing | 22.26 | 1.38 | −1.84 | 1,954 | −0.28 | 1.94 | 78 | 152 |
| Professional, sci., and tech. services | 31.70 | 0.85 | −1.14 | 2,055 | −0.17 | 1.10 | 56,571 | 62,486 |
| Management of cos. and enterprises | 24.85 | 0.48 | −0.64 | 2,037 | −0.10 | 0.27 | 0 | 0 |
| Administrative and waste services | 16.68 | 0.70 | −0.93 | 1,925 | −0.14 | 0.37 | 47,336 | 17,316 |
| Educational services | 22.70 | 1.28 | −1.70 | 1,601 | −0.26 | 1.38 | 1,360 | 1,884 |
| Health care and social assistance | 21.85 | 1.11 | −1.48 | 1,864 | −0.22 | 1.17 | 8,415 | 9,842 |
| Arts, entertainment, and recreation | 17.84 | 1.35 | −1.80 | 1,672 | −0.27 | 1.27 | 56 | 71 |
| Accommodation and food services | 13.00 | 1.10 | −1.46 | 1,696 | −0.22 | 0.62 | 3,270 | 2,028 |
| Other services | 18.53 | 0.96 | −1.28 | 1,805 | −0.19 | 0.72 | 1,421 | 1,028 |
| Total private | | | | | | | 153,846 | 126,917 |

[a] This is the change in the wage rate associated with the labor supply (Ls) or labor demand (Ld) curve and the new level of hours.

[43] The estimate of DWL assumes the market meets the theoretical conditions for an efficient market in the absence of this intervention (*e.g.,* all conditions of a perfectly competitive market hold: Full information, no barriers to entry, etc.). Since labor markets are generally not perfectly competitive, this is likely an overestimate of the DWL.

[44] For the purposes of the DWL calculation, we treat the increase in employee benefits resulting from the paid leave requirement as if it were equivalent to an increase in employees' hourly wage. This is necessary because the parameters needed to evaluate the DWL (*i.e.,* the wage elasticities) are expressed strictly in terms of wages. However, to the extent that employers may replace (''crowd out'') some of their employees' wages with the required paid sick benefit, this will result in an overestimate of DWL.

[45] An elasticity of −0.2 was used based on the Department's analysis of Lichter, A., Peichl, A. & Siegloch, A. (2014). The Own-Wage Elasticity of Labor Demand: A Meta-Regression Analysis. IZA DP No. 7958.

[46] An elasticity of 0.15 was used based on a literature review and specifically results from Bargain, O., Orsini, K., Peichl, A. (2011). Labor Supply Elasticities in Europe and the US. IZA DP No. 5820.

TABLE 14—DWL IN YEARS 1 THROUGH 10

| Year/Discount rate | DWL (Millions of 2014$) |
|---|---|
| **Years 1 through 10** | |
| Year 1 | 0.1 |
| Year 2 | 0.3 |
| Year 3 | 0.4 |
| Year 4 | 0.5 |
| Year 5 | 0.7 |
| Year 6 | 0.7 |
| Year 7 | 0.7 |
| Year 8 | 0.7 |
| Year 9 | 0.7 |
| Year 10 | 0.8 |
| **Average Annualized Amounts** | |
| 3% discount rate | 0.5 |
| 7% discount rate | 0.5 |

v. Benefits

There are a variety of benefits associated with this rule; however, due to data limitations these are not monetized. The following benefits are discussed qualitatively: Improved employee health, improved health of dependents, increased productivity, improved firm profits, reduced hiring costs, decreased healthcare expenditures, and job growth.

Improved Employee Health

Multiple studies have shown that paid sick leave greatly reduces the chance of employee injury and/or exposure. When sick employees attend their jobs, they engage in a practice known as ''presenteeism.'' Understandably, presenteeism is detrimental to productivity, and increases the probability of workplace injury and illness, resulting in greater employer and employee costs. In one study from the American Journal of Public Health, researchers used data from multiple industries (construction, retail, manufacturing, health care, etc.) to show that employees with access to paid sick leave were 28 percent less likely to incur a non-fatal work injury than their counterparts without paid sick leave.[47] In a similar study, data from the outbreak of the 2009 H1N1 pandemic showed that individuals who did not receive pay if they did not attend work had a 4.4 percentage point greater change of contracting an influenza-type illness than those with sick leave pay (9.2 percent versus 13.6 percent; only the rate for workers without paid leave is statistically significant at the 10 percent level).[48] Diminishing the practice of presenteeism by providing paid sick leave can be expected to have positive impacts on employee health, as it would reduce the possibility that sick employees could potentially expose their colleagues to infection or disease. Other studies have also linked the incidence of presenteeism to a lack of paid sick leave. For instance, a 2010 survey found that 37 percent of the working respondents who had paid sick leave, had attended work with a contagious illness.[49] Meanwhile, 55 percent of employees with no paid sick leave had attended work with a contagious illness.[50]

Improved Health of Dependents

A potential positive externality of the sick-day proposed rulemaking is its indirect effect on the health of an employee's dependents (*i.e.,* children). Paid leave has a substantial impact on parents' ability to care for sick children. One study, using the Baltimore Parenthood Study and multivariate analysis found parents with paid sick leave or vacation leave were 5.2 times more likely to remain home to care for their sick child.[51] According to a study in San Francisco by the Institute for Women's Policy Research, parents that did not have sick pay were more than 20 percentage points more likely to send their children to school with a contagious disease (75.9 compared with 53.8).[52] This ''child presenteeism'' is problematic because these pupils have the potential to expose other students and teachers to the disease, decreasing others' health.

Improved Firm Profits/Earnings

Some studies have suggested there may be a positive relationship between paid sick leave and profits. In one such study from 2001, researchers discovered that having a paid sick leave policy had a positive effect on firms' profits.[53] The authors note, however, that efficiency wage theory underpins their empirical result and thus requires compensation to increase which is not guaranteed to result from this rule because employers may respond to the paid sick leave requirement by reducing other fringe benefits, such as paid vacation, or by decreasing base wages, as permitted by law; therefore, it may not be valid to assume that Meyer et al.'s results would be comparable.

Increased Productivity

The Department expects the costs to employers of paying for sick time will be partially offset by increased employee productivity. This increased productivity will occur through numerous channels, such as improved health, retention, and effort. When workers attend work sick they tend to have diminished productivity. Goetzel et al. (2004) found that on-the-job productivity loss due to sickness represented 18 percent to 60 percent of employer costs associated with 10 health conditions.[54]

A strand of economic research, commonly referred to as ''efficiency wage'' theory, considers how an increase in compensation may be met with greater productivity.[55] To the degree that the proposed rule increases employee compensation (an outcome that, as we note elsewhere in this analysis, is not guaranteed because employers may respond to the paid sick leave requirement by reducing other fringe benefits, such as paid vacation, or by decreasing base wages), it could yield some of the benefits associated with efficiency wages. Efficiency wages reduce employer costs first by reducing turnover, allowing for workers to gain more firm-specific human capital that enhances their productivity and reducing the cost of replacing workers. Second, efficiency wages may elicit greater effort on the part of workers, making them more effective on the job.[56] A higher wage implies a larger cost of losing one's job; employees will put in more effort in order to reduce the

[47] Asfaw et al. (2012). Paid Sick Leave and Nonfatal Occupational Injuries. *American Journal of Public Health,* 102(9), e59–e64.

[48] Kumar et al. (2011) The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-like Illness Incidence During the 2009 H1N1 Pandemic. *American Journal of Public Health,* 102(1), 134–140.

[49] Smith, T.W. and Kim, J. (2010). Paid Sick Days: Attitude and Experiences. Public Welfare Foundation.

[50] These proportions are suggestive of a difference between employees with and without paid sick leave, but no standard errors or sample sizes were provided to determine if these are statistically significantly different proportions.

[51] Heymann, S.J., et al. (1999) Working Parents: What Factors are involved in Their Ability to Take Time off from Work When Their Children Are Sick? *Archives of Pediatrics and Adolescent Medicine,* 153(8): 870–874.

[52] Drago, R. & Lovell, V. (2011). San Francisco's Paid Sick Leave Ordinance: Outcomes for Employees and Employers. Institute for Women's Policy Research.

[53] Meyer, C.S., Mukerjee, S., and Sestero, A. (2001). Work-family Benefits: Which Ones Maximize Profits? Journal of Managerial Issues, 13(1), 28–44.

[54] Goetzel, R.Z., et al. (2004). Health, Absence, Disability, and Presenteeism Cost Estimates of Certain Physical and Mental Health Conditions Affecting U.S. Employers. *JOEM,* 46(4), 398–412.

[55] Akerlof, G. A. (1982). Labor Contracts as Partial Gift Exchange. *The Quarterly Journal of Economics,* 97(4), 543–569.

[56] Another model of efficiency wages, which is less applicable here, is the adverse selection model in which higher wages raise the quality of the pool of applicants.

risk of losing the job. This is commonly referred to as the shirking model.[57]

Providing paid sick leave to employees has been associated with decreased job separations. In one 2013 study, the author showed that paid sick leave is associated with a decrease in the probability of job separation of 25 percent.[58] Such a reduction in job separation would increase marginal productivity because new employees have less firm-specific capital (*i.e.,* skills and knowledge that have productive value in their particular company) and thus require additional supervision and training to become productive.[59] Other research supports the hypothesis that paid leave encourages employees to remain at their respective companies. In a survey of two hundred human resource managers, two-thirds cited family-supportive policies as the single most important factor in attracting and retaining employees.[60] By providing paid leave, companies may be able to reduce the firm's turnover rate and increase productivity (and therefore reduce hiring costs, *see* the section on reduced hiring costs below).

Reduced Hiring Costs

By providing paid sick leave, employers may experience lower job turnover, resulting in higher productivity and lower hiring costs, which both would positively impact profits (the benefit of increased productivity was discussed above). Multiple studies demonstrate an inverse relationship between sick leave pay and employee turnover. One 2003 study from the University of Michigan found that when employers in upstate New York implemented a paid sick leave policy, they experienced modest reductions in employee turnover.[61] Reduced employee turnover reduces hiring costs, boosting profitability. Various research shows that firms incur a substantial cost for hiring new employees. A review of 27 case studies found that the median cost of replacing an employee was 21 percent of the employee's annual salary.[62] These costs might be diminished by incorporating paid sick leave into family friendly policies. Even though marginal labor costs may rise when employers provide paid sick leave, the new, higher wages will be offset by increased productivity, and reduced hiring and training costs for firms.

The potential reduction in turnover is a function of several variables: the current wage, hours worked, turnover rate, industry, and occupation. Additionally, the estimated cost of replacing a separated employee, and providing paid sick leave to an employee, vary significantly based on factors such as industry and geographic region.[63] Therefore, quantifying the potential benefits associated with a decrease in turnover attributed to this proposed rule requires many sources of data and assumptions.

Government Expenditures

As noted earlier, contractors may pass along part or all of the increased cost to the government in the form of higher contract prices. If the benefits from increased productivity and reduced turnover occur, then government expenditures will not rise by the full monetized value of the newly taken sick leave.

Decreased Healthcare Expenditures

One positive externality of mandating paid sick leave benefits would be that employees could mitigate future health costs by more frequently investing in preventive care. For example, employees would likely use paid sick leave to visit a physician, who could diagnose illnesses and other ailments before they become more serious and more costly to patients. Studies analyzing data from the 2008 National Health Interview Survey show that, if provided paid sick leave, employees were 12 percent more likely to have visited a doctor in the past year.[64] Additionally, there was generally a greater probability that patients with sick pay would have received preventive procedures such as an endoscopy (9.6 percent) or mammogram (7.8 percent).[65] Researchers at the Institute for Women's Policy Research used data from the National Health Interview Survey (NHIS) on emergency room visits by workers with and without sick leave to project that requiring all employers to provide paid sick leave would prevent roughly 1.3 million hospital emergency department visits nationally each year, resulting in $1.1 billion in medical savings annually.[66]

Job Growth

One critique of the proposal to mandate paid leave has been that the transfer of income from employers to employees might result in increased unemployment. However, various studies have argued the opposite, claiming that paid sick leave might yield greater job growth. Recently, it has been shown that counties in which a city has implemented paid sick leave have experienced greater job growth than neighboring counties with no cities with paid leave laws. San Francisco County, for example, saw a 3.5 percent increase in employment between the years of 2006 (when a paid sick leave law was implemented) and 2010, while the five counties surrounding it experienced an employment decrease of 3.4 percent on average (the analysis did not control for other characteristics that may affect employment or assess statistical significance).[67] Additionally, King County, the county in which Seattle (which instituted a similar paid sick leave policy to San Francisco in 2011) is located, found that the rate of annual job growth in the food and retail industries increased much faster than within the state of Washington as a whole between 2011 and 2013.[68] We note, however, that these results might also be associated with other economic factors, such as labor migration as a

[57] Shapiro, C., & Stiglitz, J. E. (1984). Equilibrium Unemployment as a Worker Discipline Device. *The American Economic Review,* 74(3), 433–444.

[58] Hill, H. (2013). Paid Sick Leave and Job Stability. *Work and Occupations,* 40(2), 10.

[59] Argote, L., Insko, C. A., Yovetich, N., and Romero, A. A. (1995). Group Learning Curves: The Effects of Turnover and Task Complexity on Group Performance. *Journal of Applied Social Psychology,* 25(6), 512–529.

Shaw, J. D. (2011). Turnover Rates and Organizational Performance: Review, Critique, and Research Agenda. *Organizational Psychology Review,* 1(3), 187–213.

Dube, A., Lester,T.W., & Reich, M.. 2013. Minimum Wage Shocks, Employment Flows and Labor Market Frictions. IRLE Working Paper #149–13.

[60] Williams, J. (2001). Unbending Gender: Why Work and Family Conflict and What to Do About It. Oxford University Press.

[61] Baughman, R., Holtz-Eakin, D. and DiNaridi, D. (2002). Productivity and Wage Effects of ''Family-Friendly'' Fringe Benefits. *International Journal of Manpower,* 24(3), 247–259.

[62] Boushey, H. and Glynn, S. (2012). There are Significant Business Costs to Replacing Employees. Center for American Progress.

[63] One 2008 study conducted by professors at San Francisco State University showed that in California providing sick leave to employees in the construction, retail, restaurant, and hotel industries could increase employer's payroll costs from $299 to $862 per employee. Potepan, M.J. (2008). Paid Sick Leave: Access, Costs and Feasibility of Implementation at the State Level. Sacramento State: Center for California Studies.

[64] Peipins et al. (2012). The lack of paid sick leave as a barrier to cancer screening and medical care seeking. *BMC Public Health,* 12(250), 1–9.

[65] Ibid.

[66] Miller, K., Williams, C., and Youngmin Yi. (2011). Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits. Institute for Women's Policy Research, 1–33.

[67] Petro, J. (2010). Paid Sick Leave Does Not Harm Business Growth or Job Growth. Drum Major Institute for Public Policy.

[68] Paid Sick Days and the Seattle Economy: Job Growth and Business Formation at the 1-year Anniversary of Seattle's Paid Sick and Safe Leave Law. The Main Street Alliance of Washington. September 2013.

result of the Great Recession, and historically greater employment trends in the urban areas of San Francisco and Seattle in comparison to neighboring regions.

vi. Regulatory Alternatives

The Department notes that Executive Order 13706 delegates to the Secretary the authority only to issue regulations to ''implement the requirements of this order.'' Because the Executive Order itself establishes the basic paid sick leave requirements that the Department is responsible for implementing, many potential regulatory alternatives would be beyond the scope of the Department's authority in issuing this proposed rule. The Department considered a range of alternatives to determine the correct balance between providing benefits to employees and imposing compliance costs on covered contractors. For illustrative purposes only, this section presents an alternative to the provisions set forth in this proposed rule. The Department notes, however, that it considers this alternative to be beyond the scope of the Department's authority under the Executive Order.

This alternative considers how transfer payments would be affected if employees could accrue an unlimited number of hours of paid sick leave as long as they kept a maximum balance of 56 hours. For example, if paid sick leave is used periodically throughout the year, an employee who works 80 hours per week could accrue and use 138.7 hours of paid sick leave (80 hours × 52 weeks × accrual rate of one hour per 30 hours worked ($\frac{1}{30}$)). To calculate transfers associated with this alternative, employees may accrue more than 7 days of paid sick leave annually. The number of days of leave accrued is based on the mean number of hours worked among full-time employees in an industry. For example, in administrative and waste services full-time employees work on average 41.7 hours per week. With no cap on paid leave accrual, this would result in 9.0 days of leave accrued annually for employees in this industry. Using this alternative across all industries, the Department estimated 870,200 additional days of paid sick leave would be accrued by full-time employees in Year 1. If only a share are taken (as assumed earlier in the analysis and shown in Table 10) then 328,700 days will be taken by full-time employees and total transfer payments would be $89.5 million. This is 52 percent higher than the current transfer estimate of $58.9 million.

## Appendix A

TABLE 15—PERCENT OF WORKERS WITH FIXED NUMBER OF PAID SICK LEAVE PLANS, BY NUMBER OF DAYS OFFERED, PRIVATE INDUSTRY WORKERS, MARCH 2015

| Industry | Less than 5 days | 5 to 9 days | 10 to 14 days | 15 to 29 days | Greater than 29 days | Mean number of days | Median number of days |
|---|---|---|---|---|---|---|---|
| Agriculture, forestry, fishing and hunting | – | – | – | – | – | – | – |
| Mining and logging | – | 42 | 15 | – | – | 27 | 6 |
| Utilities | – | 34 | 38 | – | – | 21 | 10 |
| Construction | 31 | 57 | 11 | – | – | 6 | 5 |
| Manufacturing | 30 | 53 | 12 | – | – | 8 | 5 |
| Wholesale trade | 26 | 61 | 8 | – | – | 8 | 5 |
| Retail trade | 21 | 70 | 7 | – | – | 6 | 6 |
| Transportation and warehousing | 16 | 44 | 34 | – | – | 9 | 7 |
| Information | 6 | 65 | 26 | – | – | 9 | 7 |
| Finance and insurance | 7 | 49 | 39 | – | – | 12 | 8 |
| Real estate and rental and leasing | – | 65 | – | – | – | 6 | 6 |
| Professional, scientific, and technical services | 11 | 59 | 22 | – | – | 8 | 6 |
| Management of companies and enterprises | 14 | 66 | – | – | – | 12 | 6 |
| Administrative and waste services | 36 | 40 | 22 | – | – | 8 | 5 |
| Educational services | 8 | 35 | 52 | – | – | 11 | 10 |
| Health care and social assistance | 22 | 42 | 34 | – | – | 8 | 7 |
| Arts, entertainment, and recreation | – | 47 | – | – | – | 6 | 6 |
| Accommodation and food services | 37 | 58 | – | – | – | 6 | 5 |
| Other services | 22 | 47 | 21 | – | – | 8 | 6 |
| Total private | 21 | 53 | 21 | 3 | 2 | 8 | 6 |

**Source:** Bureau of Labor Statistics, National Compensation Survey; Unpublished data.
**Note:** Dashes indicate data not available or do not meet publication criteria.

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**Table 16: DOL Calculated Percent of Full-Time Workers with Fixed Number of Paid Sick Leave Plans, by Number of Days Offered**

| Industry | Number of Days [a] | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Agriculture, forestry, fishing and hunting | 1% | 3% | 8% | 16% | 10% | 13% | 12% | 12% | 11% | 8% |
| Mining and logging | 0% | 0% | 0% | 0% | 9% | 41% | 3% | 9% | 29% | 0% |
| Utilities | 0% | 0% | 0% | 0% | 0% | 1% | 4% | 12% | 29% | 3% |
| Construction | 2% | 5% | 11% | 17% | 16% | 14% | 13% | 10% | 7% | 6% |
| Manufacturing | 1% | 4% | 11% | 23% | 10% | 10% | 12% | 12% | 11% | 5% |
| Wholesale trade | 1% | 4% | 11% | 22% | 13% | 12% | 14% | 14% | 13% | 3% |
| Retail trade | 1% | 3% | 6% | 9% | 16% | 16% | 16% | 12% | 8% | 4% |
| Transportation and warehousing | 0% | 2% | 6% | 13% | 6% | 10% | 13% | 11% | 12% | 11% |
| Information | 0% | 1% | 2% | 5% | 9% | 14% | 19% | 16% | 17% | 8% |
| Finance and insurance | 0% | 1% | 2% | 6% | 3% | 7% | 12% | 19% | 19% | 8% |
| Real estate and rental and leasing | 1% | 4% | 7% | 11% | 13% | 14% | 14% | 11% | 8% | 3% |
| Professional, scientific, and technical services | 0% | 2% | 5% | 10% | 14% | 19% | 13% | 14% | 13% | 8% |
| Management of companies and enterprises | 0% | 2% | 7% | 20% | 7% | 14% | 12% | 19% | 26% | 0% |
| Administrative and waste services | 1% | 4% | 12% | 25% | 7% | 8% | 9% | 9% | 9% | 8% |
| Educational services | 0% | 0% | 2% | 5% | 2% | 4% | 6% | 9% | 11% | 11% |
| Health care and social assistance | 1% | 2% | 7% | 14% | 7% | 9% | 11% | 10% | 9% | 13% |
| Arts, entertainment, and recreation | 1% | 4% | 9% | 13% | 11% | 12% | 10% | 8% | 6% | 12% |
| Accommodation and food services | 2% | 5% | 11% | 17% | 14% | 15% | 13% | 10% | 7% | 2% |
| Other services | 1% | 3% | 8% | 17% | 9% | 12% | 11% | 11% | 10% | 8% |
| Total private | 1% | 3% | 8% | 16% | 10% | 13% | 12% | 12% | 11% | 8% |

[a] Workers may receive more than 10 days of sick leave but since these data are not used in the analysis the Department does not present shares above 10 days.

**Table 17: DOL Calculated Percent of Part-Time Workers with Fixed Number of Paid Sick Leave Plans, by Number of Days Offered**

| Industry | Number of Days [a] | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Agriculture, forestry, fishing and hunting | 1% | 3% | 8% | 14% | 11% | 13% | 12% | 11% | 9% | 8% |
| Mining and logging | 0% | 0% | 0% | 0% | 10% | 40% | 3% | 10% | 27% | 0% |
| Utilities | 0% | 0% | 0% | 0% | 1% | 2% | 5% | 13% | 27% | 3% |
| Construction | 2% | 6% | 11% | 15% | 16% | 15% | 12% | 8% | 5% | 5% |
| Manufacturing | 1% | 5% | 12% | 21% | 11% | 11% | 12% | 11% | 9% | 4% |
| Wholesale trade | 1% | 4% | 11% | 20% | 14% | 13% | 14% | 12% | 10% | 3% |
| Retail trade | 1% | 3% | 6% | 8% | 16% | 15% | 14% | 10% | 6% | 3% |
| Transportation and warehousing | 1% | 2% | 6% | 12% | 7% | 10% | 12% | 10% | 9% | 11% |
| Information | 0% | 1% | 2% | 5% | 11% | 15% | 17% | 15% | 13% | 8% |
| Finance and insurance | 0% | 1% | 2% | 6% | 4% | 8% | 12% | 16% | 16% | 8% |
| Real estate and rental and leasing | 2% | 4% | 7% | 10% | 14% | 13% | 13% | 9% | 5% | 3% |
| Professional, scientific, and technical services | 1% | 2% | 5% | 9% | 15% | 18% | 13% | 12% | 10% | 8% |
| Management of companies and enterprises | 0% | 2% | 7% | 18% | 8% | 15% | 13% | 18% | 21% | 0% |
| Administrative and waste services | 1% | 5% | 13% | 23% | 8% | 9% | 9% | 8% | 7% | 8% |
| Educational services | 0% | 1% | 2% | 5% | 3% | 5% | 7% | 8% | 9% | 11% |
| Health care and social assistance | 1% | 3% | 7% | 13% | 7% | 9% | 9% | 9% | 7% | 12% |
| Arts, entertainment, and recreation | 2% | 5% | 9% | 12% | 12% | 11% | 10% | 7% | 4% | 11% |
| Accommodation and food services | 2% | 6% | 11% | 15% | 15% | 15% | 12% | 8% | 5% | 2% |
| Other services | 1% | 4% | 8% | 15% | 10% | 12% | 11% | 10% | 8% | 8% |
| Total private | 1% | 3% | 8% | 14% | 11% | 13% | 12% | 11% | 9% | 8% |

[a] Workers may receive more than 10 days of sick leave but since these data are not used in the analysis the Department does not present shares above 10 days.

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## VI. Initial Regulatory Flexibility Analysis (IRFA)

The Regulatory Flexibility Act of 1980 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), hereafter jointly referred to as the RFA, requires agencies to prepare regulatory flexibility analyses and make them available for public comment when they propose regulations that will have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. The Department is publishing this initial regulatory flexibility analysis to aid stakeholders in understanding the small entity impacts of the proposed rule and to obtain additional information on the small entity impacts. The Department invites interested persons to submit comments on the following estimates, including the number of small entities affected by the Executive Order paid sick leave requirements, the compliance cost estimates, and whether alternatives exist that will reduce the burden on small entities while still remaining consistent with the objectives of Executive Order 13706. The Chief Counsel for Advocacy of the Small Business Administration (SBA) was notified of this rule upon submission of the rule to OMB under E.O. 12866.

The RFA defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. The Department used SBA's entity size standards to classify entities as small for the purpose of this analysis. SBA establishes separate standards for each 6-digit NAICS industry code, and standard cutoffs are typically based on either the average annual number of employees or average annual receipts. For example, the SBA has two widely used size standards: 500 employees for manufacturing, and $7 million in annual receipts for nonmanufacturing services.[69]

### *A. Number of Small Entities and Employees to Which the Proposed Rule Will Apply*

The number of contracting entities was estimated based on the GSA's System for Award Management (SAM) for August 2015 (543,900).[70] The Department understands that many entities listed in SAM provide not only prime contracting, but also subcontracting, services on (distinct) Federal government contracts. However, we were unable to determine the prevalence of subcontractors in the SAM database. Therefore, the Department examined five years of USASpending data[71] and found 20,600 first-tier subcontractors who do not hold contracts as primes (and thus may not be included in SAM), and added these firms to the total from SAM to obtain a total estimate of 564,400 contracting firms. The Department believes this is an overestimate of the number of covered contracting firms because it includes contractors that strictly provide materials and supplies to the government (and other firms with no Federal contracts covered by the Executive Order). However, information was not available to eliminate these firms.[72] Of these 564,400 firms, an estimated 422,400 are considered small contracting firms.[73] The Department assumed all firms will accrue regulatory familiarization costs and therefore will be affected.

The number of employees in small contracting firms is unknown. The Department estimated the share of total Federal contracting expenditures in the USASpending data associated with firms labeled as small, by industry. The Department then applied these shares to all affected employees to estimate the share of affected employees in small firms. However, based on 2015 NCS data, smaller firms are less likely to offer sick leave pay, and therefore employees in small firms are more likely to be affected. The Department adjusted for this using data from the 2015 NCS on the distribution of employees with paid sick leave by employer size. For these purposes, small businesses were approximated as those having less than 500 employees. The Department found that employees in firms with less than 500 employees were 1.1 times more likely to not have paid sick leave than employees in all firms. Therefore, the Department multiplied the estimated share of affected employees working for small firms (*e.g.,* 22.1 percent in the information industry) by 1.1 to estimate the percent of affected employees in small businesses in each industry (*e.g.,* 24.7 percent in the information industry). The Department then multiplied the percent affected that are in small businesses by the total number of affected employees by industry then summed over all industries to find that 46,300 employees employed by small contractors in Year 1 would be affected by the rule.

TABLE 18—SMALL FEDERAL CONTRACTING FIRMS AND THEIR EMPLOYEES

| Industry | NAICS | Firms [a] | | % Employees in small firms [c] | % Employees in small firms and affected [d] | Affected Employees In Year 1 | |
|---|---|---|---|---|---|---|---|
| | | Total | Small [b] | | | Total | Small |
| Agriculture, forestry, fishing and hunting | 11 | 11,060 | 5,523 | 84.9 | 95.0 | 37 | 36 |
| Mining | 21 | 2,094 | 1,732 | 52.8 | 59.1 | 13 | 8 |
| Utilities | 22 | 4,217 | 2,910 | 9.7 | 10.9 | 101 | 11 |
| Construction | 23 | 76,286 | 65,514 | 54.4 | 60.9 | 19,071 | 11,606 |
| Manufacturing | 31–33 | 88,963 | 75,185 | 10.2 | 11.4 | 5,538 | 630 |
| Wholesale trade | 42 | 37,379 | 31,587 | 45.7 | 51.2 | 122 | 62 |
| Retail trade | 44–45 | 16,333 | 12,955 | 30.7 | 34.4 | 3,051 | 1,049 |
| Transportation and warehousing | 48–49 | 15,646 | 11,470 | 23.5 | 26.3 | 4,022 | 1,058 |

[69] Some exceptions exist. For example, depository institutions (including credit unions, commercial banks, and non-commercial banks) are classified by total assets. Small governmental jurisdictions are another noteworthy exception; they are defined as the governments of cities, counties, towns, townships, villages, school districts, or special districts with population of less than 50,000 people. *See http://www.sba.gov/advocacy/regulatory-flexibility-act.*

[70] Data are released in monthly files.

[71] The Department identified subawardees from the USASpending.gov data between FY2010 and FY2014 who did not perform work as a prime during those years.

[72] This may also be an overestimate because some firms in the SAM database do not currently have contracts with the Federal government, and the Department did not exclude firms that might be registered on SAM solely to apply for grants. Conversely, some covered firms may be excluded from this estimate. For example, the SAM database may not include some concessions contractors, and some contractors offering services for Federal employees, their dependents or the general public in connection with Federal property or lands, including some businesses with leases in federal buildings.

[73] SAM data for August 2015 and USASpending for FY2010 through FY2014. All subcontractors as considered small due to lack of data.

TABLE 18—SMALL FEDERAL CONTRACTING FIRMS AND THEIR EMPLOYEES—Continued

| Industry | NAICS | Firms [a] | | % Employees in small firms [c] | % Employees in small firms and affected [d] | Affected Employees In Year 1 | |
|---|---|---|---|---|---|---|---|
| | | Total | Small [b] | | | Total | Small |
| Information | 51 | 18,002 | 14,450 | 22.1 | 24.7 | 918 | 227 |
| Finance and insurance | 52 | 3,543 | 2,169 | 0.8 | 0.9 | 2,465 | 23 |
| Real estate and rental and leasing | 53 | 27,109 | 20,493 | 20.6 | 23.0 | 78 | 18 |
| Professional, scientific, and technical services | 54 | 128,650 | 88,155 | 26.1 | 29.2 | 56,571 | 16,509 |
| Management of companies and enterprises | 55 | 346 | 217 | 22.0 | 24.7 | 0 | 0 |
| Administrative and waste services | 56 | 41,329 | 34,445 | 20.9 | 23.4 | 47,336 | 11,083 |
| Educational services | 61 | 17,527 | 11,778 | 13.5 | 15.1 | 1,360 | 206 |
| Health care and social assistance | 62 | 35,723 | 16,125 | 26.7 | 29.8 | 8,415 | 2,510 |
| Arts, entertainment, and recreation | 71 | 5,322 | 3,970 | 66.5 | 74.5 | 56 | 41 |
| Accommodation and food services | 72 | 11,658 | 9,131 | 22.6 | 25.3 | 3,270 | 826 |
| Other services | 81 | 23,254 | 14,639 | 27.2 | 30.5 | 1,421 | 433 |
| Total private | — | 564,440 | 422,447 | 24.4 | 27.3 | 153,846 | 46,336 |

[a] **Source:** GSA's System for Award Management (SAM) for August 2015. Companies without a primary NAICS code are distributed proportionately amongst all industries. All firms are assumed to be affected. Includes 20,600 additional first-tier subcontractors identified in USASpending.gov.

[b] SAM for August 2015. Companies without a primary NAICS code are distributed proportionately amongst all industries. All small firms are assumed to be affected. Assume all 20,600 additional subcontractors identified in USASpending.gov are small.

[c] **Source:** USASpending.gov. Percentage of contracting expenditures for covered contracts in small businesses in FY2012–FY2014.

[d] Employees in firms with less than 500 employees were 1.1 times more likely to have no paid sick leave than employees in all firms. The Department adjusted upward the number of affected employees by 1.1.

*B. Small Entity Costs of the Proposed Rule*

Employers would need to keep additional records for affected employees if the NPRM were to be made final without change. As indicated in this analysis, the NPRM would require the accrual of paid sick leave. This would result in an increase in employer burden, which was estimated in the PRA portion (section VI.) of this NPRM. Note that the burdens reported for the PRA section of this NPRM include the entire information collection and not merely the additional burden estimated as a result of this NPRM.

Small entities will also have regulatory familiarization, implementation, administrative, and payroll costs (*i.e.,* transfers). These are discussed in Section C. Total direct costs (*i.e.,* excluding transfers) to small firms in Year 1 were estimated to be $66.6 million (Table 19). This is 72 percent of total direct costs in Year 1. Calculation of these costs are discussed in the following paragraphs.

Estimated regulatory familiarization costs and initial implementation costs in Year 1 apply to nearly all small Federal contractors. Regulatory familiarization costs were assumed to take 1 hour of time in Year 1, on average across firms of all sizes. An hour of a human resource manager's time was valued at $79.96 per hour.[74] [75] Initial implementation costs, the upfront cost that is thought to be comparable across firms of all sizes, and thus is a fraction of the total implementation costs, were estimated as taking 1 hour of a human resource worker's time (or 10 hours depending on whether a firm has a paid leave system in place), valued at $27.30 per hour.[76]

In addition to upfront implementation costs, firms will experience recurring implementation costs as employees gradually become covered. As each employee is affected, the firm will need to spend some time updating the accounting systems used to track paid sick leave. Therefore, implementation costs are modeled as a function of newly affected employees for the first five years.[77] Because of this component, costs vary with firm size. The Department estimated one hour of time per newly affected employee will be spent by a human resources worker on implementation costs. Firms may also incur recurring administrative costs associated with maintaining records of paid sick leave and adjusting scheduling. The Department assumed a human resource worker will spend an additional fifteen minutes per affected employee annually on ongoing administrative costs.

To calculate payroll costs, the Department began with total transfers estimated in SectionV.C.iii, then multiplied the ratio of affected employees in small firms to all affected employees by total transfers. This yields the share of transfers occurring in small Federal contractor firms, $18.7 million in Year 1 (Table 19). This is 32 percent of total transfers, for all contracting firms, in Year 1. As noted in V.C.iii, total transfers may be an overestimate if contractors tend to perform work for multiple clients, rather than working exclusively on Federal contracts. This may be especially pertinent for small business since according to a report by American Express Open, Federal contracting comprises 19 percent of revenues for small contracting firms.[78] Table 20 contains the average costs and transfers per small firm by industry.

[74] This includes the mean base wage of $54.88 from the Occupational Employment Statistics (OES) plus benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's Employer Costs for Employee Compensation (ECEC) data. OES data available at: *http://www.bls.gov/oes/current/oes113121.htm.*

[75] Time and wage estimates for small establishments are the same as used in the analysis for all firms. We have not tailored these to small businesses due to lack of data. The Department requests relevant data from commenters.

[76] This includes the mean base wage of $18.74 from the Occupational Employment Statistics (OES) plus benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's Employer Costs for Employee Compensation (ECEC) data. OES data available at: *http://www.bls.gov/oes/current/oes113121.htm.*

[77] The proposed rule will only apply to employees on new contracts. The Department estimates it will take five years for all employees to be affected. Therefore, adjustment costs will accrue over the first five years.

[78] American Express OPEN. (2013). Trends in Federal Contracting for Small Businesses: A Research Summary for the American Express OPEN for Government Contracts Program.

Average Year 1 costs and transfers per small firm with affected employees range from $155 to $658.

To estimate whether these costs and transfers will have a detrimental impact to small entities they are compared to total revenues. Based on Survey of United States Businesses (SUSB) data, small Federal contractors had total annual revenues of $1.4 trillion in 2014 from all sources (Table 21).[79] Transfers from small firms and costs to small firms in Year 1 ($85.3 million) are less than 0.01 percent of revenues on average and no more than 0.11 percent in any industry. Therefore, the Department believes this proposed rulemaking will not have a significant impact on small businesses.

To estimate average annualized costs to small contracting firms the Department projected small business costs and transfers forward 9 years. To do this the Department calculated the ratio of affected employees in small firms to all affected employees in Year 1, then multiplied this ratio by the 10-year projections of national costs and transfers (*see* Section V.C.vii). This yields the share of projected costs and transfers attributable to small businesses (Table 22).

TABLE 19—COSTS AND TRANSFERS TO SMALL FIRMS IN YEAR 1

| Industry | NAICS | Direct employer costs ($1,000s) | | | | | Transfers ($1,000s) |
|---|---|---|---|---|---|---|---|
| | | Regulatory familiarization | Initial implementation | Recurring implementation | Recurring administrative | Total | |
| Agriculture, forestry, fishing and . . . | 11 | $442 | $409 | $1 | $0 | $852 | $15 |
| Mining | 21 | 138 | 128 | 0 | 0 | 267 | 1 |
| Utilities | 22 | 233 | 215 | 0 | 0 | 448 | 5 |
| Construction | 23 | 5,238 | 4,848 | 317 | 79 | 10,482 | 5,377 |
| Manufacturing | 31–33 | 6,012 | 5,563 | 17 | 4 | 11,596 | 244 |
| Wholesale trade | 42 | 2,526 | 2,337 | 2 | 0 | 4,865 | 20 |
| Retail trade | 44–45 | 1,036 | 959 | 29 | 7 | 2,030 | 240 |
| Transportation and warehousing | 48–49 | 917 | 849 | 29 | 7 | 1,802 | 429 |
| Information | 51 | 1,155 | 1,069 | 6 | 2 | 2,232 | 68 |
| Finance and insurance | 52 | 173 | 161 | 1 | 0 | 335 | 9 |
| Real estate and rental and leasing | 53 | 1,639 | 1,516 | 0 | 0 | 3,156 | 10 |
| Professional, scientific, and . . . | 54 | 7,049 | 6,523 | 451 | 113 | 14,135 | 8,329 |
| Management of companies and . . . | 55 | 17 | 16 | 0 | 0 | 33 | 0 |
| Administrative and waste services | 56 | 2,754 | 2,549 | 303 | 76 | 5,681 | 2,420 |
| Educational services | 61 | 942 | 872 | 6 | 1 | 1,820 | 87 |
| Health care and social assistance | 62 | 1,289 | 1,193 | 69 | 17 | 2,568 | 1,060 |
| Arts, entertainment, and recreation | 71 | 317 | 294 | 1 | 0 | 613 | 16 |
| Accommodation and food services | 72 | 730 | 676 | 23 | 6 | 1,434 | 193 |
| Other services | 81 | 1,170 | 1,083 | 12 | 3 | 2,268 | 128 |
| Total private | | 33,779 | 31,258 | 1,265 | 316 | 66,618 | 18,652 |

TABLE 20—AVERAGE COSTS AND TRANSFERS PER SMALL FIRM WITH AFFECTED EMPLOYEES IN YEAR 1

| Industry | NAICS | Direct employer costs per small firm | Transfers per small firm | Total costs and transfers per small firm |
|---|---|---|---|---|
| Agriculture, forestry, fishing and hunting | 11 | $155.05 | $13.77 | $168.82 |
| Mining | 21 | 154.73 | 1.79 | 156.52 |
| Utilities | 22 | 154.60 | 8.71 | 163.30 |
| Construction | 23 | 184.18 | 410.40 | 594.59 |
| Manufacturing | 31–33 | 155.38 | 16.21 | 171.60 |
| Wholesale trade | 42 | 154.29 | 3.22 | 157.51 |
| Retail trade | 44–45 | 167.77 | 92.73 | 260.50 |
| Transportation and warehousing | 48–49 | 169.70 | 187.05 | 356.75 |
| Information | 51 | 156.63 | 23.45 | 180.09 |
| Finance and insurance | 52 | 155.73 | 20.15 | 175.87 |
| Real estate and rental and leasing | 53 | 154.10 | 2.47 | 156.58 |
| Professional, scientific, and technical services | 54 | 185.91 | 472.43 | 658.34 |
| Management of companies and enterprises | 55 | 154.03 | 0.52 | 154.54 |
| Administrative and waste services | 56 | 208.86 | 351.29 | 560.15 |
| Educational services | 61 | 156.94 | 36.94 | 193.88 |
| Health care and social assistance | 62 | 180.52 | 328.77 | 509.29 |
| Arts, entertainment, and recreation | 71 | 155.73 | 19.71 | 175.44 |
| Accommodation and food services | 72 | 169.40 | 105.68 | 275.08 |
| Other services | 81 | 159.00 | 43.60 | 202.60 |
| Total private | | 172.67 | 220.76 | 393.43 |

[79] Based on 2012 SUSB data inflated to 2014$.

TABLE 21—COSTS AND TRANSFERS AS SHARE OF REVENUE IN SMALL CONTRACTING FIRMS IN YEAR 1

| Industry | NAICS | Total transfers & costs ($1,000s) | Small firm revenues (billions) [a] | Total as share of revenues (%) |
|---|---|---|---|---|
| Agriculture, forestry, fishing and hunting | 11 | $867 | $5.5 | 0.016 |
| Mining | 21 | 268 | 9.6 | 0.003 |
| Utilities | 22 | 453 | 3.2 | 0.014 |
| Construction | 23 | 15,860 | 262.9 | 0.006 |
| Manufacturing | 31–33 | 11,840 | 487.2 | 0.002 |
| Wholesale trade | 42 | 4,885 | 209.7 | 0.002 |
| Retail trade | 44–45 | 2,271 | 25.6 | 0.009 |
| Transportation and warehousing | 48–49 | 2,231 | 15.3 | 0.015 |
| Information | 51 | 2,300 | 254.7 | 0.001 |
| Finance and insurance | 52 | 344 | 5.5 | 0.006 |
| Real estate and rental and leasing | 53 | 3,166 | 22.3 | 0.014 |
| Professional, scientific, and technical services | 54 | 22,465 | 60.8 | 0.037 |
| Management of companies and enterprises | 55 | 33 | 0.2 | 0.020 |
| Administrative and waste services | 56 | 8,101 | 25.8 | 0.031 |
| Educational services | 61 | 1,907 | 10.6 | 0.018 |
| Health care and social assistance | 62 | 3,628 | 14.9 | 0.024 |
| Arts, entertainment, and recreation | 71 | 628 | 3.0 | 0.021 |
| Accommodation and food services | 72 | 1,627 | 1.6 | 0.102 |
| Other services | 81 | 2,396 | 7.7 | 0.031 |
| Total private | ..... | 85,270 | 1,426.1 | 0.006 |

[a] **Source:** Total revenue for small firms from 2012 SUSB; inflated to 2014$ using the CPI–U. Adjusted with ratio of small contracting firms to all small firms.

TABLE 22—PROJECTED COSTS TO SMALL BUSINESSES

[Millions of 2014$]

| Year/discount rate | Direct employer costs | Transfers | Total |
|---|---|---|---|
| **Years 1 Through 10** | | | |
| Year 1 | $66.6 | $18.7 | $85.3 |
| Year 2 | 1.93 | 39.3 | 41.2 |
| Year 3 | 2.3 | 60.1 | 62.4 |
| Year 4 | 2.6 | 81.1 | 83.7 |
| Year 5 | 3.0 | 102.4 | 105.4 |
| Year 6 | 1.7 | 104.8 | 106.6 |
| Year 7 | 1.8 | 107.3 | 109.1 |
| Year 8 | 1.8 | 109.9 | 111.7 |
| Year 9 | 1.8 | 112.6 | 114.4 |
| Year 10 | 1.9 | 115.3 | 117.2 |
| **Average Annualized Amounts** | | | |
| 3% discount rate | 9.4 | 82.6 | 92.0 |
| 7% discount rate | 10.7 | 79.2 | 89.9 |

*C. Differing Compliance and Reporting Requirements for Small Entities*

This NPRM provides no differing compliance and reporting requirements for small entities.

*D. Least Burdensome Option or Explanation Required*

The Department believes it has chosen the most effective option that implements the EO, and results in the least burden. Taking no regulatory action does not address the Department's concerns discussed above (*see* Need for Regulation section) and would contravene the Executive Order. The Department also found the option to allow unlimited accrual (Section V.C.vi) to be overly burdensome on business as well as beyond the scope of the Executive Order.

Pursuant to section 603(c) of the RFA, the following alternatives are to be addressed:

i. Differing compliance or reporting requirements for small entities. To establish differing compliance or reporting requirements for small businesses would undermine the impact of the rule. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance. Therefore the Department has not proposed differing compliance or reporting requirements for small businesses.

ii. The clarification, consolidation, or simplification of compliance and reporting requirements for small entities. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance. As such, the Department has not proposed clarification, consolidation, or simplification of the rule.

iii. The use of performance rather than design standards. The Department makes available a variety of resources to employers for understanding their

obligations and achieving compliance. Therefore, the Department has not proposed relying upon performance to determine compliancy.

iv. An exemption from coverage of the rule, or any part thereof, for such small entities.

To exempt small businesses from the proposed rulemaking would undermine the impact of the rule. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance. Therefore, the Department has not proposed a ''small business'' exemption.

*E. Identification, to the Extent Practicable, of all Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

The Department is not aware of any federal rules that duplicate, overlap, or conflict with this NPRM.

**VII. Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing any Federal mandate that may result in excess of $100 million (adjusted annually for inflation) in expenditures in any one year by State, local, and tribal governments in the aggregate or by the private sector. The current (2015) threshold after adjustment for inflation is approximately $157,000,000.

As explained in the economic analysis set forth in the section discussing Executive Orders 12866 and 13563 above, the Department estimates that the proposed rule may result in transfers of up to $315 million per year (beginning in 2021), with steady increases up to that level over the intervening years). Because this proposed rule applies only to contracts for which the solicitation will be issued on or after January 1, 2017, contractors would have the information necessary to factor into their bids the labor costs resulting from the paid sick leave requirement, and thus it may be likely that the Federal Government would bear the burden of the transfers. However, most contracts covered by this proposed rule are paid through appropriated funds, and how Congress and agencies respond to rising bids is subject to political processes whose unpredictability limits the Department's ability to project rule-induced outcomes. The Department therefore acknowledges that this proposed rule may yield effects that make it subject to UMRA requirements. The Department carried out the requisite cost-benefit analysis in preceding sections of this document.

**VIII. Executive Order 13132, Federalism**

The Department has (1) reviewed this rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**IX. Executive Order 13175, Indian Tribal Governments**

This proposed rule would not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

**X. Effects on Families**

The undersigned hereby certifies that the proposed rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

**XI. Executive Order 13045, Protection of Children**

This proposed rule would have no environmental health risk or safety risk that may disproportionately affect children.

**XII. Environmental Impact Assessment**

A review of this proposed rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.;* and the Departmental NEPA procedures, 29 CFR part 11, indicates that the rule would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

**XIII. Executive Order 13211, Energy Supply**

This proposed rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

**XIV. Executive Order 12630, Constitutionally Protected Property Rights**

This proposed rule is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

**XV. Executive Order 12988, Civil Justice Reform Analysis**

This proposed rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The proposed rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

**List of Subjects in 29 CFR Part 13**

Administrative practice and procedure, Construction, Government contracts, Law enforcement, Paid sick leave, Reporting and recordkeeping requirements.

**David Weil,**

*Administrator, Wage and Hour Division.*

For the reasons set out in the preamble, the Department of Labor proposes to amend Title 29 part 13 of the Code of Federal Regulations by adding part 13 to read as follows:

## PART 13—ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

**Subpart A—General**

Sec.
13.1 Purpose and scope.
13.2 Definitions.
13.3 Coverage.
13.4 Exclusions.
13.5 Paid sick leave for Federal contractors and subcontractors.
13.6 Prohibited acts.
13.7 Waiver of rights.

**Subpart B—Federal Government Requirements**

13.11 Contracting agency requirements.
13.12 Department of Labor requirements.

**Subpart C—Contractor Requirements**

13.21 Contract clause.
13.22 Paid sick leave.
13.23 Deductions.
13.24 Anti-kickback.
13.25 Records to be kept by contractors.
13.26 Certified list of employees' accrued paid sick leave.
13.27 Notice.
13.28 Timing of pay.

**Subpart D—Enforcement**

13.41 Complaints.

13.42 Wage and Hour Division conciliation.
13.43 Wage and Hour Division investigation.
13.44 Remedies.

**Subpart E—Administrative Proceedings**

13.51 Disputes concerning contractor compliance.
13.52 Debarment proceedings.
13.53 Referral to Chief Administrative Law Judge; amendment of pleadings.
13.54 Consent findings and order.
13.55 Administrative Law Judge proceedings.
13.56 Petition for review.
13.57 Administrative Review Board proceedings.
13.58 Administrator ruling.

**Appendix A to Part 13—Contract Clause**

**Authority:** 4 U.S.C. 301; Executive Order 13706, 80 FR 54697; Secretary's Order 01–2014, 79 FR 77527.

## Subpart A—General

### § 13.1 Purpose and scope.

(a) *Purpose.* This part contains the Department of Labor's rules relating to the administration and enforcement of Executive Order 13706 (Executive Order or the Order), ''Establishing Paid Sick Leave for Federal Contractors.'' The Order states that providing paid sick leave to employees will improve the health and performance of employees of Federal contractors and will bring benefits packages offered by Federal contractors in line with model employers, ensuring they remain competitive in the search for dedicated and talented employees. The Executive Order concludes that providing paid sick leave will result in savings and quality improvements in the work performed by parties who contract with the Federal Government that will in turn lead to improved economy and efficiency in Government procurement.

(b) *Policy.* Executive Order 13706 sets forth the general position of the Federal Government that providing access to paid sick leave on Federal contracts will increase efficiency and cost savings for the Federal Government. The Order therefore provides that executive departments and agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts'') include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that employees will earn not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with covered contracts. Nothing in Executive Order 13706 or this part shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable municipal law or ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under the Order or this part.

(c) *Scope.* Neither Executive Order 13706 nor this part creates or changes any rights under the Contract Disputes Act or creates any private right of action. The Executive Order provides that disputes regarding whether a contractor has provided paid sick leave as prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided in this part. However, nothing in the Order or this part is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. The Order and this part similarly do not preclude judicial review of final decisions by the Secretary of Labor in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

### § 13.2 Definitions.

For purposes of this part:

*Accrual year* means the 12-month period during which a contractor may limit an employee's accrual of paid sick leave to no less than 56 hours.

*Administrative Review Board* (ARB or Board) means the Administrative Review Board, U.S. Department of Labor.

*Administrator* means the Administrator of the Wage and Hour Division and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

*As soon as is practicable* means as soon as both possible and practical, taking into account all of the facts and circumstances of the individual case.

*Certification issued by a health care provider* means any type of written document created or signed by a health care provider (or by a representative of the health care provider) that contains information verifying that the physical or mental illness, injury, medical condition, or need for diagnosis, care, or preventive care or other need for care referred to in § 13.5(c)(1)(i), (ii), or (iii) exists.

*Child* means:

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis;* or

(4) A child, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

*Concessions contract* or *contract for concessions* means a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. The term *concessions contract* includes, but is not limited to, a contract the principal purpose of which is to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public.

*Contract* or *contract-like instrument* means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term *contract* includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term *contract* shall be interpreted broadly to include, but not be limited to, any contract that may be consistent with the definition provided in the Federal Acquisition Regulation (FAR) or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. The term *contract* includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not subject to the Service Contract Act, and contracts in

connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

*Contracting officer* means a representative of an executive department or agency with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

*Contractor* means any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract. The term *contractor* refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The term *contractor* includes lessors and lessees. The term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in various sections of this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of the Executive Order.

*Davis-Bacon Act* (DBA) means the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.,* and its implementing regulations.

*Domestic partner* means an adult in a committed relationship with another adult. A committed relationship is one in which the employee and the domestic partner of the employee are each other's sole domestic partner (and are not married to or domestic partners with anyone else) and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

*Domestic violence* means:

(1) Felony or misdemeanor crimes of violence (including threats or attempts) committed:

(i) By a current or former spouse, domestic partner, or intimate partner of the victim;

(ii) By a person with whom the victim shares a child in common;

(iii) By a person who is cohabitating with or has cohabitated with the victim as a spouse, domestic partner, or intimate partner;

(iv) By a person similarly situated to a spouse of the victim under domestic or family violence laws of the jurisdiction in which the victim resides or the events occurred; or

(v) By any other adult person against a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the victim resides or the events occurred.

(2) Domestic violence also includes any crime of violence considered to be an act of domestic violence according to State law.

*Employee* means any person engaged in performing work on or in connection with a contract covered by the Executive Order, and whose wages under such contract are governed by the Service Contract Act, the Davis-Bacon Act, or the Fair Labor Standards Act, including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions, regardless of the contractual relationship alleged to exist between the individual and the employer. The term *employee* includes any person performing work on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the U.S. Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

*Executive departments and agencies* means executive departments, military departments, or any independent establishments within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

*Executive Order 13495* or *Nondisplacement Executive Order* means Executive Order 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts, 74 FR 6103 (Feb. 4, 2009), and its implementing regulations at 29 CFR part 9.

*Executive Order 13658* or *Minimum Wage Executive Order* means Executive Order 13658 of February 12, 2014, Establishing a Minimum Wage for Contractors, 79 FR 9851 (Feb. 20, 2014), and its implementing regulations at 29 CFR part 10.

*Fair Labor Standards Act* (FLSA) means the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.,* and its implementing regulations.

*Family and Medical Leave Act* (FMLA) means the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.,* and its implementing regulations.

*Family violence* means any act or threatened act of violence, including any forceful detention of an individual that results or threatens to result in physical injury and is committed by a person against another individual (including an elderly individual) to or with whom such person is related by blood, is or was related by marriage or is or was otherwise legally related, or is or was lawfully residing.

*Federal Government* means an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. For purposes of the Executive Order and this part, this definition does not include the District of Columbia, any Territory or possession of the United States, or any independent regulatory agency within the meaning of 44 U.S.C. 3502(5).

*Health care provider* means any practitioner who is licensed or certified under Federal or State law to provide the health-related service in question or any practitioner recognized by an employer or the employer's group health plan. The term includes, but is not limited to, doctors of medicine or osteopathy, podiatrists, dentists, psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, physician assistants, physical therapists, and Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

*Independent agencies* means independent regulatory agencies within the meaning of 44 U.S.C. 3502(5).

*Individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship* means any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

*Intimate partner* means a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on a consideration of the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

*New contract* means a contract that results from a solicitation issued on or after January 1, 2017, or a contract that is awarded outside the solicitation

process on or after January 1, 2017. This term includes both new contracts and replacements for expiring contracts. It does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government. For purposes of the Executive Order, a contract that is entered into prior to January 1, 2017 will constitute a *new contract* if, through bilateral negotiation, on or after January 1, 2017:

(1) The contract is renewed;

(2) The contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2016 providing for a short-term limited extension; or

(3) The contract is amended pursuant to a modification that is outside the scope of the contract.

*Obtain additional counseling, seek relocation, seek assistance from a victim services organization, or take related legal action,* used in reference to domestic violence, sexual assault, or stalking, means to spend time arranging, preparing for, or executing acts related to addressing physical injuries or mental or emotional impacts resulting from being a victim of domestic violence, sexual assault, or stalking. Such acts include finding and using services of a counselor or victim services organization intended to assist a victim to respond to or prevent future incidents of domestic violence, sexual assault, or stalking; identifying and moving to a different residence to avoid being a victim of domestic violence, sexual assault, or stalking; or a victim's pursuing any related legal action.

*Obtaining diagnosis, care, or preventive care from a health care provider* means receiving services from a health care provider, whether to identify, treat, or otherwise address an existing condition or to prevent potential conditions from arising. The term includes time spent traveling to and from the location at which such services are provided or recovering from receiving such services.

*Office of Administrative Law Judges* means the Office of Administrative Law Judges, U.S. Department of Labor.

*Option* means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

*Paid sick leave* means compensated absence from employment that is required by Executive Order 13706 and this part.

*Parent* means:

(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian;

(3) A person who stands *in loco parentis* to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis;* or

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

*Physical or mental illness, injury, or medical condition* means any disease, sickness, disorder, or impairment of, or any trauma to, the body or mind.

*Predecessor contract* means a contract that precedes a successor contract.

*Procurement contract for construction* means a procurement contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. The term *procurement contract for construction* includes any contract subject to the Davis-Bacon Act.

*Procurement contract for services* means a contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder. The term *procurement contract for services* includes any contract subject to the Service Contract Act.

*Related legal action* or *related civil or criminal legal proceeding,* used in reference to domestic violence, sexual assault, or stalking, means any type of legal action, in any forum, that relates to the domestic violence, sexual assault, or stalking, including, but not limited to, family, tribal, territorial, immigration, employment, administrative agency, housing matters, campus administrative or protection or stay-away order proceedings, and other similar matters; and criminal justice investigations, prosecutions, and post-trial matters (including sentencing, parole, and probation) that impact the victim's safety and privacy.

*Secretary* means the Secretary of Labor and includes any official of the U.S. Department of Labor authorized to perform any of the functions of the Secretary of Labor under this part.

*Service Contract Act* (SCA) means the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.,* and its implementing regulations.

*Sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

*Solicitation* means any request to submit offers, bids, or quotations to the Federal Government.

*Spouse* means the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a common law marriage that was entered into in a State that recognizes such marriages or, if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

*Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

*Successor contract* means a contract for the same or similar services as were provided by a different predecessor contractor at the same location.

*United States* means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, and instrumentalities, including nonappropriated fund instrumentalities. When used in a geographic sense, the *United States* means the 50 States and the District of Columbia.

*Victim services organization* means a nonprofit, nongovernmental, or tribal organization or rape crisis center, including a State or tribal coalition, that assists or advocates for victims of domestic violence, sexual assault, or stalking, including domestic violence shelters, faith-based organizations, and other organizations, with a documented history of effective work concerning domestic violence, sexual assault, or stalking.

*Violence Against Women Act* (VAWA) means the Violence Against Women Act of 1994, 42 U.S.C. 13925 *et seq.,* and its implementing regulations.

*Wage and Hour Division* means the Wage and Hour Division, U.S. Department of Labor.

**§ 13.3 Coverage.**

(a) This part applies to any new contract with the Federal Government, unless excluded by § 13.4, provided that:

(1)(i) It is a procurement contract for construction covered by the Davis-Bacon Act;

(ii) It is a contract for services covered by the Service Contract Act;

(iii) It is a contract for concessions, including any concessions contract excluded from coverage under the Service Contract Act by Department of Labor regulations at 29 CFR 4.133(b); or

(iv) It is a contract in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(2) The wages of employees performing on or in connection with such contract are governed by the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions.

(b) For contracts covered by the Service Contract Act or the Davis-Bacon Act, this part applies to prime contracts only at the thresholds specified in those statutes. For procurement contracts where employees' wages are governed by the Fair Labor Standards Act, this part applies when the prime contract exceeds the micro-purchase threshold, as defined in 41 U.S.C. 1902(a). For all other prime contracts covered by Executive Order 13706 and this part and for all subcontracts awarded under prime contracts covered by Executive Order 13706 and this part, this part applies regardless of the value of the contract.

(c) This part only applies to contracts with the Federal Government requiring performance in whole or in part within the United States. If a contract with the Federal Government is to be performed in part within and in part outside the United States and is otherwise covered by the Executive Order and this part, the requirements of the Order and this part would apply with respect to that part of the contract that is performed within the United States.

(d) This part does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government that are subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. 6501 *et seq.*

**§ 13.4 Exclusions.**

(a) *Grants.* The requirements of this part do not apply to grants within the meaning of the Federal Grant and Cooperative Agreement Act, as amended, 31 U.S.C. 6301 *et seq.*

(b) *Contracts and agreements with and grants to Indian Tribes.* This part does not apply to contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450 *et seq.*

(c) *Procurement contracts for construction that are excluded from coverage of the Davis-Bacon Act.* Procurement contracts for construction that are not covered by the Davis-Bacon Act are not subject to this part.

(d) *Contracts for services that are exempted from coverage under the Service Contract Act.* Service contracts, except for those expressly covered by § 13.3(a)(1)(iii) or (iv), that are exempt from coverage of the Service Contract Act pursuant to its statutory language at 41 U.S.C. 6702(b) or its implementing regulations, including those at 29 CFR 4.115 through 4.122 and 29 CFR 4.123(d) and (e), are not subject to this part.

(e) *Employees performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek.* The accrual requirements of this part do not apply to employees performing in connection with covered contracts, *i.e.,* those employees who perform work duties necessary to the performance of the contract but who are not directly engaged in performing the specific work called for by the contract, who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts. This exclusion is inapplicable to employees performing on covered contracts, *i.e.,* those employees directly engaged in performing the specific work called for by the contract, at any point during the workweek. This exclusion is also inapplicable to employees performing in connection with covered contracts with respect to any workweek in which the employees spend 20 percent or more of their hours worked performing in connection with a covered contract.

**§ 13.5 Paid sick leave for Federal contractors and subcontractors.**

(a) *Accrual.* (1) A contractor shall permit an employee to accrue not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract. A contractor shall aggregate an employee's hours worked on or in connection with all covered contracts for that contractor for purposes of paid sick leave accrual.

(i) For purposes of Executive Order 13706 and this part, hours worked includes all time for which an employee is or should be paid, meaning time an employee spends working or in paid time off status, including time when the employee is using paid sick leave or any other paid time off provided by the contractor. To properly exclude time spent on non-covered work from an employee's hours worked that count toward the accrual of paid sick leave, a contractor must accurately identify in its records the employee's covered and non-covered hours worked.

(ii) A contractor shall calculate an employee's accrual of paid sick leave no less frequently than at the conclusion of each workweek. A contractor need not allow an employee to accrue paid sick leave in increments smaller than 1 hour for completion of any fraction of 30 hours worked. Any such fraction of hours worked shall be added to hours worked for the same contractor in subsequent workweeks to reach the next 30 hours worked provided that the next workweek in which the employee performs on or in connection with a covered contract occurs within the same accrual year.

(iii) If a contractor is not obligated by the Service Contract Act, Davis-Bacon Act, or Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541, the contractor may, as to that employee, calculate paid sick leave accrual by tracking the employee's actual hours worked or by using the assumption that the employee works 40 hours on or in connection with a covered contract in each workweek. If such an employee regularly works fewer than 40 hours per week on or in connection with covered contracts, whether because the employee splits time between covered and non-covered contracts or because the employee is part-time, the contractor may allow the employee to accrue paid sick leave based on the employee's typical number of hours worked on covered contracts per workweek.

(2) A contractor shall inform an employee, in writing, of the amount of paid sick leave that the employee has accrued but not used:

(i) No less than monthly;

(ii) At any time when the employee makes a request to use paid sick leave;

(iii) Upon the employee's request for such information, but no more often than once a week;

(iv) Upon a separation from employment; and

(v) Upon reinstatement of paid sick leave pursuant to paragraph (b)(3) of this section.

(3) A contractor may choose to provide an employee with at least 56 hours of paid sick leave at the beginning of each accrual year rather than allowing the employee to accrue such leave based on hours worked over time. In such circumstances, the contractor need not comply with the accrual requirements described in paragraph (a)(1) of this section. The contractor must, however, allow carryover of paid sick leave as required by paragraph (b)(2) of this section, and although the contractor may limit the amount of paid sick leave an employee may carry over to no less than 56 hours, the contractor may not limit the amount of paid sick leave an employee has available for use at any point as is otherwise permitted by paragraph (b)(3) of this section.

(b) *Maximum accrual, carryover, reinstatement, and payment for unused leave.* (1) A contractor may limit the amount of paid sick leave an employee is permitted to accrue to not less than 56 hours in each accrual year. An accrual year is a 12-month period beginning on the date an employee's work on or in connection with a covered contract began or any other fixed date chosen by the contractor, such as the date a covered contract began, the date the contractor's fiscal year begins, a date relevant under State law, or the date a contractor uses for determining employees' leave entitlements under the FMLA pursuant to 29 CFR 825.200. A contractor may choose its accrual year but must use a consistent option for all employees and may not select or change its accrual year in order to avoid the paid sick leave requirements of Executive Order 13706 and this part.

(2) Paid sick leave shall carry over from one accrual year to the next. Paid sick leave carried over from the previous accrual year shall not count toward any limit the contractor sets on annual accrual.

(3) A contractor may limit the amount of paid sick leave an employee is permitted to have available for use at any point to not less than 56 hours. Accordingly, even if an employee has accrued fewer than 56 hours of paid sick leave since the beginning of the accrual year, the employee need only be permitted to accrue additional paid sick leave if the employee has fewer than 56 hours available for use.

(4) Paid sick leave shall be reinstated for employees rehired by the same contractor or a successor contractor within 12 months after a job separation. This reinstatement requirement applies whether the employee leaves and returns to a job on or in connection with a single covered contract or works for a single contractor on or in connection with more than one covered contract, regardless of whether the employee remains employed by the contractor in between periods of working on covered contracts. It also applies if an employee takes a job on or in connection with a covered successor contract after working for a different contractor on or in connection with the predecessor contract, including when an employee is entitled to a right of first refusal of employment from the successor contractor under Executive Order 13495.

(5) Nothing in Executive Order 13706 or this part shall require a contractor to make a financial payment to an employee for accrued paid sick leave that has not been used upon a separation from employment. If a contractor nevertheless makes such a payment, whether voluntarily or pursuant to a collective bargaining agreement, that payment shall have no effect on the contractor's, or a successor contractor's, obligation to reinstate an employee's accrued paid sick leave upon rehiring the employee within 12 months of the separation pursuant to paragraph (b)(4) of this section.

(c) *Use.* (1) Subject to the conditions described in paragraphs (d) and (e) of this section and the amount of paid sick leave the employee has available for use, a contractor must permit an employee to use paid sick leave to be absent from work for that contractor on or in connection with a covered contract because of:

(i) Physical or mental illness, injury, or medical condition of the employee;

(ii) Obtaining diagnosis, care, or preventive care from a health care provider by the employee;

(iii) Caring for the employee's child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions or needs for diagnosis, care, or preventive care described in paragraphs (c)(1)(i) or (ii) of this section or is otherwise in need of care; or

(iv) Domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes otherwise described in paragraphs (c)(1)(i) or (ii) of this section or to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action, including preparation for or participation in any related civil or criminal legal proceeding, or assist an individual related to the employee as described in paragraph (c)(1)(iii) of this section in engaging in any of these activities.

(2) A contractor shall account for an employee's use of paid sick leave in increments of no greater than 1 hour.

(i) A contractor may not reduce an employee's accrued paid sick leave by more than the amount of leave the employee actually takes, and a contractor may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using an increment of no greater than 1 hour.

(ii) The amount of paid sick leave used may not exceed the hours an employee would have worked if the need for leave had not arisen.

(3) A contractor shall provide to an employee using paid sick leave the same pay and benefits the employee would have received had the employee not used paid sick leave.

(4) A contractor may not limit the amount of paid sick leave an employee may use per year or at once.

(5) A contractor may not make an employee's use of paid sick leave contingent on the employee's finding a replacement worker to cover any work time to be missed or on the fulfillment of the contractor's operational needs.

(d) *Request for leave.* (1) A contractor shall permit an employee to use any or all of the employee's available paid sick leave upon the oral or written request of an employee that includes information sufficient to inform the contractor that the employee is seeking to be absent from work for a purpose described in paragraph (c)(1) of this section and, to the extent reasonably feasible, the anticipated duration of the leave. The employee's request shall be directed to the appropriate personnel pursuant to a contractor's policy or, in the absence of a formal policy, any personnel who typically receive requests for other types of leave or otherwise address scheduling issues on behalf of the contractor.

(2) If the need for leave is foreseeable, the employee's request shall be made at least 7 calendar days in advance. If the employee is unable to request leave at least 7 calendar days in advance, the request shall be made as soon as is practicable. When an employee becomes aware of a need to take paid sick leave less than 7 calendar days in advance, it should typically be practicable for the employee to make a request for leave either the day the employee becomes aware of the need to take paid sick leave or the next business day. In all cases, however, the determination of when an employee could practicably make a

request must take into account the individual facts and circumstances.

(3)(i) A contractor may communicate its grant of a request to use paid sick leave either orally or in writing provided that the contractor also complies with the requirement in paragraph (a)(2) of this section to inform the employee in writing of the amount of paid sick leave the employee has available for use.

(ii) A contractor shall communicate any denial of a request to use paid sick leave in writing, with an explanation for the denial. Denial is appropriate if, for example, the employee did not provide sufficient information about the need for paid sick leave; the reason given is not consistent with the uses of paid sick leave described in paragraph (c)(1) of this section; the employee did not indicate when the need would arise; the employee has not accrued, and will not have accrued by the date of leave anticipated in the request, a sufficient amount of paid sick leave to cover the request (in which case, if the employee will have any paid sick leave available for use, only a partial denial is appropriate); or the request is to use paid sick leave during time the employee is scheduled to be performing non-covered work. If the denial is based on insufficient information provided in the request, such as if the employee did not state the time of an appointment with a health care provider, the contractor must permit the employee to submit a new, corrected request. If the denial is based on an employee's request to use paid sick leave during time she is scheduled to be performing non-covered work, the denial must be supported by records adequately segregating the employee's time spent on covered and non-covered contracts.

(iii) A contractor shall respond to any request to use paid sick leave as soon as is practicable after the request is made. Although the determination of when it is practicable for a contractor to provide a response will take into account the individual facts and circumstances, it should in many circumstances be practicable for the contractor to respond to a request immediately or within a few hours. In some instances, however, such as if it is unclear at the time of the request whether the employee will be working on or in connection with a covered or non-covered contract at the time for which paid sick leave is requested, as soon as practicable could mean within a day or no longer than within a few days.

(e) *Certification or documentation for leave of 3 or more consecutive full workdays.* (1)(i) A contractor may require certification issued by a health care provider to verify the need for paid sick leave used for the purposes described in paragraphs (c)(1)(i), (ii), or (iii) of this section only if the employee is absent for 3 or more consecutive full workdays. The contractor shall protect the confidentiality of any certification as required by § 13.25(d).

(ii) A contractor may only require documentation from an appropriate individual or organization to verify the need for paid sick leave used for the purposes described in paragraph (c)(1)(iv) of this section only if the employee is absent for 3 or more consecutive full workdays. The contractor may only require that such documentation contain the minimum necessary information establishing a need for the employee to be absent from work. The contractor shall not disclose any verification information and shall maintain confidentiality about the domestic abuse, sexual assault, or stalking, as required by § 13.25(d).

(2) If certification or documentation is to verify the illness, injury, or condition, need for diagnosis, care, or preventive care, or activity related to domestic violence, sexual assault, or stalking of an individual related to the employee as described in paragraph (c)(1)(iii) of this section, a contractor may also require the employee to provide reasonable documentation or a statement of the family or family-like relationship. This documentation may take the form of a simple written statement from the employee or could be a legal or other document proving the relationship, such as a birth certificate or court order.

(3)(i) A contractor may only require certification or documentation if the contractor informs an employee before the employee returns to work that certification or documentation will be required to verify the use of paid sick leave if the employee is absent for 3 or more consecutive full workdays.

(ii) A contractor may require the employee to provide certification or documentation within 30 days of the first day of the 3 or more consecutive full workdays of paid sick leave but may not set a shorter deadline for its submission.

(iii) While a contractor is waiting for or reviewing certification or documentation, it must treat the employee's otherwise proper request for 3 or more consecutive full workdays of paid sick leave as valid. If the contractor ultimately does not receive certification or documentation, or if the certification or documentation the employee provides is insufficient to verify the employee's need for paid sick leave, the contractor may, within 10 calendar days of the deadline for receiving the certification or documentation or within 10 calendar days of the receipt of the insufficient certification or documentation, whichever occurs first, retroactively deny the employee's request to use paid sick leave. In such circumstances, the contractor may recover the value of the pay and benefits the employee received but to which the employee was not entitled, including through deduction from any sums due to the employee (*e.g.,* unpaid wages, vacation pay, profit sharing, etc.), provided such deductions do not otherwise violate applicable Federal or State wage payment or other laws.

(4) A contractor may contact the health care provider or other individual who created or signed the certification or documentation only for purposes of authenticating the document or clarifying its contents. The contractor may not request additional details about the medical or other condition referenced, seek a second opinion, or otherwise question the substance of the certification. To make such contact, the contractor must use a human resources professional, a leave administrator, or a management official. The employee's direct supervisor may not contact the employee's health care provider unless there is no other appropriate individual who can do so. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, set forth at 45 CFR parts 160 and 164, must be satisfied when individually identifiable health information of an employee is shared with a contractor by a HIPAA-covered health care provider.

(f) *Interaction with other laws and paid time off policies.* (1) *General.* Nothing in Executive Order 13706 or this part shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under the Executive Order and this part.

(2) *SCA and DBA requirements.* (i) Paid sick leave required by Executive Order 13706 and this part is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act. A contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of Executive Order 13706 and this part.

(ii) A contractor may count the value of any paid sick time provided in excess of the requirements of Executive Order 13706 and this part (and any other law) toward its obligations under the Service

Contract Act or Davis-Bacon Act in keeping with the requirements of those Acts.

(3) *FMLA.* A contractor's obligations under the Executive Order and this part have no effect on its obligations to comply with, or ability to act pursuant to, the Family and Medical Leave Act. Paid sick leave may be substituted for (that is, may run concurrently with) unpaid FMLA leave under the same conditions as other paid time off pursuant to 29 CFR 825.207. As to time off that is designated as FMLA leave and for which an employee uses paid sick leave, all notices and certifications that satisfy the FMLA requirements set forth at 29 CFR 825.300 through 300.308 will satisfy the request for leave and certification requirements of paragraphs (d) and (e) of this section.

(4) *State and local paid sick time laws.* A contractor's compliance with a State or local law requiring that employees be provided with paid sick time does not excuse the contractor from compliance with its obligations under the Executive Order 13706 or this part. A contractor may, however, satisfy its obligations under the Order and this part by providing paid sick time that fulfills the requirements of a State or local law provided that the paid sick time is accrued and may be used in a manner that meets or exceeds the requirements of the Order and this part.

(5) *Other paid time off policies.* The paid sick leave requirements of Executive Order 13706 and this part need not have any effect on a contractor's voluntary paid time off policy, whether provided pursuant to a collective bargaining agreement or otherwise. A contractor's existing paid time off policy (if provided in addition to the fulfillment of Service Contract Act or Davis-Bacon Act obligations, if applicable) will satisfy the requirements of the Executive Order and this part if the paid time off is made available to all employees described in § 13.3(a)(2) (other than those excluded by § 13.4(e)); may be used for at least all of the purposes described in paragraph (c)(1) of this section; is provided in a manner and an amount sufficient to comply with the rules and restrictions regarding the accrual of paid sick leave set forth in paragraph (a) of this section and regarding maximum accrual, carryover, reinstatement, and payment for unused leave set forth in paragraph (b) of this section; is provided pursuant to policies sufficient to comply with the rules and restrictions regarding use of paid sick leave set forth in paragraph (c) of this section, regarding requests for leave set forth in paragraph (d) of this section, and regarding certification and documentation set forth in paragraph (e) of this section, at least with respect to any paid time off used for the purposes described in paragraph (c)(1) of this section; and is protected by the prohibitions against interference, discrimination, and recordkeeping violations described in § 13.6 and the prohibition against waiver of rights described in § 13.7, at least with respect to any paid time off used for the purposes described in paragraph (c)(1) of this section.

#### § 13.6 Prohibited acts.

(a) *Interference.* (1) A contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or this part.

(2) Interference includes, but is not limited to, miscalculating the amount of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, transferring the employee to work on non-covered contracts to prevent the accrual or use of paid sick leave, disclosing confidential information provided in certification or other documentation provided to verify the need to use paid sick leave, or making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the contractor's operational needs.

(b) *Discrimination.* (1) A contractor may not discharge or in any other manner discriminate against any employee for:

(i) Using, or attempting to use, paid sick leave as provided for under Executive Order 13706 and this part;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 or this part;

(iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706 or this part; or

(iv) Informing any other person about his or her rights under Executive Order 13706 or this part.

(2) Discrimination includes, but is not limited to, a contractor's considering any of the actions described in paragraph (b)(1) of this section as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions, or a contractor's counting paid sick leave under a no fault attendance policy.

(c) *Recordkeeping.* A contractor's failure to make and maintain or to make available to authorized representatives of the Wage and Hour Division records for inspection, copying, and transcription as required by § 13.25, or any other failure to comply with the requirements of § 13.25, constitutes a violation of Executive Order 13706, this part, and the underlying contract.

#### § 13.7 Waiver of rights.

Employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706 or this part.

## Subpart B—Federal Government Requirements

#### § 13.11 Contracting agency requirements.

(a) *Contract clause.* The contracting agency shall include the Executive Order paid sick leave contract clause set forth in appendix A of this part in all covered contracts and solicitations for such contracts, as described in § 13.3, except for procurement contracts subject to the Federal Acquisition Regulations (FAR) in title 48 of the Code of Federal Regulations. The required contract clause directs, as a condition of payment, that all employees performing work on or in connection with covered contracts shall be permitted to accrue and use paid sick leave as required by Executive Order 13706 and this part. For procurement contracts subject to the FAR, contracting agencies must use the clause set forth in the FAR developed to implement part 13. Such clause will accomplish the same purposes as the clause set forth in appendix A and be consistent with the requirements set forth in part 13.

(b) *Failure to include the contract clause.* Where the Department of Labor or the contracting agency discovers or determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that Executive Order 13706 and this part did not apply to a particular contract and/or failed to include the applicable contract clause in a contract to which the Executive Order and this part apply, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision

authorizing changes, cancellation, and termination).

(c) *Withholding.* A contracting officer shall, upon his or her own action or upon written request of the Administrator, withhold or cause to be withheld from the prime contractor under the covered contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of Executive Order 13706 or this part. In the event of any such violation, the agency may, after authorization or by direction of the Administrator and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of Executive Order 13706 or this part may be grounds for termination of the right to proceed with the contract work. In such event, the contracting agency may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(d) *Suspending payment.* A contracting officer shall, upon his or her own action or upon the direction of the Administrator and notification of the contractor, take action to cause suspension of any further payment or advance of funds to a contractor that has failed to make available for inspection, copying, and transcription any of the records identified in § 13.25.

(e) *Actions on complaints.* (1) *Reporting time frame.* The contracting agency shall forward all information listed in paragraph (e)(2) of this section to the Office of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 within 14 calendar days of receipt of a complaint alleging contractor noncompliance with Executive Order 13706 or this part or within 14 calendar days of being contacted by the Wage and Hour Division regarding any such complaint.

(2) *Report contents.* The contracting agency shall forward to the Office of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 any:

(i) Complaint of contractor noncompliance with Executive Order 13706 or this part;

(ii) Available statements by the worker, contractor, or any other person regarding the alleged violation;

(iii) Evidence that the Executive Order paid sick leave contract clause was included in the contract;

(iv) Information concerning known settlement negotiations between the parties, if applicable; and

(v) Any other relevant facts known to the contracting agency or other information requested by the Wage and Hour Division.

(f) *Certified list of employees' accrued paid sick leave.* The contracting officer shall provide to a successor contractor any predecessor contractor's certified list, provided to the contracting officer pursuant to § 13.26, of the amounts of unused paid sick leave that employees have accrued.

### § 13.12 Department of Labor requirements.

(a) *Notice*—(1) *Wage Determinations OnLine Web site.* The Administrator will publish and maintain on Wage Determinations OnLine (WDOL), *http://www.wdol.gov,* or any successor site, a notice that Executive Order 13706 creates a requirement to allow employees performing work on or in connection with contracts covered by Executive Order 13706 and this part to accrue and use paid sick leave, as well as an indication of where to find more complete information about that requirement.

(2) *Wage determinations.* The Administrator will publish on all wage determinations issued under the Davis-Bacon Act and the Service Contract Act a notice that Executive Order 13706 creates a requirement to allow employees performing work on or in connection with contracts covered by Executive Order 13706 and this part to accrue and use paid sick leave, as well as an indication of where to find more complete information about that requirement.

(b) *Notification to a contractor of the withholding of funds.* If the Administrator requests that a contracting agency withhold funds from a contractor pursuant to § 13.11(c), or suspend payment or advance of funds pursuant to § 13.11(d), the Administrator and/or contracting agency shall notify the affected prime contractor of the Administrator's request to the contracting agency.

## Subpart C—Contractor Requirements

### § 13.21 Contract clause.

(a) The contractor, as a condition of payment, shall abide by the terms of the applicable Executive Order paid sick leave contract clause referred to in § 13.11(a).

(b) The contractor shall include in any covered subcontracts the applicable Executive Order paid sick leave contract clause referred to in § 13.11(a) and shall require, as a condition of payment, that the subcontractor include the contract clause in any lower-tier subcontracts. The prime contractor and any upper-tier contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the requirements of Executive Order 13706 and this part, whether or not the contract clause was included in the subcontract.

### § 13.22 Paid sick leave.

The contractor shall allow all employees performing work on or in connection with a covered contract to accrue and use paid sick leave as required by Executive Order 13706 and this part.

### § 13.23 Deductions.

The contractor may make deductions from the pay and benefits of an employee who is using paid sick leave only if such deduction qualifies as a:

(a) Deduction required by Federal, State, or local law, such as Federal or State withholding of income taxes;

(b) Deduction for payments made to third parties pursuant to court order;

(c) Deduction directed by a voluntary assignment of the employee or his or her authorized representative; or

(d) Deduction for the reasonable cost or fair value, as determined by the Administrator, of furnishing such employee with ''board, lodging, or other facilities,'' as defined in 29 U.S.C. 203(m) and part 531 of this title.

### § 13.24 Anti-kickback.

All paid sick leave used by employees performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (except as set forth in § 13.23), rebate, or kickback on any account. Kickbacks directly or indirectly to the contractor or to another person for the contractor's benefit for the whole or part of the paid sick leave are prohibited.

### § 13.25 Records to be kept by contractors.

(a) The contractor and each subcontractor performing work subject to Executive Order 13706 and this part shall make and maintain during the course of the covered contract, and preserve for no less than three years thereafter, records containing the information specified in paragraphs (a)(1) through (15) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(1) Name, address, and Social Security number of each employee;

(2) The employee's occupation(s) or classification(s);

(3) The rate or rates of wages paid;

(4) The number of daily and weekly hours worked;

(5) Any deductions made;

(6) The total wages paid each pay period;

(7) A copy of notifications to employees of the amount of paid sick leave the employees have accrued as required under § 13.5(a)(2);

(8) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests;

(9) Dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the requirements of Executive Order 13706 and part 13 as described in § 13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 13706);

(10) A copy of any written denials of employees' requests to use paid sick leave, including explanations for such denials, as required under § 13.5(d)(3);

(11) Any records relating to the certification and documentation a contractor may require an employee to provide under § 13.5(e), including copies of any certification or documentation provided by an employee;

(12) Any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave;

(13) A copy of any certified list of employees' unused paid sick leave provided to a contracting officer in compliance with § 13.26;

(14) Any certified list of employees' unused paid sick leave received from the contracting agency in compliance with § 13.11(f); and

(15) The relevant covered contract.

(b) If a contractor wishes to distinguish between an employee's covered and non-covered work (such as time spent performing work on or in connection with a covered contract versus time spent performing work on or in connection with non-covered contracts or time spent performing work on or in connection with a covered contract in the United States versus time spent performing work outside the United States, or to establish that time spent performing solely in connection with covered contracts constituted less than 20 percent of an employee's hours worked during a particular workweek), the contractor must keep records or other proof reflecting such distinctions. Only if the contractor adequately segregates the employee's time will time spent on non-covered contracts be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if that contractor adequately segregates the employee's time may a contractor properly deny an employee's request to take leave under § 13.5(d) on the ground that the employee was scheduled to perform non-covered work during the time she asked to use paid sick leave.

(c) If a contractor is not obligated by the Service Contract Act, Davis-Bacon Act, or Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541, and the contractor chooses to use the assumption permitted by § 13.5(a)(1)(iii), the contractor is excused from the requirement in paragraph (a)(4) of this section to keep records of the employee's number of daily and weekly hours worked.

(d)(1) Records relating to medical histories or domestic violence, sexual assault, or stalking, created by or provided to a contractor for purposes of Executive Order 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(2) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA) and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this part, the records and documents must also be maintained in compliance with the confidentiality requirements of the GINA and/or ADA as described in 29 CFR 1635.9 and 29 CFR 1630.14(c)(1), respectively.

(3) The contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in § 13.5(c)(1)(iv) (as described in § 13.5(d)(2)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(e) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(f) Nothing in this part limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658, their implementing regulations, or other applicable law.

#### § 13.26 Certified list of employees' accrued paid sick leave.

Upon completion of a covered contract, a predecessor prime contractor shall provide to the contracting officer a certified list of the names of all employees entitled to paid sick leave under Executive Order 13706 and this part who worked on or in connection with the covered contract or any covered subcontract(s) at any point during the 12 months preceding the date of completion of the contract, the date each such employee separated from the contract or covered subcontract(s) if prior to the date of the completion of the contract, and the amount of paid sick leave each such employee had available for use as of the date of completion of the contract or the date each such employee separated from the contract or subcontract.

#### § 13.27 Notice.

(a) The contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706 and this part by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees.

(b) Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

#### § 13.28 Timing of pay.

The contractor shall compensate an employee for time during which the employee used paid sick leave no later than one pay period following the end of the regular pay period in which the paid sick leave was used.

### Subpart D—Enforcement

#### § 13.41 Complaints.

(a) Any employee, contractor, labor organization, trade organization, contracting agency, or other person or entity that believes a violation of the Executive Order or this part has occurred may file a complaint with any

office of the Wage and Hour Division. No particular form of complaint is required. A complaint may be filed orally or in writing. If the complainant is unable to file the complaint in English, the Wage and Hour Division will accept the complaint in any language.

(b) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual. Disclosure of such statements shall be governed by the provisions of the Freedom of Information Act (5 U.S.C. 552, *see* 29 CFR part 70) and the Privacy Act of 1974 (5 U.S.C. 552a).

**§ 13.42 Wage and Hour Division conciliation.**

After receipt of a complaint, the Administrator may seek to resolve the matter through conciliation.

**§ 13.43 Wage and Hour Division investigation.**

The Administrator may investigate possible violations of the Executive Order or this part either as the result of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator may conduct interviews with the relevant contractor, as well as the contractor's employees at the worksite during normal work hours; inspect the relevant contractor's records (including contract documents and payrolls, if applicable); make copies and transcriptions of such records; and require the production of any documentary or other evidence the Administrator deems necessary to determine whether a violation, including conduct warranting imposition of debarment, has occurred. Federal agencies and contractors shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with employees, and in all aspects of investigations.

**§ 13.44 Remedies and sanctions.**

(a) *Interference.* When the Administrator determines that a contractor has interfered with an employee's accrual or use of paid sick leave in violation of § 13.6(a), the Administrator will notify the contractor and the relevant contracting agency of the interference and request that the contractor remedy the violation. If the contractor does not remedy the violation, the Administrator shall direct the contractor to provide any appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to § 13.51. Such relief may include the any pay and/or benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation; or appropriate equitable or other relief. Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator because the violation was in good faith and the contractor had reasonable grounds for believing it had not violated the Order or this part. The Administrator may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary that monetary relief is due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(b) *Discrimination.* When the Administrator determines that a contractor has discriminated against an employee in violation of § 13.6(b), the Administrator will notify the contractor and the relevant contracting agency of the discrimination and request that the contractor remedy the violation. If the contractor does not remedy the violation, the Administrator shall direct the contractor to provide appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to § 13.51. Such relief may include, but is not limited to, employment, reinstatement, promotion, restoration of leave, or lost pay and/or benefits. Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator because the violation was in good faith and the contractor had reasonable grounds for believing the contractor had not violated the Order or this part. The Administrator may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary that monetary relief is due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(c) *Recordkeeping.* When a contractor fails to comply with the requirements of § 13.25 in violation of § 13.6(c), the Administrator will request that the contractor remedy the violation. If the contractor fails to produce required records upon request, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds on the contract until such time as the violations are discontinued.

(d) *Debarment.* Whenever a contractor is found by the Secretary to have disregarded its obligations under the Executive Order or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, shall be ineligible to be awarded any contract or subcontract subject to the Executive Order for a period of up to three years from the date of publication of the name of the contractor or responsible officer on the excluded parties list currently maintained on the System for Award Management Web site, *http://www.SAM.gov.* Neither an order of debarment of any contractor or its responsible officers from further Government contracts nor the inclusion of a contractor or its responsible officers on a published list of noncomplying contractors under this section shall be carried out without affording the contractor or responsible officers an opportunity for a hearing before an Administrative Law Judge.

(e) *Civil actions to recover greater underpayments than those withheld.* If the payments withheld under § 13.11(c) are insufficient to reimburse all monetary relief due, or if there are no payments to withhold, the Department of Labor, following a final order of the Secretary, may bring an action against the contractor in any court of competent jurisdiction to recover the remaining amount. The Department of Labor shall, to the extent possible, pay any sums it recovers in this manner directly to the employees who suffered the violation(s) of § 13.6(a) or (b). Any sum not paid to an employee because of inability to do so within three years shall be transferred into the Treasury of the United States as miscellaneous receipts.

(f) *Retroactive inclusion of contract clause.* If a contracting agency fails to include the applicable contract clause in a contract to which the Executive Order applies, the contracting agency, on its

own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination).

## Subpart E—Administrative Proceedings

### § 13.51 Disputes concerning contractor compliance.

(a) This section sets forth the procedures for resolution of disputes of fact or law concerning a contractor's compliance with this part. The procedures in this section may be initiated upon the Administrator's own motion or upon request of the contractor.

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor(s) and the prime contractor (if different) of the investigative findings by certified mail to the last known address.

(2) A contractor desiring a hearing concerning the Administrator's investigative findings letter shall request such a hearing by letter postmarked within 30 calendar days of the date of the Administrator's letter. The request shall set forth those findings that are in dispute with respect to the violations and/or debarment, as appropriate, explain how the findings are in dispute including by making reference to any affirmative defenses.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation to an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 13.52, the Administrator shall notify the contractor(s) of the investigative findings by certified mail to the last known address, and shall issue a ruling in the investigative findings letter on any issues of law known to be in dispute.

(2)(i) If the contractor disagrees with the factual findings of the Administrator or believes that there are relevant facts in dispute, the contractor shall so advise the Administrator by letter postmarked within 30 calendar days of the date of the Administrator's letter. In the response, the contractor shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a timely response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor accordingly.

(3) If the contractor desires review of the ruling issued by the Administrator under paragraph (c)(1) or the final sentence of (c)(2)(ii) of this section, the contractor shall file a petition for review thereof with the Administrative Review Board postmarked within 30 calendar days of the date of the ruling, with a copy thereof to the Administrator. The petition for review shall be filed in accordance with the procedures set forth in 29 CFR part 7.

(d) If a timely response to the Administrator's investigative findings letter is not made or a timely petition for review is not filed, the Administrator's investigative findings letter shall become the final order of the Secretary. If a timely response or petition for review is filed, the Administrator's letter shall be inoperative unless and until the decision is upheld by an Administrative Law Judge or the Administrative Review Board or otherwise becomes a final order of the Secretary.

### § 13.52 Debarment proceedings.

(a) Whenever any contractor is found by the Secretary of Labor to have disregarded its obligations to employees or subcontractors under Executive Order 13706 or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which such contractor or responsible officers have an interest, shall be ineligible for a period up to three years to receive any contracts or subcontracts subject to Executive Order 13706 from the date of publication of the name or names of the contractor or persons on the excluded parties list currently maintained on the System for Award Management Web site, *http://www.SAM.gov.*

(b)(1) Whenever the Administrator finds reasonable cause to believe that a contractor has committed a violation of Executive Order 13706 or this part which constitutes a disregard of its obligations to employees or subcontractors, the Administrator shall notify by certified mail to the last known address or by personal delivery, the contractor and its responsible officers (and any firms, corporations, partnerships, or associations in which the contractor or responsible officers are known to have an interest), of the finding. The Administrator shall afford such contractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under Executive Order 13706 or this part. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter to the Administrator postmarked within 30 calendar days of the date of the investigative findings letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute.

(2) Hearings under this section shall be conducted in accordance with the procedures set forth in 29 CFR part 6. If no hearing is requested within 30 calendar days of the letter from the Administrator, the Administrator's findings shall become the final order of the Secretary.

### § 13.53 Referral to Chief Administrative Law Judge; amendment of pleadings.

(a) Upon receipt of a timely request for a hearing under § 13.51 (where the Administrator has determined that relevant facts are in dispute) or § 13.52 (debarment), the Administrator shall refer the case to the Chief

Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent. The investigative findings letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

(b) At any time prior to the closing of the hearing record, the complaint (investigative findings letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as the Administrative Law Judge may approve. For proceedings pursuant to § 13.51, such an amendment may include a statement that debarment action is warranted under § 13.52. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events that have happened since the date of the pleadings and that are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

**§ 13.54 Consent findings and order.**

(a) At any time prior to the receipt of evidence or, at the Administrative Law Judge's discretion prior to the issuance of the Administrative Law Judge's decision, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the Administrator's findings letter and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 calendar days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

**§ 13.55 Administrative Law Judge proceedings.**

(a) *Jurisdiction.* The Office of Administrative Law Judges has jurisdiction to hear and decide appeals concerning questions of law and fact from the Administrator's investigative findings letters issued under §§ 13.51 and 13.52.

(b) *Proposed findings of fact, conclusions, and order.* Within 20 calendar days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, together with a supporting brief expressing the reasons for such proposals. Each party shall serve such proposals and brief on all other parties.

(c) *Decision.* (1) Within a reasonable period of time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 calendar days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall issue a decision. The decision shall contain appropriate findings, conclusions, and an order, and be served upon all parties to the proceeding.

(2) If the respondent is found to have violated Executive Order 13706 or this part, and if the Administrator requested debarment, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the excluded parties list, including findings that the contractor disregarded its obligations to employees or subcontractors under the Executive Order or this part.

(d) *Limit on scope of review.* The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, Administrative Law Judges shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(e) *Orders.* If the Administrative Law Judge concludes a violation occurred, the final order shall mandate action to remedy the violation, including any monetary or equitable relief described in § 13.44. Where the Administrator has sought imposition of debarment, the Administrative Law Judge shall determine whether an order imposing debarment is appropriate.

(f) *Finality.* The Administrative Law Judge's decision shall become the final order of the Secretary, unless a timely petition for review is filed with the Administrative Review Board.

**§ 13.56 Petition for review.**

(a) *Filing.* Within 30 calendar days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Administrative Review Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the disregard of obligations to employees and/or subcontractors, or lack thereof, as appropriate. A party must serve the petition for review, and all briefs, on all parties and the Chief Administrative Law Judge. It must also timely serve copies of the petition and all briefs on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(b) *Effect of filing.* If a party files a timely petition for review, the Administrative Law Judge's decision shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision, or the decision otherwise becomes a final order of the Secretary. If a petition for review concerns only the imposition of debarment, however, the remainder of

the decision shall be effective immediately. No judicial review shall be available unless a timely petition for review to the Administrative Review Board is first filed.

**§ 13.57 Administrative Review Board proceedings.**

(a) *Authority.* (1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under § 13.51(c)(1) or the final sentence of § 13.51(c)(2)(ii), Administrator's rulings issued under § 13.58, and decisions of Administrative Law Judges issued under § 13.55. In considering the matters within the scope of its jurisdiction, the Administrative Review Board shall act as the authorized representative of the Secretary and shall act fully and finally on behalf of the Secretary concerning such matters.

(2) *Limit on scope of review.* (i) The Administrative Review Board shall not have jurisdiction to pass on the validity of any provision of this part. The Administrative Review Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Administrative Review Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Administrative Review Board's final decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Administrative Review Board concludes a violation occurred, the final order shall mandate action to remedy the violation, including, but not limited to, any monetary or equitable relief described in § 13.44. Where the Administrator has sought imposition of debarment, the Administrative Review Board shall determine whether an order imposing debarment is appropriate.

(d) *Finality.* The decision of the Administrative Review Board shall become the final order of the Secretary.

**§ 13.58 Administrator ruling.**

(a) Questions regarding the application and interpretation of the rules contained in this part may be referred to the Administrator, who shall issue an appropriate ruling. Requests for such rulings should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(b) Any interested party may appeal to the Administrative Review Board for review of a final ruling of the Administrator issued under paragraph (a) of this section. The petition for review shall be filed with the Administrative Review Board within 30 calendar days of the date of the ruling.

*Appendix A to Part 13—Contract Clause*

The following clause shall be included by the contracting agency in every contract, contract-like instrument, and solicitation to which Executive Order 13706 applies, except for procurement contracts subject to the Federal Acquisition Regulation (FAR):

(a) *Executive Order 13706.* This contract is subject to Executive Order 13706, the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order, and the following provisions.

(b) *Paid Sick Leave.* (1) The contractor shall permit each employee (as defined in 29 CFR 13.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and employee, to earn not less than 1 hour of paid sick leave for every 30 hours worked. The contractor shall additionally allow accrual and use of paid sick leave as required by Executive Order 13706 and 29 CFR part 13. The contractor shall in particular comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract.

(2) The contractor shall provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account. The contractor shall provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken.

(3) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the requirements of Executive Order 13706, 29 CFR part 13, and this clause.

(c) *Withholding.* The contracting officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of Executive Order 13706, 29 CFR part 13, or this clause, including any pay and/or benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation, and liquidated damages.

(d) *Contract Suspension/Contract Termination/Contractor Debarment.* In the event of a failure to comply with Executive Order 13706, 29 CFR part 13, or this clause, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

(e) The paid sick leave required by Executive Order 13706, 29 CFR part 13, and this clause is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act, and a contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of Executive Order 13706 and 29 CFR part 13.

(f) Nothing in Executive Order 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under Executive Order 13706 and 29 CFR part 13.

(g) *Recordkeeping.* (1) Any contractor performing work subject to Executive Order 13706 and 29 CFR part 13 must make and maintain, for no less than three years from the completion of the work on the contract, records containing the information specified in paragraphs (i) through (xv) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(i) Name, address, and Social Security number of each employee;

(ii) The employee's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked;

(v) Any deductions made;

(vi) The total wages paid each pay period;

(vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(4);

(viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests;

(ix) Dates and amounts of paid sick leave taken by employees (unless a contractor's paid time off policy satisfies the requirements of Executive Order 13706 and part 13 as described in § 13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 13706);

(x) A copy of any written denials of employees' requests to use paid sick leave, including explanations for such denials, as required under 29 CFR 13.5(d)(3);

(xi) Any records reflecting the certification and documentation a contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee;

(xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave;

(xiii) A copy of any certified list of employees' accrued, unused paid sick leave provided to a contracting officer in compliance with 29 CFR 13.26;

(xiv) Any certified list of employees' accrued, unused paid sick leave received from the contracting agency in compliance with 29 CFR 13.11(f); and

(xv) A copy of the relevant covered contract.

(2) If a contractor wishes to distinguish between an employee's covered and non-covered work, the contractor must keep records or other proof reflecting such distinctions. Only if the contractor adequately segregates the employee's time will time spent on non-covered contracts be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if that contractor adequately segregates the employee's time may a contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform non-covered work during the time she asked to use paid sick leave.

(3) In the event a contractor is not obligated by the Service Contract Act, the Davis-Bacon Act, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the FLSA's minimum wage and overtime requirements, and the contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the contractor is excused from the requirement in paragraph (1)(d) of this section to keep records of the employee's number of daily and weekly hours worked.

(4)(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of Executive Order 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA) and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents must also be maintained in compliance with the confidentiality requirements of the GINA and/or ADA as described in 29 CFR 1635.9 and 29 CFR 1630.14(c)(1), respectively.

(iii) The contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658, their respective implementing regulations, or any other applicable law.

(h) The contractor (as defined in 29 CFR 13.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts.

(i) *Certification of Eligibility.* (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts currently maintained on the System for Award Management Web site, *http://www.SAM.gov*.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(j) *Interference/Discrimination.* (1) A contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or 29 CFR part 13. Interference includes, but is not limited to, miscalculating the amount of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, disclosing confidential information provided in certification or other documentation provided to verify the need to use paid sick leave, or making the use of paid sick leave contingent on the employee's finding a replacement worker or fulfilling the contractor's operational needs.

(2) A contractor may not discharge or in any other manner discriminate against any employee for:

(i) Using, or attempting to use, paid sick leave as provided for under Executive Order 13706 and 29 CFR part 13;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 or 29 CFR part 13;

(iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706 or 29 CFR part 13; or

(iv) Informing any other person about his or her rights under Executive Order 13706 or 29 CFR part 13.

(k) *Waiver.* Employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706, 29 CFR part 13, or this clause.

(l) *Notice.* The contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706, 29 CFR part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

(m) *Disputes concerning labor standards.* Disputes related to the application of Executive Order 13706 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 13. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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Part III

## Department of the Interior

Bureau of Land Management

43 CFR Part 1600
Resource Management Planning; Proposed Rules

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 1600**

**[LLWO210000.L1610000]**

**RIN 1004–AE39**

## Resource Management Planning

**AGENCY:** Bureau of Land Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to amend existing regulations that establish the procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act (FLPMA). The proposed rule would enable the BLM to more readily address landscape-scale resource issues, such as wildfire, habitat connectivity, or the demand for renewable and non-renewable energy sources and to respond more effectively to environmental and social changes. The proposed rule would further emphasize the role of science in the planning process and the importance of evaluating the resource, environmental, ecological, social, and economic conditions at the onset of planning. The proposed rule would affirm the important role of other Federal agencies, State and local governments, Indian tribes, and the public during the planning process, and would enhance opportunities for public involvement and transparency during the preparation of resource management plans. Finally, the proposed rule would make revisions to clarify existing text and use plain language to improve the readability of the planning regulations.

**DATES:** Please submit comments on or before April 25, 2016.

**ADDRESSES:** You may submit comments by any of the following methods:

*Mail:* Director (630), Bureau of Land Management, U.S. Department of the Interior, 1849 C Street NW., Room 2134LM, Washington, DC 20240, Attention: 1004–AE39.

*Personal or messenger delivery:* U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003.

*Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions at this Web site.

You may submit comments on the proposed collection of information by fax or electronic mail as follows:

*Fax:* Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, 202–395–5806.

*Electronic mail: oira_submission@omb.eop.gov*.

Please indicate ''Attention: OMB Control Number 1004–XXXX,'' regardless of the method used. If you submit comments on the proposed collection of information please provide the BLM with a copy of your comments at one of the addresses shown above.

**FOR FURTHER INFORMATION CONTACT:** Leah Baker, Branch Chief (Acting), Planning and NEPA, at 202–912–7282, for information relating to the BLM's national planning program or the substance of this proposed rule. For information on procedural matters or the rulemaking process, you may contact Charles Yudson at 202–912–7437. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact these individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

The BLM initiated this rulemaking as part of a broader effort known as ''Planning 2.0'' to improve the land use planning procedures required by FLPMA. The BLM follows these procedures to prepare and amend resource management plans that guide future BLM decisions on the public lands. Planning 2.0 responds to a 2011 BLM strategic review that identified challenges and opportunities for the BLM and to recent Executive and Secretarial direction that encourages science-based decision-making; landscape-scale management approaches; adaptive management techniques to manage for uncertainty; and active coordination and collaboration with partners and stakeholders. In this proposed rule, the BLM proposes targeted changes to the existing planning regulations in 43 CFR subparts 1601 and 1610 and explains the rationale.

*Background*

In 2011, the BLM released a strategic plan titled ''Winning the Challenges of the Future: A Roadmap for Success in 2016'' (the Roadmap). This plan identified several challenges for the BLM in managing the public lands consistent with its statutory direction ''that management be on the basis of multiple use and sustained yield unless otherwise specified by law'' (43 U.S.C. 1701(a)(7)). Management of the public lands in the 21st century is made more complex by increasing population growth and urbanization in the West, diversifying use activities on the public lands, demand for renewable and non-renewable energy sources, increasing conflicts between resource uses and conservation objectives, and landscape-scale resource issues such as climate change or wildfire. The Roadmap also identified new opportunities for the BLM due to the broad availability of Internet access and rapid acceleration in technologies as well as heightened expectations for services on the part of those who use and enjoy the public lands. Given these challenges and opportunities, the Roadmap called for a more ''nimble'' approach to planning that is responsive to a rapidly changing environment and conditions.

In addition, recent Presidential and Secretarial policies and strategic direction emphasize the value in applying landscape-scale management approaches to address climate change, wildfire, energy development, habitat conservation, restoration, and mitigation of impacts on Federal lands. The BLM has developed strategies and tools to support this approach by advancing the role of science in public lands management, standardizing data gathering, developing landscape assessments, requiring monitoring and evaluation to guide adaptive management strategies, and advancing the use of geospatial data and technology.

Through Planning 2.0, the BLM aims to improve the land use planning process in order to apply this policy and strategic direction and to complement related efforts within the BLM. Further, the Planning 2.0 initiative aims to incorporate lessons-learned and best practices developed over the last ten to fifteen years of resource management planning and respond to public sentiment that the planning process is, at times, cumbersome and slow to complete. Specifically, Planning 2.0 seeks to achieve three goals: (1) Improve the BLM's ability to respond to social and environmental change in a timely manner; (2) provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans; and (3) improve the BLM's ability to address landscape-scale resource issues and to apply landscape-scale management approaches. The Planning 2.0 initiative includes this proposed rule and a forthcoming revision of the BLM *Land Use Planning Handbook* (H–1601–1).

Planning 2.0 is informed, in part, by public input. In May 2014, the BLM

announced Planning 2.0, created a Web site (*www.blm.gov/plan2*), issued a press release, and requested public input on ways to improve the land use planning process. The BLM held two facilitated public listening sessions that were available through a live broadcast of the event over the Internet (livestream) in the fall of 2014. The BLM also conducted external outreach to partners and internal outreach to staff. The *Planning 2.0 Public Input Summary Report* (2015) summarizes written comments received by the BLM from over 6,000 groups and individuals.

*Statutory and Regulatory Authority*

Section 202 of FLPMA (43 U.S.C. 1712) directs the Secretary of the Interior to ''develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands'' (43 U.S.C. 1712(a)) and outlines requirements for developing and revising land use plans. In particular, section 202(f) (43 U.S.C. 1712(f)) directs the Secretary of the Interior, by regulation, to ''establish procedures . . . to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.'' The BLM first developed land use planning regulations in 1979 (44 FR 46386, August 7, 1979). The BLM made significant revisions to the regulations in 1983 (48 FR 20364, May 5, 1983) and revised them again in 2005 (70 FR 14561, March 23, 2005).

*Overview of the Proposed Rule*

The proposed rule would revise two subparts of the existing regulations, 43 CFR subparts 1601 (Planning) and 1610 (Resource Management Planning). Proposed changes in subpart 1601 would revise the purpose, objective, responsibilities, definitions, and principles sections. Proposed changes in subpart 1610 would describe the general framework for resource management planning, including the components of a resource management plan; update the public notification and public comment provisions; establish an assessment to determine and describe baseline conditions that would occur before initiating the preparation of a resource management plan; establish new opportunities for public involvement earlier in the planning process; clarify plan approval and protest procedures; strengthen the monitoring and evaluation requirements; modify the amendment and maintenance provisions; update the provisions for designating areas of critical environmental concern (ACECs); and make other clarifying edits. These revisions are discussed in detail in the section-by-section analysis of this preamble. In both subparts, we propose changes to improve readability and understanding of the planning regulations to support effective collaboration and public involvement during the planning process.

*Responsibilities and Plan Boundaries*

The proposed rule would explain the responsibilities for preparing or amending a resource management plan to acknowledge that planning areas may extend beyond traditional BLM administrative boundaries such as Field Offices or States. References to the ''Field Manager'' would be replaced with the ''responsible official,'' as the BLM official responsible for preparing and amending a resource management plan. References to the ''State Director'' would be replaced with the ''deciding official,'' as the BLM official responsible for supervisory review, including plan approval.

The proposed rule would make the BLM Director responsible for determining the deciding official and the planning area for resource management plans and for plan amendments that cross State boundaries. For plan amendments that do not cross State boundaries, the deciding official would be responsible for determining the planning area.

*Plan Components*

Under the existing and proposed regulations, a resource management plan provides management direction that guides future management decisions within a planning area. The proposed rule would explain this function in greater detail by distinguishing between the components of a resource management plan that provide planning-level management direction (''plan components'') and ''implementation strategies'' that would guide future actions consistent with the management direction in the plan (''implementation strategies''). As proposed, plan components would include goals, objectives, designations, resource use determinations, monitoring standards, and, where appropriate, lands identified as available for disposal from BLM administration under section 203 of FLPMA. Implementation strategies would describe potential actions the BLM may take in the future in order to achieve the goals and objectives, as well as procedures for monitoring and evaluating the resource management plan implementation. Implementation strategies would be developed during the planning process but are not plan components in and of themselves.

Under the proposed rule, plan components would be changed through plan amendment or revision procedures where the BLM determined that monitoring and evaluation findings, new high quality information, new or revised policy, a proposed action, or other relevant changes in circumstances warranted a substantive change to management direction. A plan component may be adjusted through maintenance to correct a typographical or mapping error, or to reflect minor changes in mapping or data. Implementation strategies as proposed could be updated at any time without triggering a plan amendment, but would conform with the plan components and would be made available for public review at least 30 days before they can be implemented.

*Planning Assessment*

The proposed rule would add a new planning assessment requirement before initiating the preparation of a resource management plan or a plan amendment for which an environmental impact statement (EIS) will be prepared (EIS-level amendments). The planning assessment is intended to assist the BLM and the public in understanding the current baseline in regards to resource, environmental, ecological, social, and economic conditions in the planning area. During the planning assessment, the BLM would describe these conditions and current management. The BLM would also identify the role of the public lands in addressing landscape-scale resource issues or in supporting national, regional, or local policies, strategies, or plans. The planning assessment would inform the preparation of the resource management plan or EIS-level amendments.

The planning assessment process would include the BLM arranging for relevant data and information to be gathered, identifying relevant plans or strategies for consideration, providing opportunities for other agencies, State and local governments, Indian tribes, and the public to provide existing data, information, plans, or strategies for consideration in the planning assessment, and identifying relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area. The proposed rule would require that the BLM use high quality information (including the best available scientific information) to inform the planning process; any

information submitted for consideration would be required to meet standards for high quality information. As part of the proposed planning assessment, the BLM would evaluate the data and information gathered to assess conditions in the planning area. This information would be summarized in a report made available for public review and, to the extent practical, non-sensitive geospatial information would be made available to the public on the BLM's Web site.

*Public Involvement*

The proposed rule would use the term ''public involvement'' instead of ''public participation'' to be more consistent with the terms used in FLPMA. The proposed rule also would restructure the public involvement provisions in section 1610.2 to indicate more clearly where in the land use planning process the BLM would provide for public notice, public review, or public comment. In the proposed rule, the BLM would make new commitments to announce public involvement opportunities in planning on the BLM Web site and by posting a notice at the BLM offices located within the planning area. The BLM would also notify individuals or groups that ask to receive notice of public involvement opportunities relating to a planning effort by written or electronic means, such as email correspondence.

The proposed rule would add new public involvement opportunities. First, the proposed planning assessment would include an opportunity for other Federal agencies, State and local government, Indian tribes, and the public to provide data or information or to suggest policies, strategies, guidance or plans to inform the BLM planning process and would require the BLM to identify public views in relation to resource, environmental, ecological, social, or economic conditions. Second, the proposed rule would require that BLM offices make the preliminary resource management alternatives, the rationale for alternatives, and the basis for the impacts analysis available for public review in advance of issuing the draft resource management plan and draft EIS. Public review of the preliminary alternatives prior to issuance of the draft resource management plan and draft EIS would enable the public to raise any concerns with the BLM before the BLM conducts the impacts analysis of the management plan alternatives.

*Integration With National Environmental Policy Act (NEPA) Requirements*

The proposed rule would address several procedural requirements for plan amendments to improve consistency and integration with NEPA procedures. Specifically, the proposed rule would require the publication of a notice of intent (NOI) to prepare a plan amendment to align with the requirements of the Council on Environmental Quality (CEQ) NEPA regulations; and the public comment period on a draft plan amendment to align with the CEQ regulations and guidance regarding public comment on draft EISs. The proposed rule would change the requirements for selecting a preferred alternative to align more closely with the requirements of the Department of the Interior (DOI) NEPA implementation regulations.

*Protests*

The proposed rule would clarify the protest procedures to provide more detailed information on what constitutes a valid protest issue and for consistency with the proposed terminology for plan components. The BLM would provide a new opportunity for the public to submit protests electronically through methods specified for each resource management plan or plan amendment. The proposed rule would clarify that proposed resource management plans (including plan revisions) and plan amendments are subject to protest. The proposed rule would provide the opportunity for a party that previously participated in the preparation of a resource management plan or plan amendment to identify why a plan component is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations before the final decision to approve the plan. The proposed rule would clarify that the focus of a protest is to identify and remedy inconsistency with Federal laws and regulations or the purposes, policies, and programs of such laws and regulations.

*Transition From the Existing Planning Process*

The proposed rule would address the transition from the existing planning regulations to those that result from this proposal, including resource management plans currently in preparation.

**I. Public Comment Procedures**

You may submit comments on this proposed rule by mail, personal or messenger delivery, or electronic mail.

*Mail:* Director (630), Bureau of Land Management, U.S. Department of the Interior, 1849 C Street NW., Room 2134LM, Washington, DC 20240, Attention: Regulatory Affairs, 1004–AE39.

*Personal or messenger delivery:* U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003.

*Electronic mail:* You may access and comment on the proposed rule at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. When possible, comments should reference the specific section or paragraph of the proposed rule that the comment is addressing.

The BLM need not consider or include in the Administrative Record for the final rule, comments that it receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses, will be available for public review at the U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134LM, Washington, DC 20003 during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. They also will be available at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at this Web site.

You may submit comments on the proposed collection of information by fax or electronic mail as follows:

*Fax:* Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, 202–395–5806.

*Electronic mail: oira_submission@omb.eop.gov*.

Please indicate ''Attention: OMB Control Number 1004–XXX,'' regardless of the method used. If you submit comments on the proposed collection of information, please provide the BLM with a copy of your comments at one of the addresses shown above.

Before including your address, telephone number, email address, or other personal identifying information

in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment for the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**II. Background**

The Bureau of Land Management (BLM) manages more than 245 million acres of land, the most of any Federal agency. This land, known as the National System of Public Lands, is primarily located in 12 Western states, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. The BLM's mission is to manage and conserve the public lands for the use and enjoyment of present and future generations under the mandate of multiple-use and sustained yield. In Fiscal Year 2014, the BLM generated $5.2 billion in receipts from public lands.

*Statutory and Regulatory Authority*

The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, is the BLM ''organic act'' that establishes the agency's mission to manage the public lands on the basis of multiple-use and sustained yield, unless otherwise specified by law. Through FLPMA, the BLM is directed to manage the public lands in a manner which recognizes the nation's need for natural resources from the public lands, provides for outdoor recreation and other human uses, provides habitat for fish and wildlife, preserves and protects certain public lands in their natural condition, and protects the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values. The BLM develops goals and objectives to guide management through the land use planning process under section 202 of FLPMA.

Section 202(a) of FLPMA requires the Secretary of the Interior, with public involvement, to ''develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.'' Among other provisions, section 202(c) of FLPMA requires the Secretary, in developing and revising land use plans: To use and observe the principles of multiple use and sustained yield; to use an interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences; to give priority to the designation and protection of ACECs; to use the inventory of public lands, resources and other values, to the extent it is available; to consider both present and potential uses of public lands; to consider the relative scarcity of values; to weigh long-term benefits against short term benefits; to provide for compliance with applicable pollution control laws; and to coordinate with other Federal departments and agencies, Indian tribes, and the States and local governments.

Section 202(f) of FLPMA directs the Secretary to provide for public involvement and to establish procedures by regulation ''to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.'' Under FLPMA, the Secretary administers the public lands through the BLM.

The BLM issued regulations establishing a land use planning system for BLM-managed public lands, as prescribed in FLPMA, in 1979 (44 FR 46386). These regulations established the term ''resource management plan'' (RMP) for the land use plans mandated by FLPMA, to replace the then-existing ''management framework plans.'' The BLM revised these regulations in 1983 to clarify the planning process and ''eliminate burdensome, outdated, and unneeded provisions'' (48 FR 20364). These regulations were amended again in 2005 (70 FR 14561) to make clear the role of cooperating agencies in the land use planning process and to emphasize the importance of working with Federal and State agencies and local and tribal governments through cooperating agency relationships in developing, amending, and revising the BLM's resource management plans.

*The BLM's Existing Land Use Planning Process*

The BLM planning process is a collaborative process, which involves Federal agencies, Indian tribes, State and local governments, and the public at various steps, while retaining decision-making authority within the BLM. Cooperating agencies play an important role in the development of resource management plans. Early in the planning process, the BLM invites eligible governmental entities to serve as cooperating agencies, and the BLM is committed to collaborating with cooperating agencies during several steps of the process. Resource management plans are generally established based on a BLM Field Office or District Office boundary and prepared by an interdisciplinary team under the direction of a BLM field or district manager. The BLM State Directors provide oversight and guidance to the field or district managers and the BLM State Directors approve the resource management plan. The BLM Director provides high-level guidance and renders a decision on any public protests of the proposed plan, and when necessary, inconsistencies with State and local plans that are raised by the Governor through a consistency review process.

As outlined in 43 CFR subparts 1601 and 1610, the steps of the planning process are fully integrated with the requirements of the National Environmental Policy Act (NEPA).[1] The planning process begins with public notice and formal invitation for the public to assist the BLM in the identification of planning issues, concurrent and integrated with the NEPA scoping process. Planning issues are defined in the BLM Land Use Planning Handbook (H–1601–1) as ''disputes or controversies about existing and potential land and resource allocations, levels of resource use, production, and related management practices.''

Next, the BLM develops criteria to guide the development of the resource management plan. The planning criteria ensure that the resource management plan is tailored to the planning issues and that the BLM avoids unnecessary data collection and analyses. The BLM summarizes the planning issues and planning criteria in a scoping report, which is made available to the public. The BLM continues to refine the planning issues and the planning criteria throughout the development of the draft resource management plan.

To aid in the planning process, the BLM arranges for the collection or assembly of data and information, which are then analyzed to determine the ability of the resources to respond to the planning issues as well as any management opportunities. The resulting ''analysis of the management situation'' provides the basis for the BLM's development of a range of reasonable alternatives and analysis of the environmental impacts of these alternatives, as required by the NEPA. The BLM presents the range of alternatives in a single integrated draft resource management plan and draft EIS and identifies its preferred alternative.

[1] Council on Environmental quality (CEQ) NEPA implementing regulations require Federal agencies, ''to the fullest extent possible,'' to ''[i]ntegrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively'' 40 CFR 1500.2(c).

The BLM then makes the draft resource management plan and draft EIS available to the public for a 90-day comment period. At the close of this period, the BLM evaluates the comments received and prepares a proposed resource management plan and final EIS, including responses to any substantive public comments received on the draft resource management plan and draft EIS.

The BLM provides the proposed resource management plan and final EIS to the Governor(s) of any State(s) the plan falls within for a 60-day consistency review period. During this period, the Governor may identify any inconsistencies between State and local plans and the proposed resource management plan. This step, including the process of resolving identified inconsistencies, ensures that BLM has satisfied the FLPMA section 202(a)(9) requirement that the BLM keep apprised of State, local, and tribal land use plans and assist in resolving, to the extent practical and consistent with Federal law, inconsistencies between Federal and non-Federal government plans. Concurrent with the Governor's consistency review, the BLM provides a 30-day period during which members of the public who have an interest that may be adversely affected by the approval of the proposed resource management plan and who participated in the planning process may protest approval of the proposed resource management plan. The BLM Director renders a decision on any protest, which serves as the final decision of the DOI, and is not subject to an administrative appeal.

Following approval of the resource management plan, the BLM conducts monitoring and evaluation at intervals established in the plan to assess the need for maintenance, revision, or amendment of the plan. Maintenance is provided as needed to address minor changes in data. An amendment or plan revision is initiated in response to monitoring and evaluation findings, new data, new or revised policy, a change in circumstances, or a proposed action that would not be in conformance with the approved resource management plan. The BLM undertakes a resource management plan revision when monitoring and evaluation findings, new data, new or revised policy, and changes in circumstances affect the entire plan or major portions of the plan.

The proposed rule would maintain the general process for developing, revising, amending, and maintaining a resource management plan, as described, while proposing specific changes to improve the process in a number of ways.

*Why the BLM Is Proposing Changes to the Land Use Planning Process*

The proposed rule would respond to needs identified by the BLM and related Presidential and Secretarial direction. In 2011, the BLM released a strategic plan titled ''Winning the Challenges of the Future: A Roadmap for Success in 2016'' (the Roadmap). This document highlighted the increasing complexity the BLM faces in managing for multiple-use and sustained yield on the public lands. Population growth and urbanization in the West, a diversifying portfolio of use activities, demand for renewable and non-renewable energy sources, and the proliferation of landscape-scale environmental change agents such as climate change, wildfire, or invasive species create challenges that require that the BLM develop new strategies and approaches to effectively manage the public lands. Simultaneously, the rapid acceleration in technologies such as the Internet, telecommunications, and analytical tools, including geospatial tools, have brought new opportunities combined with new expectations for services to be provided by land management agencies. Given the foundational nature of land use planning, a process that establishes direction for future management activities on the public lands, the Roadmap recognized the need for the BLM's resource management plans to address these challenges and respond to emerging opportunities. The Roadmap also recognized the importance of an efficient planning process, one that can effectively integrate new information and new technologies as they become available in order to keep resource management attuned to changing conditions on the ground and newly available information.

Specifically, the Roadmap set the following goal for the BLM to accomplish by the year 2016: ''Adopt a proactive and nimble approach to planning that allows us to work collaboratively with partners at different scales to produce highly useful decisions that adapt to the rapidly changing environment and conditions'' (page 10). Following the publication of the Roadmap, the BLM chartered a team of BLM managers and planning staff to assess the current status of the BLM's resource management plans and develop recommendations to improve the process for developing resource management plans. The proposed rule, in part, would implement the recommendations for achieving the goals set forth in the Roadmap.

*Related Executive and Secretarial Direction*

In addition, the proposed rule would respond to and advance direction set forth in several Executive or Secretarial Orders and related policies and strategies. This direction demonstrates an increasing emphasis within the DOI, and the Federal Government, on the use of science-based, collaborative, landscape-scale approaches to natural resource management. Recent Presidential and Secretarial direction provided to DOI bureaus and agencies emphasize the importance of this approach for resource management planning.

Effective collaboration is a central theme in recent Presidential and Secretarial directives, beginning with the President's 2009 Open Government Directive (M–10–06). This directive describes the three principles of transparency, participation, and collaboration as the cornerstone of an open government by promoting accountability to the public, sharing of information, and partnerships and cooperation within the Federal Government, across all levels of government, and between the government and private institutions. In 2012, the Office of Management and Budget (OMB) and the CEQ issued the ''Memorandum on Environmental Collaboration and Conflict Resolution.'' This memorandum directs Federal departments and agencies to ensure they effectively explore opportunities for up-front collaboration in their planning and decision-making processes to address different perspectives and potential conflicts and thereby promote improved outcomes, including fewer appeals and less litigation.

Multiple directives related to climate change also emphasize the importance of collaboration, science, adaptive management, and the need for landscape-scale approaches to resource management. ''Secretarial Order 3289—Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources,'' issued on September 14, 2009, and amended on February 22, 2010, directs DOI bureaus and agencies to work together, with other Federal, State, tribal and local governments, and private landowners, to develop landscape-level strategies for understanding and responding to climate change impacts. The Departmental Manual chapter on climate change policy (523 DM 1), issued on December 20, 2012, similarly directs DOI bureaus and agencies to ''promote landscape-scale, ecosystem-based management approaches to

enhance the resilience and sustainability of linked human and natural systems.'' ''The Department of the Interior Climate Change Adaptation Plan for 2014'' (Climate Change Adaptation Plan), provides guidance for implementing 523 DM 1 and ''Executive Order No. 13653—Preparing the United States for the Impacts of Climate Change'' (78 FR 66819). The Climate Change Adaptation Plan directs the DOI bureaus and agencies to strengthen existing landscape level planning efforts; use well-defined and established approaches for managing through uncertainty, such as adaptive management; and maintain key ecosystem services, among other important directives. This plan also identifies several guiding principles, including the use of the best available social, physical, and natural science to increase understanding of climate change impacts and active coordination and collaboration with stakeholders.

Likewise, recent directives associated with renewable energy development and mitigation practices emphasize the importance of a collaborative, landscape-scale approach. ''Secretarial Order 3285—Renewable Energy Development by the Department of the Interior,'' issued on March 11, 2009, and amended on February 22, 2010, identified renewable energy production, development, and delivery as one of the Department's highest priorities and called on bureaus and agencies to carry out this priority by collaborating with one another and with governmental and tribal partners, local communities, and private landowners. In particular, this Order highlighted the need to identify and prioritize specific locations that are well-suited to large-scale renewable energy production as well as the electric transmission infrastructure and transmission corridors needed to deliver the energy produced.

A landscape-scale approach to planning is integral to realizing renewable energy development, in addition to other priorities on Federal lands. ''Secretarial Order 3330—Improving Mitigation Policies and Practices of the Department of the Interior,'' issued on October 31, 2013, called for the development of a DOI-wide mitigation strategy, which would use a landscape-scale approach to identify and facilitate investments in key conservation priorities in a region. The April 2014 report, ''A Strategy for Improving the Mitigation Policies and Practices of The Department of the Interior,'' provides direction to implement such an approach. And the Departmental Manual was revised in October 2015, to include direction to all bureaus and agencies for implementation of this approach to resource management (600 DM 6).

The Presidential Memorandum ''Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment,'' issued in November 2015, affirmed the importance of applying a landscape-scale approach by directing agencies that ''[l]arge-scale plans and analysis should inform the identification of areas where development may be most appropriate, where high natural resource values result in the best locations for protection and restoration, or where natural resource values are irreplaceable'' (80 FR 68743).

Finally, ''Secretarial Order 3336—Rangeland Fire Prevention, Management and Restoration,'' issued on January 5, 2015, directs DOI bureaus and agencies to use landscape-scale approaches to address fire prevention, management, and restoration in the Great Basin; and to establish protocols for monitoring the effectiveness of fuels management, post-fire, and long-term restoration treatments and a strategy for adaptive management to modify management practices or improve land treatments when necessary.

Collectively, these directives identify the importance of science-based decision-making; landscape-scale management approaches; adaptive management techniques to manage for uncertainty; and active coordination and collaboration with partners and stakeholders. The BLM believes that changes to the resource management planning process will assist in effectively implementing these directives.

*The Planning 2.0 Initiative*

Together, the Roadmap and the recent policy and strategic direction described in this preamble informed the BLM's decision to revise its resource management planning process. The BLM's Planning 2.0 initiative responds to this opportunity. Through Planning 2.0, the BLM seeks to improve the resource management planning process, including the development, amendment, and maintenance of resource management plans. The BLM has developed three targeted goals to guide the Planning 2.0 initiative:

*Goal 1: Improve the BLM's ability to respond to social and environmental change in a timely manner.* This goal addresses the need for land use plans that support effective management when faced with environmental uncertainty, incomplete information, or changing conditions. It is imperative that resource management plans provide clear management direction to guide future management activities on the public lands, while facilitating the use of adaptive, science-based approaches to respond to change when necessary and appropriate. Encompassed in this goal is the need for an efficient planning process so that changes to a resource management plan, when needed, are timely and responsive to the relevant issues.[2]

*Goal 2: Provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans.* This goal highlights the importance of strong public involvement in the planning process to reduce conflict and disputes over public lands management and develop durable resource management plans. Through the Planning 2.0 initiative, the BLM seeks to establish earlier and more frequent opportunities for public involvement in the planning process and to provide for effective coordination and collaboration with other Federal agencies, State and local governments, tribes, and stakeholders. At the same time, Planning 2.0 affirms the BLM's commitments to collaborating with cooperating agencies, and coordinating with other Federal agencies, State and local governments, and Indian tribes throughout the planning process. Planning 2.0 also affirms the BLM's commitment to working with Resource Advisory Councils (RACs) throughout the planning process (see existing 43 CFR 1610.3–1(g)).

*Goal 3: Improve the BLM's ability to address landscape-scale resource issues and to apply landscape-scale management approaches.* This goal addresses the need for landscape-scale management approaches to address resource issues that cross traditional administrative boundaries. The BLM manages a diverse range of natural resources, which occur at an equally diverse range of geographic scales, and collaborates with a diversity of partners, stakeholders and communities, who work at different scales. For these reasons, the BLM planning process must be able to consider issues and

[2] An efficient land use planning process under FLPMA advances direction in CEQ NEPA regulations and guidance for seeking efficiencies in the NEPA process. *See, e.g.,* 40 CFR 1500.2(b) and (c) and 1500.5; Memorandum for Heads of Federal Departments and Agencies from Nancy H. Sutley, Chair, Council on Environmental Quality, ''Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act'' (Mar. 6, 2012), *https://www.whitehouse.gov/sites/default/files/microsites/ceq/improving_nepa_efficiencies_06mar2012.pdf.*

opportunities at multiple scales and across traditional management boundaries.

To achieve these three goals, the BLM is proposing to amend specific provisions of the land use planning regulations (43 CFR part 1600). The proposed regulatory revisions are the subject of this rule. Separately, the BLM also is revising the Land Use Planning Handbook to provide detailed guidance to implement these regulations. We have taken a coordinated approach to ensure that these two efforts mutually support the achievement of the Planning 2.0 goals and provide consistent requirements and guidance for developing and amending resource management plans.

*Related BLM Initiatives*

In recent years, the BLM has taken several steps toward the goals identified in the ''Related Executive and Secretarial Direction'' section of this preamble, including tools to aid science-based decision-making; landscape-scale management approaches; the use of adaptive management techniques to manage for uncertainty; and active coordination and collaboration with partners and stakeholders. These steps include crafting new policies and strategies and introducing innovative data and information technology tools. The Planning 2.0 initiative supports the implementation of these other important BLM efforts, and is mutually supported by these other efforts. Here we describe several other BLM efforts and how they relate to the goals of Planning 2.0, even though they are beyond the scope of this rulemaking.

In partnership with the Landscape Conservation Cooperatives (LCCs) and other Federal agencies, the BLM has worked to develop Rapid Ecoregional Assessments (REAs) in the western United States.[3] Each REA synthesizes the best available information about resource conditions and trends within an ecoregion and highlights areas of high ecological value, as well as areas that have high energy development potential and relatively low ecological value, which could be well-suited for siting future energy development. In addition, REAs establish landscape-scale baseline ecological data to help gauge the effect and effectiveness of future management activities. The REAs are an important step in support of adaptive, landscape-scale management approaches,[4] and they provide necessary data and information to support the Planning 2.0 goal to address landscape-scale resource issues and to apply landscape-scale management approaches.

In 2013, the BLM issued the ''Draft—Regional Mitigation Manual Section (MS)-1794'' as interim guidance, which promotes consideration of mitigation within a broader regional context and development of mitigation strategies. Mitigation strategies identify, evaluate, and communicate potential mitigation needs and mitigation measures in a geographic area. Under this draft guidance, the BLM has worked collaboratively with partners to develop regional mitigation strategies in several key areas while also developing guidance consistent with Secretarial Order 3330. This guidance, which provides for a landscape-scale approach to mitigation, is consistent with the Planning 2.0 goal to apply landscape-scale management approaches. The Planning 2.0 initiative will support effective implementation of the regional mitigation policy by ensuring that resource management plans, like mitigation, are grounded in sound science, applied at a broader regional context, and that the mitigation hierarchy process is applied in the development and implementation of a resource management plan.

The BLM is implementing its ''Assessment, Inventory, and Monitoring (AIM) Strategy'' (2011), which was developed to standardize data collection and retrieval so information is comparable over time and can be readily accessed and shared. The AIM Strategy provides a process for the BLM to collect quantitative information on the status, condition, trend, amount, location, and spatial pattern of renewable resources on the nation's public lands. The BLM strategy, ''Advancing Science in the BLM: An Implementation Strategy'' (2015), outlines goals and an action plan for integrating science into multiple-use land management decisions in a consistent manner. Both strategies improve the BLM's ability to employ science-based decision-making and apply adaptive management techniques using standardized monitoring data that can be analyzed and applied at multiple scales. These steps are essential to achieving the Planning 2.0 goals.

In addition, the BLM is implementing its ''Geospatial Services Strategic Plan'' (GSSP) (2008), which will provide the high-quality mapping products needed to develop and support adaptive, landscape-scale management approaches. The GSSP establishes a governance model for the management of BLM's geospatial information and institutes a structure to coordinate the use of geospatial technology within the BLM. The GSSP also addresses data management, data acquisitions, data standards, and the establishment of corporate data themes. Geospatial transformation is essential for achieving all three Planning 2.0 goals. In addition to supporting science-based, landscape-scale, adaptive management approaches, advances in geospatial technology support the use of new and innovative methods for public involvement. For example, the development and deployment of BLM's ePlanning platform, an online national register for land use planning and NEPA documents, provides a dynamic and interactive link between text, such as land use plans, and the supporting geospatial data. The ePlanning platform enables the BLM to make documents and maps available to the public via the Internet for review and comment and provides a searchable register for NEPA and land use planning projects (*https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do*). The BLM is transitioning to the ePlanning platform for all land use planning and NEPA documents and expects that ePlanning will be deployed throughout the BLM by 2017.

Finally, the BLM is strengthening its commitment to partnerships and cooperating agencies. The BLM's ''National Strategy and Implementation Plan to Support and Enhance Partnerships, 2014–2018'' (2014), highlights the importance of partnerships to achieving the BLM's mission, and creates a national framework for improved coordination in support of partnerships across the BLM. The updated BLM publication, *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners* (2012), reaffirmed the BLM's commitment to working with Federal, State, local, and tribal government partners. The Planning 2.0 goal of providing new and enhanced opportunities for collaborative planning will build on these foundational efforts.

[3] The LCCs are a network of 22 public-private partnerships launched under Secretarial Order 3289 to improve the integration of science and management to address climate change and other landscape-scale issues. See *http://lccnetwork.org/about.* Information about the REAs is available at: *http://www.blm.gov/wo/st/en/prog/more/Landscape_Approach/reas.html.*

[4] See BLM *Information Bulletin No. 2012–058, ''The Bureau of Land Management's Landscape Approach for Managing the Public Lands'' (Apr. 3, 2012), http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_information/2012/IB_2012–058.html.*

*Initial Public Involvement in Planning 2.0*

The BLM has conducted public outreach and engagement activities as a part of the Planning 2.0 initiative. This outreach is consistent with section 2(c) of ''Executive Order 13563—Improving Regulation and Regulatory Review'' (76 FR 3822), which encourages agencies to seek the views of those who are likely to be affected by a rulemaking before issuing a proposed rule. The outreach for the overall Planning 2.0 initiative includes the proposed rule and a forthcoming revision of the Land Use Planning Handbook. The BLM launched the Planning 2.0 initiative in May 2014 by seeking public input on how the land use planning process could be improved. The BLM developed a Web site for the initiative (*www.blm.gov/plan2*) and issued a national press release with information on how to provide input to the agency. The BLM held public listening sessions in Denver, Colorado (October 1, 2014) and in Sacramento, California (October 7, 2014). Both meetings were led by a third-party facilitator and were available to remote participants through a live broadcast of the event over the Internet (livestream). The goals of these meetings were to share information about the Planning 2.0 initiative with interested members of the public, to provide a forum for dialogue about the initiative, and to receive input from the public on how best to achieve the goals of the initiative. Summary notes from these meetings and recorded livestream video are available on the Planning 2.0 Web site (*www.blm.gov/plan2*).

The BLM has conducted external outreach to BLM partners and internal outreach to BLM staff in State, District, and Field Offices. External outreach included multiple briefings provided to the Federal Advisory Committee Act chartered RACs; a briefing for State Governor representatives coordinated through the Western Governors Association; a briefing for State Fish and Wildlife Agency representatives coordinated through the Association of Fish and Wildlife Agencies; multiple briefings for other Federal agencies; a webinar for interested local government representatives coordinated through the National Association of Counties; and meetings with other interested parties upon request.

*Public Response to Planning 2.0 During Early Engagement*

Since May 2014, over 6,000 groups and individuals submitted written comments for BLM's consideration. This information was summarized into a written report and made available on the Planning 2.0 Web site on February 3, 2015. The input received through written submissions and the public listening sessions covered a broad range of topics and opinions, which are summarized in this preamble and described in more detail in the ''Planning 2.0 Public Input Summary Report'' (2015). The summary report is available on the Planning 2.0 Web site (*www.blm.gov/plan2*). The BLM has worked to consider this information and to find an appropriate balance between different needs and perspectives in the development of the proposed rule.

A large number of comments focused on how to integrate adaptive management into resource management plans. While nearly all comments supported the goal of ''a more dynamic and efficient planning process,'' many commenters were concerned that resource management plans could become so ''dynamic'' that they become meaningless. Many comments suggested that the BLM establish achievable and measurable objectives to guide future decisions, as well as indicators and thresholds for resource condition in resource management plans. While some commenters believed that the BLM should have the ability to increase or reduce resource protections established in the resource management plan if site-specific conditions warrant, many commenters were concerned that such an adaptive management approach might allow activities that otherwise conflict with the other resource management plan goals and objectives.

Some commenters suggested that efficiencies could be gained by developing standardized decision language, prohibiting overlapping designations, and working with partners to avoid duplication of efforts. Commenters requested that the BLM improve data collection and management by including non-BLM data sources in resource management plans; providing better public access to BLM data; establishing standards for monitoring in resource management plans; designating timeframes to modify management based on monitoring results; and identifying enforceable actions if monitoring does not occur.

Public comments affirmed the value of public participation as essential to the success of any land use plan. Several commenters expressed the need for broad, comprehensive stakeholder participation and requested that the BLM conduct strategic and targeted outreach at the onset of all planning efforts to reach stakeholders. Commenters also encouraged the BLM to collaborate with other Federal agencies, which often manage adjacent lands, and to conduct outreach to Indian tribes.

Numerous commenters suggested two new opportunities for public involvement in the planning process. Outreach before initiating the NEPA scoping process could be used to identify preliminary stakeholders and management issues, solicit input about resource data needed for resource management plan development, and encourage stakeholders to contribute inventory information. Additionally, a public review of preliminary management alternatives could occur between public scoping and the publication of the draft resource management plan and draft EIS to help BLM refine the range of alternatives to address public concern.

The BLM also received comments on different ways to effectively engage the public. Several commenters requested that the BLM leverage Web-, tele-, and video-conference technology to reach a larger audience while also providing meaningful involvement opportunities for members of the public without technological access. Commenters also described a broad range of best practices for public participation and encouraged the BLM to implement these practices in the planning process.

Several commenters proposed instituting a landscape level planning process in which the BLM would evaluate public lands, establish priority areas for conservation and priority areas for development, set desired conditions at the ecoregional level, and then allocate allowable uses and make special designations at the field office level. Conversely, some commenters questioned the utility of landscape level planning. It is important to many stakeholders that resource management plans provide specific, local context, and clearly articulate for local users how the BLM will manage public lands close to them. Some commenters were concerned that it would be shortsighted for the BLM to limit development only to those priority areas identified in an ecoregional plan, as future technological advances could make new unforeseeable areas appropriate for development.

Many comments urged the BLM to integrate the DOI mitigation policy, ''Improving Mitigation Policies and Practices of the Department of the Interior'' (Secretarial Order 3330), into the land use planning process. Public comments also stated that effective landscape planning should be fully integrated with the NEPA process and provide clear direction for considering State and private lands. At the same time, commenters cautioned that the

BLM should ensure that landscape level planning does not result in time-consuming analysis that overlaps the NEPA analysis that already occurs during a resource management plan revision.

In addition to input on how to meet Planning 2.0 goals, many public comments contained recommendations on how the BLM should address specific resources, uses, and special designations in resource management plans. These comments are summarized in the ''Planning 2.0 Public Input Summary Report'' (2015), available on the Planning 2.0 Web site (*www.blm.gov/plan2*).

*Why the Proposed Rule Is Necessary To Achieve the Goals of Planning 2.0*

As part of the Planning 2.0 initiative, the BLM proposes revising specific provisions of the land use planning regulations (43 CFR part 1600). The BLM is also revising the Land Use Planning Handbook. After careful consideration, the BLM believes that such an approach would most effectively advance the goals of the Planning 2.0 initiative by ensuring that the land use planning regulations and the Land Use Planning Handbook provide clear and consistent direction leading to improved stewardship of the public lands and resources. In the following paragraphs we explain how the proposed changes to the planning regulations would serve the overall goals of the Planning 2.0 initiative.

Under the proposed rule, the BLM would distinguish between the planning-level management direction that guides all future management decisions (plan components) and the information that may be included with a resource management plan that describes how the BLM intends to implement future actions consistent with the planning-level management direction (implementation strategies). This distinction is essential for applying a landscape-scale management approach, which requires consideration of a broader regional context when developing planning-level management direction. Such consideration is difficult to achieve when planning-level management direction is integrated with detailed information about implementing future actions. This distinction would also facilitate the use of adaptive-management approaches when developing future actions consistent with the management direction in the resource management plan.

The proposed changes would emphasize that land use planning is grounded in high quality information, including the best available scientific information, and that the future actions taken consistent with a resource management plan should be based on the high quality information at the time the action is proposed.

The proposed changes would also emphasize the importance of assessing resource, environmental, ecological, social, and economic conditions at multiple scales and before initiating the preparation of a resource management plan, in order to apply science-based decision-making and inform management decisions at appropriate scales.

The proposed changes would add new opportunities for collaboration in the land use planning process and emphasize the importance of early public involvement in order to engage different perspectives and ensure planning is responsive to public needs and values. Proposed changes would promote increased communication with and transparency to the public by providing for the use of electronic communications and information technology, in addition to traditional methods of communication. The BLM believes that enhanced collaboration would promote a more efficient planning process and improved outcomes by ensuring that diverse viewpoints are considered early and often. In particular, the BLM anticipates that considering diverse viewpoints early in the planning process, when they can help inform the development of the resource management plan and supporting NEPA analysis, would help the BLM avoid the need to re-start the planning process or supplement the NEPA analysis based on issues raised later in the process after considerable work has been completed. At the same time, the proposed rule would eliminate some **Federal Register** notice requirements and shorten the minimum requirement for the length of public comment periods for draft resource management plans and draft EIS-level amendments to balance the need for an efficient planning process with additional time for new public involvement opportunities and also to promote consistency and integration with the requirements of NEPA. Consistency between overlapping regulatory requirements (such as the requirements of the BLM planning regulations, the DOI NEPA implementation regulations, and the CEQ NEPA regulations) would help to make these requirements less confusing to stakeholders.

In revisions to both subpart 1601 and 1610, the BLM proposes to update existing text to reflect current style guidelines and to use plain language, consistent with the ''Presidential Memorandum on Plain Language in Government Writing'' (63 FR 31885), which directs Federal Agencies to consider rewriting existing regulations in plain language if the opportunity is available. These changes would facilitate improved readability and understanding of the planning regulations, which would support effective collaboration during the planning process.

*Summary of Proposed Changes*

(1) Amend the responsibilities section with the addition of the new terms ''responsible official'' and ''deciding official.''

(2) Provide for BLM Director determination of the deciding official and the planning area for resource management plans and for plan amendments that cross State boundaries, and deciding official determination of the planning area for all other plan amendments.

(3) Distinguish between ''plan components'' (*i.e.,* planning-level management direction) and ''implementation strategies'' which assist in implementing future actions consistent with the plan components.

(4) Require specific and measurable plan objectives to improve implementation, monitoring and evaluation, transparency, and accountability.

(5) Add new public involvement opportunities during the early steps of the planning process, including an opportunity to provide data and other information to inform the planning process and public review of preliminary resource management alternatives, the rationale for alternatives, and the procedures, assumptions, and indicators to be used in the effects analysis (''basis for analysis'').

(6) Add new commitments to transparency (*e.g.,* making preliminary alternatives and the rationale for those alternatives available to the public, posting resource management plans online, making protests available to the public, notifying the public before updates are made to an implementation strategy or to plan components through plan maintenance, and making plan evaluations available to the public).

(7) Add a new requirement for an assessment of resource, environmental, ecological, social, and economic conditions which will be made available to the public and provide important baseline information before initiating the preparation of a resource management plan or a plan amendment

for which an EIS will be prepared to inform the amendment.

(8) Remove the requirement to publish a NOI in the **Federal Register** for amendments that require preparation of an environmental assessment (EA) for consistency with NEPA requirements and to facilitate an efficient amendment process.

(9) Reduce the minimum public comment period for draft EIS-level plan amendments from 90 days to 45 days for consistency with NEPA requirements and to facilitate an efficient amendment process. Reduce the minimum public comment period for draft resource management plans from 90 days to 60 days to allow for the addition of new early opportunities for public involvement (*e.g.,* public review of preliminary alternatives) while still maintaining an efficient process.

(10) Replace the requirement that the BLM identify a single preferred alternative in a draft resource management plan and draft EIS with a new requirement that the BLM identify ''one or more'' preferred alternatives for more consistency with DOI NEPA implementation regulations that apply to draft EISs (43 CFR 46.425(a)).

(11) Affirm the legal requirements for consistency with the land use plans of other Federal agencies, State and local governments, and Indian tribes for consistency with FLPMA and improved clarity.

(12) Amend the protest section to clarify what constitutes a valid protest and the requirements for submitting a protest.

(13) Amend the resource management plan maintenance section to clarify the limitations of its use and to provide transparency to the public when changes are made through plan maintenance.

(14) Amend the ACEC provisions for improved clarity.

(15) Replace the requirement to publish a notice in the **Federal Register** listing each proposed ACEC with a requirement to notify the public of each proposed ACEC.

(16) Remove the requirement to provide a 60 day public comment period on the draft resource management plan or plan amendment when an ACEC is involved for better integration of ACEC consideration into the overall planning process and consistency with NEPA requirements.

(17) Clarify the specific requirements of the Governor's consistency review and provide the BLM Director discretion to notify the public of his or her decision by means other than the **Federal Register**.

## III. Section-by-Section Analysis of Proposed Changes

The proposed rule would revise part 1600, including subparts 1601 (Planning) and 1610 (Resource Management Planning). Proposed revisions in subpart 1601 would update and introduce new definitions and revise the purpose, objective, responsibilities, environmental impact statement policy, and principles sections.

Proposed subpart 1610 would be reorganized to improve readability. The proposed revisions would describe guidance and general requirements, and resource management plan components; update the public involvement provisions; establish an assessment of baseline conditions in the planning area before the BLM initiates the preparation of a resource management plan and EIS-level amendments; revise the steps in the planning process to increase transparency and add new opportunities for public involvement; clarify resource management plan approval and protest procedures; modify the monitoring and evaluation, amendment, and maintenance provisions; update the provisions for designating ACECs; and make clarifying edits.

The following paragraphs present a section-by-section analysis of key proposed changes under each subpart compared to the current regulations.

### Subpart 1601—Planning

The BLM would make several style changes throughout both subparts, such as replacing the Bureau of Land Management with the acronym ''BLM'' and the Federal Land Policy and Management Act with the acronym ''FLPMA,'' for improved readability. We would replace the word ''title'' with ''part'' throughout both subparts for consistency with current style guidelines. We also would replace the word ''shall'' with ''will'' throughout both subparts for improved readability, unless otherwise noted. We would replace ''plan'' with ''resource management plan,'' where appropriate, and ''amendment'' with ''plan amendment'' throughout both subparts to improve consistency and precision in use of terminology.

Finally, we propose to remove most references to resource management plan ''revisions'' throughout both subparts. Revisions would be included in the definition of a resource management plan (see proposed § 1601.0–5) and must comply with all of the requirements of these regulations for preparing and approving a resource management plan (see proposed § 1610.6–8). Differentiating between the preparation of a new resource management plan and the revision of a resource management plan is unnecessary and confusing. For example, if the BLM revises portions of more than one existing resource management plan, it is unclear whether the resulting resource management plan would be considered a new resource management plan or a revised resource management plan. Under the proposed and existing regulations, there is no substantive difference between a resource management plan and a resource management plan revision, therefore both would be considered a ''resource management plan.''

*Section 1601.0–1 Purpose*

The only proposed changes to this section are to introduce the acronym ''BLM,'' which is used throughout the part and to remove the words ''and revision'' for the reasons previously described. There would be no substantive change to this section.

*Section 1601.0–2 Objective*

The BLM proposes to revise the stated objectives of resource management planning to reflect FLPMA and remove vague or inaccurate language. In the first sentence, we propose to remove the phrase ''maximize resource values for the public through a rational, consistently applied set of regulations and procedures.'' The term ''maximize resource values'' is vague and therefore inappropriate in regulations and a ''rational, consistently applied set of regulations and procedures'' is an objective of developing planning regulations, but not an objective of resource management planning.

Proposed changes to this section would also replace the phrase ''concept of multiple use management'' in the first sentence of this section with the phrase ''principles of multiple use and sustained yield on public lands unless otherwise provided by law.'' This change is consistent with FLPMA, which directs the BLM to ''use and observe the principles of multiple use and sustained yield'' in the development and revision of land use plans (43 U.S.C. 1712(c)(1)). The proposed change also acknowledges that in some situations the BLM must use and observe the principles of other legal authorities. For instance, national monuments established under the Antiquities Act of 1906 (16 U.S.C. 431–433) must use and observe the principles specific to their establishment. The word ''appropriate'' would be removed from before ''Federal agencies'' in the first sentence. This

word is unnecessary, as any Federal agency may participate in the BLM's planning process; the BLM does not make a determination on which agencies may or may not be appropriate. We propose to specify that an objective of resource management planning is to ensure participation by the public, State and local governments, Indian tribes, and Federal agencies ''in the development of resource management plans.'' There would be no change in existing practice or policy from these proposed changes.

The BLM proposes to add an additional objective of resource management planning to the regulations, which is to ''ensure that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide for outdoor recreation and human use, and which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands.'' This proposed change would incorporate language from FLPMA (see 43 U.S.C. 1701(a)(8) and (a)(12)) to identify in the planning regulations the general management objectives that apply to the public lands and therefore apply to all resource management plans. While this is a change in the regulations, it would simply affirm statutory direction and not change existing practice or policy.

We propose to remove the final sentence in this section, ''resource management plans are designed to guide and control future management actions and development of subsequent, more detailed and limited scope plans for resources and uses.'' This sentence does not accurately describe the objectives of resource management planning; rather it describes the function of a resource management plan. Under the proposed rule, elements of the removed sentence would be revised and incorporated into the proposed definition for ''plan components'' (for more information, see the discussion on ''plan components'' at the preamble for proposed § 1601.0–5).

*Section 1601.0–3 Authority*

The BLM proposes this section, which is identical to that in the existing regulations.

*Section 1601.0–4 Responsibilities*

The BLM proposes to revise paragraph (a) of this section to use active voice, stating ''[t]he Secretary and the Director provide national level policy and procedure guidance for planning.'' There would be no change in the meaning of this sentence or in the associated responsibilities. In the second sentence, we propose to establish a new responsibility for the BLM Director to determine the deciding official (a proposed new term defined in § 1601.0–5) and the planning area for resource management plans and for plan amendments that cross State boundaries. This is a change from existing regulations, where the deciding official is the State Director and the default planning area is a field office area, unless otherwise authorized by the State Director (see existing § 1610.1(b)). Although the BLM is able to establish a different planning area under existing regulations, the proposed rule would align with the BLM's intent to no longer rely on the field office area as the default resource management plan boundary and specify that the BLM Director is the appropriate employee to determine the deciding official and the planning area for resource management plans and plan amendments that cross State boundaries.

In making these changes, the BLM acknowledges that conservation, resource management, development activities, or other priorities such as landscape-scale mitigation may benefit from planning area boundaries that cross traditional BLM administrative boundaries and may require greater coordination of land use planning across BLM States and national level programs.

In paragraph (b) of this section, the BLM proposes to replace references to ''State Directors'' with ''deciding officials'' and to use active voice by stating ''deciding officials provide quality control'' instead of existing language which states that ''State Directors will provide quality control'' to improve readability. There would be minimal changes in the responsibilities associated with this role in the planning process. Although the BLM expects that BLM State Directors would continue to be the deciding official for resource management plans located within their BLM State boundaries (or an equivalent BLM Official should the boundaries of administrative oversight change in the future), in some situations a different deciding official may be appropriate. For example, a single BLM State Director could be the deciding official for a resource management plan or plan amendment that crosses State boundaries, and this would be determined by the BLM Director (see paragraph (a) of this section).

Deciding officials would be responsible for ''quality control and supervisory review, including approval, for the preparation and amendment of resource management plans and related [EISs] or [EAs].'' Proposed changes would clarify that deciding officials are responsible for quality control and supervisory review of plan amendments, in addition to resource management plans. These proposed changes are consistent with current practice and policy.

We propose to specify that deciding officials would determine the planning area for plan amendments that do not cross State boundaries, consistent with current practice and policy. The BLM requests public comment on the proposed responsibilities for the determination of the planning area for plan amendments. In particular, the BLM requests public comment on whether a different distinction than ''crossing State boundaries'' should be used to differentiate between amendments where the Director would determine the planning area and amendments where the deciding official would determine the planning area.

We propose to remove the requirement that deciding officials ''provide additional guidance, as necessary, for use by Field Managers.'' This language is unnecessary in the regulations. Deciding officials may provide guidance, as described in proposed § 1610.1–1, but this is only one of their many responsibilities during the planning process that are all encompassed by ''supervisory review.'' It is unnecessary and inappropriate to identify the provision of guidance as a unique responsibility. The BLM intends no change in practice or policy by removing ''guidance'' from the responsibilities section.

We also propose to remove the requirement that deciding officials ''file draft and final [EISs].'' This language is unnecessary and redundant with the requirement that deciding officials provide supervisory review for ''related [EISs]'' which would include supervisory review of filing the documents. Current BLM practice is for the deciding official to delegate the responsibility of filing EISs or EAs. The proposed change would be consistent with current practice.

Proposed changes in paragraph (c) of this section would replace references to ''Field Managers'' with ''responsible officials'' (a proposed new term defined in § 1601.0–5) and provide that responsible officials would prepare resource management plans and plan amendments, and related EISs and EAs. As discussed in the preamble to the proposed definitions in 1601.0–5, the term ''responsible official'' is adapted

from the term used in the DOI NEPA regulations (see 43 CFR 46.30). There would be no change in the responsibilities associated with this role, but the new term would provide the BLM with more flexibility to prepare or amend resource management plans at levels other than a field office.

The proposed changes are intended to facilitate planning across traditional BLM administrative boundaries. For instance, if the planning area for a resource management plan or plan amendment is larger than the BLM Field Office administrative boundary in order to address a landscape-scale resource issue, the BLM Field Manager may not be the most appropriate BLM employee to prepare the resource management plan or plan amendment. These changes are consistent with current practices used by the BLM. There are several examples where a BLM District Manager is the responsible official for the preparation or amendment of a resource management plan, such as the resource management plan currently under preparation for the Carson City District in Nevada.

We propose to include the preparation of related ''EAs'' as a responsibility of responsible officials. The proposed change would fix an existing inconsistency in the regulations. Responsible officials prepare plan amendments and either an EIS or an EA could be prepared to inform the plan amendment. Responsible officials would therefore be responsible for the preparation of a related EA, in addition to related EISs. The BLM intends no change in practice or policy from this addition.

We propose to remove the final sentence of paragraph (c) of this section, which requires that ''State Directors must approve these documents.'' Under the proposed rule, deciding officials would approve these documents, as discussed in paragraph (b) of this section.

*Section 1601.0–5 Definitions*

The BLM proposes to add the definitions of fourteen new terms: Deciding official, High quality information, Implementation strategies, Indian tribe, Mitigation, Plan amendment, Plan components, Plan maintenance, Plan revision, Planning area, Planning assessment, Planning issue, Responsible official, and Sustained yield. The BLM proposes to also revise the existing definitions of: Areas of Critical Environmental Concern or ACEC, Conformity or conformance, Cooperating agency, Local government, Officially approved and adopted resource-related (land use) plans, and Resource management plan. The BLM proposes to remove the definitions of: Consistent, Eligible cooperating agency, Field Manager, Guidance, and Resource area or field office. The following paragraphs describe the proposed changes to these definitions and the rationale for each. This analysis does not discuss the definitions of terms that are proposed without amendment.

*Areas of Critical Environmental Concern or ACEC.* We propose to move the last sentence of this definition (''[t]he identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands.'') to the ACEC provisions in § 1610.8–2(b). The proposed change would make the definition of an ACEC in this section more consistent with FLPMA. This sentence is not part of the definition of an ACEC provided in FLPMA and it establishes policy for a potential ACEC; it should therefore be located in the policy provisions governing ACECs. The sentence is most appropriately placed following the description of the criteria for identifying a potential ACEC (§ 1610.8–2(b)). This proposed change would not be a change in practice or policy.

*Conformity or conformance.* The proposed changes to this section would replace the word ''shall'' with ''will,'' remove language that an action ''shall be specifically provided for in the plan'' and replace the phrase ''terms, conditions, and decisions'' with ''plan components'' of the approved resource management plan in the definition of conformity or conformance. These proposed changes would be consistent with proposed changes to § 1610.1–2, which refer to plan components instead of ''terms, conditions, and decisions.'' The proposed changes reflect that plan components provide the planning-level management direction that guides all future management actions, thus a proposed action must be consistent with the planning-level management direction. Proposed changes also reflect the fact that although specific actions may be identified in implementation strategies, these strategies are not considered a component of the resource management plan and must also be clearly consistent with the plan components.

The proposed rule would provide a more precise definition of conformance, which would assist the BLM and the public in identifying whether a proposed action is in conformance with an approved resource management plan. The proposed rule would also remove the words ''plan amendment'' from the end of the definition. These words are not necessary; an approved plan amendment is encompassed by an approved resource management plan (*i.e.,* following approval the plan amendment amends the resource management plan).

*Consistent.* The proposed rule would remove the definition of the term consistent. This definition is unnecessary as this is commonly used terminology.

*Eligible cooperating agency.* We propose removing this definition and revising the definition of ''cooperating agency'' to cite the definition of ''eligible governmental entity'' in the DOI NEPA regulations (43 CFR 46.225(a)). The DOI definition was promulgated after the BLM Planning regulations were last amended in 2005. No change in meaning or practice is intended; the BLM merely seeks to make the planning regulations consistent with the DOI NEPA regulations.

*Cooperating agency.* In defining ''cooperating agency'' for resource management planning purposes, the BLM proposes to modify the existing definition in the planning regulations for improved consistency with the DOI NEPA implementing regulations (43 CFR 46.225(a)) and to clarify existing language. This will make clear that while cooperating agencies are defined under the CEQ NEPA implementing regulations, cooperating agencies have unique roles in the BLM land use planning and NEPA processes and that the BLM defines cooperating agencies in the same way for both processes. Specifically, this section modifies the existing definition in the planning regulations by adding a reference to the definition of ''eligible governmental entity'' from the DOI NEPA regulations (43 CFR 46.225(a)) and by clarifying that a cooperating agency agrees to participate in the development of an ''environmental impact statement or environmental assessment'' under NEPA and in the planning process. We propose to delete ''written'' in the first sentence of this section, because a Federal cooperating agency—unlike State, local, or tribal governments—need not enter into a memorandum of understanding (MOU) or other written agreement to confirm its status under DOI NEPA regulations (see proposed § 1610.3–1(b)(2)).

We also propose to add the words ''appropriate'' and ''scope of their expertise'' to the last sentence to indicate that cooperating agencies will participate in the planning process as feasible and ''appropriate,'' given the ''scope of their expertise'' and constraints of their resources. The added language would reinforce the fact

that cooperating agencies have a broad range of expertise and their participation in the planning process should be appropriate to their particular area of expertise. The BLM intends no change from current practice or policy with these proposed changes.

*Deciding official.* This proposed new definition refers to the BLM official who is delegated the authority to approve a resource management plan or plan amendment. As discussed throughout this preamble, it replaces the term ''State Director'' throughout the planning regulations in order to facilitate planning across traditional BLM administrative boundaries.

*Field manager.* We propose to remove this definition, because we propose to replace references to the Field Manager with ''responsible official'' or ''the BLM'' throughout. This change is intended to facilitate planning across traditional BLM administrative boundaries.

*Guidance.* We propose to remove the definition of guidance, because we believe a definition for the term ''guidance'' is no longer necessary in the planning regulations. Internal BLM guidance must be in compliance with all applicable laws and regulations, so further restrictions in the definitions section of these regulations is not necessary or appropriate. The removal of unnecessary definitions or language improves readability of the regulations. This proposed change would not be a change in practice or policy.

*High quality information.* We propose to add this new definition to describe new terminology introduced into proposed §§ 1610.1–1(c) and 1610.4(b). High quality information would be defined as ''any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users'' (for more information, see the discussion on high quality information at the preamble for proposed § 1610.1–1(c)).

*Implementation strategies.* We propose to add this new definition to describe new terminology introduced into proposed § 1610.1–3. As proposed, implementation strategies would be strategies that assist in implementing future actions consistent with the plan components. As explained in the preamble for proposed § 1610.1–3, implementation strategies would not be considered a component of the approved resource management plan; rather these optional strategies would be prepared in conjunction with the preparation of a resource management plan to assist in the future implementation of the resource management plan or be developed subsequently, but consistent, with the plan components.

*Indian tribe.* We propose to add this new definition of Indian tribe for consistency with the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a). The planning regulations were promulgated prior to this Act and this new definition would clarify the use of this term. As proposed, the term Indian tribe would refer to federally recognized Indian tribes. This proposed change would not be a change in practice or policy.

In connection with this change, we propose to delete the words ''federally recognized'' from five locations where the existing regulations refer to ''federally recognized Indian tribes.'' These references were added under the 2005 revision to the regulations (70 FR 14561), but other existing references to Indian tribes were not amended at that time. Consequently, the existing regulations are inconsistent in their use of terminology. The references to ''federally recognized'' Indian tribes would no longer be necessary as a result of the proposed definition, which includes only federally recognized Indian tribes. The five references are identified and clarified in the corresponding sections of this preamble.

It is important to note that the proposed rule would not affect government-to-government consultation with federally recognized Indian tribes during the preparation or amendment of a resource management plan. The proposed rule also would not affect implementation of the ''Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations'' (2012). The BLM would continue to conduct government-to-government consultation with federally recognized Indian tribes and would also continue to consult with ANCSA corporations during the preparation and amendment of resource management plans, consistent with DOI policy.

*Local government.* We propose to replace the existing language for ''regulation authority'' with ''regulatory authority'' for improved readability. No change in meaning is intended by this proposal.

*Mitigation.* We propose to add this new definition of mitigation to explain that mitigation includes the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts. This sequence is commonly referred to as the ''mitigation hierarchy.'' By including this proposed definition in the planning regulations, the BLM acknowledges that this sequence also applies to the planning process. For example, during the preparation of resource management plans, the BLM first and foremost applies the principle of avoidance through the identification of planning issues and the formulation of alternatives that are guided by the planning issues (*i.e.,* identifying potential impacts and developing alternatives that avoid those potential impacts). During the preparation of a resource management plan, the BLM also identifies mitigation standards, which help to guide the future application of the principles of minimization and then compensation (for more information, see the discussion on mitigation standards at the preamble for proposed § 1610.1–2(a)(2)). The proposed language is consistent with the Departmental Manual chapter on ''Implementing Mitigation at the Landscape-scale'' (600 DM 6).

*Officially approved and adopted land use plans.* We propose to replace the phrase ''resource related plans'' with ''land use plans'' in this definition and throughout both subparts. The existing terminology of ''resource related plans'' is vague and it is unclear what constitutes a resource related plan. The proposed terminology of ''land use plans'' is consistent with section 202 of FLPMA. We also propose to remove the words ''policies, programs, and processes'' from the definition of officially approved and adopted land use plans. The existing definition is inconsistent with § 1610.3–2, which distinguishes between ''officially approved or adopted resource related plans'' in existing § 1610.3–2(a) and ''officially approved or adopted resource related policies and programs'' in existing § 1610.3–2(b), rather than combining them, such as in the existing definition.

This proposed change would mean that the requirements of § 1610.3–2(a) would apply to the ''land use plans'' of other Federal agencies, State and local governments, and Indian tribes, but would not apply to the ''policies, programs, and processes.'' There would be no regulatory requirements for consistency with the ''policies, programs, and processes'' of other Federal agencies, State and local governments, and Indian tribes. This proposed change is consistent with section 202(c)(9) of FLPMA. For more information, see the discussion on consistency requirements at the preamble for proposed § 1610.3–2.

*Plan amendment.* This proposed new definition would clarify that a plan amendment could either be an amendment to an approved resource management plan or a management framework plan. A management framework plan is a land use plan that was prepared and approved prior to FLPMA. In either case, the BLM would be required to follow the same amendment procedures, as described in this part.

*Plan components.* This proposed new definition identifies plan components as the elements of a resource management plan with which future management actions will be consistent. Although other items could be prepared in conjunction with a resource management plan, such as implementation strategies, they would not be considered a component of the resource management plan (for more information, see the discussions on plan components and implementation strategies in the preamble for proposed §§ 1610.1–2 and 1610.1–3).

*Plan maintenance.* This proposed new definition would describe plan maintenance as minor changes to an approved resource management plan to correct typographical or mapping errors or reflect minor changes in mapping or data. For example, the BLM might maintain a plan by updating maps in the plan to correct a mistake in the location of a fence line. The BLM also might update maps in the plan to reflect minor changes in data, such as the location of a river that has migrated over time. The proposed language is consistent with existing § 1610.5–4 and proposed § 1610.6–5.

*Plan revision.* The BLM proposes to include a new definition for plan revisions, as a revision of an approved resource management plan or major portions of the resource management plan. We propose to clarify in this definition that the phrase ''preparation or development of a resource management plan,'' which is used throughout the proposed planning regulations, includes plan revisions. The proposed language would improve understanding that the revision of a resource management plan follows the same procedures as the preparation of a new resource management plan (see proposed § 1610.6–7).

*Planning area.* This proposed new definition would describe the geographic area for the preparation or amendment of a resource management plan and would replace the existing definition for ''resource area or field office.'' We would replace the terms ''resource area'' or ''field office'' with ''planning area'' throughout the proposed rule. The proposed change is consistent with the terminology the BLM currently uses to describe the geographic area for which resource management plans are prepared (see page 14 of BLM Handbook H–1601–1). Proposed § 1601.0–4 provides revised direction for determination of planning area boundaries. This proposed change would not be a change in practice or policy.

*Planning assessment.* This proposed new definition would describe an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area, which is developed to describe the current status of lands and resources in the planning area, project demand for those resources, and to assess how these demands can be met consistent with the BLM's multiple use and sustained yield mandate. The assessment will inform the preparation and, as appropriate, the implementation of a resource management plan or revision. Section 1610.4 of this preamble describes the proposed planning assessment step in the planning process, including opportunities for collaboration and public involvement. The planning assessment may also be used during the implementation of a resource management plan. For example, the BLM could use information from a planning assessment to evaluate whether a future proposed action conforms with an objective in the approved resource management plan related to the protection of a sensitive resource and could supplement that information with down-scaled information specific to the project area being considered. The BLM could also use information from a planning assessment to inform the preparation of a travel management plan.

*Planning issue.* This proposed new definition would identify planning issues as disputes, controversies, or opportunities related to resource management. For example, a planning issue might identify a potential dispute over resource management, such as a popular recreation area that coincides with important cultural sites, habitat, or another multiple use. A planning issue might also identify a potential opportunity, such as an opportunity to control the spread of invasive species through resource management. The proposed new definition would be consistent with current practice and policy.

*Public lands.* We propose to replace Bureau of Land Management with BLM and to split the existing definition into two sentences for improved readability. These proposed changes would not be a change in practice or policy.

*Resource area or field office.* We propose to remove this definition, because the resource area or field office no longer would be the ''default'' planning area. We would replace the terms ''resource area'' or ''field office'' with ''planning area'' throughout the proposed rule.

*Resource Management Plan.* We propose to simplify the existing definition to say a resource management plan is ''a land use plan as described under section 202 of the Federal Land Policy and Management Act of 1976, including plan revisions.'' Much of the existing language, and a more in depth discussion of what constitutes a resource management plan would be moved to §§ 1610.1–2 and 1610.1–3. ''Plan components'' and ''implementation strategies'' described in proposed § 1610.1 would replace the elements generally established in a resource management plan under the existing definition in § 1601.0–5(n). As discussed in § 1610.1 of the preamble, these proposed changes aim to clarify that a resource management plan is a landscape-focused document that guides future management activities. They also aim to distinguish the land use planning-level components of a resource management plan (*i.e.,* plan components) from supporting documents that assist in implementing future actions consistent with the resource management plan (*i.e.,* implementation strategies).

Proposed language would clarify that the term ''resource management plan'' includes plan revisions. The proposed change would improve understanding that the revision of a resource management plan follows the same procedures as the preparation of a new resource management plan (see proposed § 1610.6–7).

We propose to revise existing language at the end of this definition to read ''approval of a resource management plan is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.'' The decision to approve a resource management plan is therefore not an approval of future actions within the planning area that require subsequent plans (such as a mining plan of operations), process steps (such as site-specific NEPA-analysis), or decisions (such as the decision to approve the action based on the site-specific NEPA analysis).

*Responsible official.* This proposed new term would replace the term ''Field

Manager'' throughout the planning regulations, acknowledging that the BLM employee authorized to prepare a resource management plan or plan amendment may not always be the Field Manager due to the need to plan across traditional BLM administrative boundaries. The proposed term is based on the definition of ''Responsible official'' in the DOI NEPA implementing regulations, ''the bureau employee who is delegated the authority to make and implement a decision on a proposed action and is responsible for ensuring compliance with NEPA'' (43 CFR 46.30). This proposed term, as modified, would only be applicable to the BLM land use planning process; no change to the DOI NEPA implementing regulations is intended. However, note that in the DOI NEPA regulations, the responsible official has the authority to make and implement a decision on a proposed action and is responsible for ensuring compliance with NEPA. We propose to divide these responsibilities between the deciding official and the responsible official for purposes of the planning rule. Under the proposed rule, the responsible official would prepare the resource management plan or plan amendment and related EISs and EAs, and the deciding official would approve the resource management plan.

*Sustained yield.* This proposed new definition comes from section 103(h) of FLPMA. We propose adding it because the planning regulations already include the statutory definition of multiple use and the principles of multiple use and sustained yield guide the BLM's development and revision of land use plans under section 202(c)(1) of FLPMA absent other applicable law. These regulatory definitions are useful because they are referenced throughout the existing and proposed regulations.

*Section 1601.0–6 Environmental Impact Statement Policy*

We propose to replace the word ''plan'' with ''resource management plan'' and to replace the word ''shall'' with ''will'' throughout this section, for the reasons previously described.

*Section 1601.0–7 Scope*

The BLM proposes this section, which is identical to that in the existing regulations.

*Section 1601.0–8 Principles*

In the first sentence of this section, we propose edits to replace ''shall'' with ''will'' for the reasons previously described, and ''the Federal Land Policy and Management act of 1976'' with FLPMA. The BLM intends no change in practice or policy from these proposed changes.

The second sentence of this section would be revised to state that the BLM will consider the impacts of resource management plans on resource, environmental, ecological, social and economic conditions at appropriate scales, rather than just on ''local economies.'' This broader range of conditions would include the consideration of impacts to local economies, in addition to the impacts on other conditions. The revised language more accurately describes current practice when considering impacts and would provide useful information for the deciding official. It is also important that these impacts be considered at appropriate scales. For example, it is important that the deciding official is aware of the socioeconomic impacts of a resource of national significance found within the planning area, such as the Federal Helium Reserve, which the BLM administers near Amarillo, Texas. The new language is consistent with the Planning 2.0 goals of addressing landscape-scale resource issues.

Finally, we propose edits to use active voice in the last sentence of this section and to require that the BLM consider the impacts of resource management plans on adjacent or nearby Federal and non-Federal lands, as well as the uses of adjacent or nearby Federal and non-Federal lands. The new language is consistent with the Planning 2.0 goals of addressing landscape-scale resource issues and would facilitate coordination and collaboration with adjacent Federal land managers and landowners, as appropriate.

**Subpart 1610—Resource Management Planning**

*Section 1610.1 Resource Management Planning Framework*

We propose to change the heading of § 1610.1 by replacing the word guidance with framework. The broader heading would reflect the entire section as revised.

Many of the provisions of existing § 1610.1 would be found in §§ 1610.1–1, 1610.1–2, and 1610.1–3 of the proposed rule. Those sections are discussed in greater detail as follows.

*Section 1610.1–1 Guidance and General Requirements*

Proposed § 1610.1–1 would address the development of guidance for resource management planning and general requirements for the preparation and amendment of resource management plans.

Proposed § 1610.1–1(a) contains provisions of existing § 1610.1(a). This section would still refer to planning guidance, but we propose to replace references to ''State Director'' with ''deciding official'' and references to ''Field Manager'' with ''responsible official.'' These changes are consistent with changes made throughout this proposed rule to facilitate planning across traditional BLM administrative boundaries. We propose to specify that the word ''plan'' refers to a ''resource management plan.''

Proposed § 1610.1–1(a)(1) contains provisions of existing § 1610.1(a)(1), which explains that guidance may include ''Policy established through Presidential, Secretarial, Director, or deciding official approved documents, so long as such policy is consistent with the Federal laws and regulations applicable to public lands.'' We propose to remove existing language limiting this guidance to ''National level policy'' to also include policy developed at the deciding official level as another type of guidance that may be developed to help the responsible official prepare a resource management plan. We also propose to remove existing language that provides examples of policy, such as ''appropriately developed resource management commitments.'' These examples are unnecessary in the regulations and do not adequately cover the broad range of policy examples that could be included as guidance. The BLM intends no change in practice or policy from the proposed changes to this section. Rather, the proposed changes are intended to improve readability and reaffirm that the BLM may only develop or apply policy that is consistent with Federal laws and regulations.

Proposed § 1610.1–1(a)(2) contains most of the provisions found in existing § 1610.1(a)(2) with some revisions. We propose to remove existing § 1610.1(a)(3). This section would no longer be necessary because guidance developed at the deciding official level would be incorporated into proposed § 1610.1–1(a)(1). The proposed changes would remove existing requirements for the State Director to reconsider inappropriate guidance during the planning process. This language is vague and confusing, as it does not define what it means for guidance to be ''inappropriate.'' The BLM must comply with the requirements of Federal laws and regulations applicable to public lands and therefore guidance developed to inform the preparation of a resource management plan must also comply with Federal laws and regulations applicable to the public lands.

We propose to remove existing § 1610.1(b), which states ''a resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area.'' This language is no longer necessary because proposed § 1601.0–4 describes the responsibilities for determining future planning areas. For more information, see the discussion on the determination of planning areas at the preamble for proposed § 1601.0–4.

Proposed § 1610.1–1(b) would contain the provisions of existing § 1610.1(c). The proposed section would make several style changes: Changing ''shall'' to ''will'', and abbreviating ''Bureau of Land Management'' to ''BLM'' in the last sentence. The first sentence would be revised to read ''the BLM will use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences.'' The proposed language is consistent with section 202(c)(2) of FLPMA and would highlight the objective of using an interdisciplinary approach, as described in FLPMA, as well as the importance of integrated consideration of sciences in the planning process.

In the second sentence of proposed § 1610.1–1(b), we propose to replace the word ''disciplines'' with ''expertise,'' to reflect that BLM staff may have expertise outside of their formal discipline, and an ''interdisciplinary approach'' should be based on expertise, not formal disciplines. This proposed change is consistent with current practice. We propose to add the word ''resource'' before values, to clearly identify what type of values this sentence applies to and to specify that ''the expertise of the preparers will be appropriate to . . . the principles of multiple use and sustained yield, or other applicable law.'' No change in meaning, practice, or policy is intended by these proposed changes.

Finally, we propose to replace ''Field Manager'' with ''responsible official'' in the last sentence of proposed § 1610.1–1(b). This change would be consistent with other changes in terminology in this proposed rule.

Proposed § 1610.1–1(c) would state that the BLM will use high quality information to inform the preparation, amendment, and maintenance of resource management plans. High quality information includes the best available scientific information, but the requirement extends to other information as well. For example, ''Traditional Ecological Knowledge'' (TEK) refers to the knowledge specific to a location acquired by indigenous and local peoples over hundreds and thousands of years through direct contact with the environment. Under the proposed rule, TEK would be considered a type of high quality information that could inform the preparation, amendment, and maintenance of resource management plans, so long as the TEK is relevant to the planning effort and documented using methodologies designed to maintain accuracy and reliability, and to avoid bias, corruption, or falsification, such as ethnographic research methods.

As the BLM considers what constitutes high quality information for purposes of the planning process, the BLM is mindful of its obligations under the Information Quality Act, section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, H.R. 5658), and implementing guidelines of OMB,[5] DOI,[6] and the BLM for ''ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.'' [7] The descriptions of objectivity, integrity, and utility provided in the BLM guidelines, as well as the principle of using the ''best available'' information, are particularly instructive with regard to information considered and shared with the public during resource management planning. In the planning process, the BLM also adheres to NEPA requirements for using ''high quality'' information and ''[a]ccurate scientific analysis'' (40 CFR 1500.1(b)), and for ensuring the ''professional integrity, including scientific integrity, of the discussions and analyses in [EISs]'' (40 CFR 1502.24).

In addition, the BLM intends that the March 2015 publication, ''Advancing Science in the BLM: An Implementation Strategy,'' will inform a responsible official's consideration of high quality information. This publication describes several principles and practices that pertain to the identification and consideration of high quality information in resource management planning. They include: Using the best available scientific knowledge relevant to a problem or decision, including peer-reviewed literature where it exists; acknowledging, describing, and documenting assumptions and uncertainties; and using quantitative data when it exists, together with professional scientific expertise from within and outside the BLM.[8] Moreover, all BLM employees are subject to the DOI scientific integrity policy in the Departmental Manual (305 DM 3, Dec. 16, 2014) when they use scientific information for DOI policy, management, or regulatory decisions. This policy states: ''Scientific information considered in Departmental decision-making must be robust, of the highest quality, and the result of as rigorous a set of scientific processes as can be achieved. Most importantly, the information must be trustworthy.'' (305 DM 3, section 3.4).

Together, these requirements, policies, and strategies relating to high quality information, including scientific information, will guide responsible officials as they consider information for planning purposes. The BLM anticipates that including the BLM's commitment to using high quality information in the planning regulations, and operating consistent with Departmental policy on scientific integrity and BLM's strategy for advancing science, would result in greater consistency in how BLM field, district, and State offices identify and use information, including scientific information, throughout the land use planning process. The proposed change would simply reaffirm current practice and policy.

*Section 1610.1–2 Plan Components*

Proposed § 1610.1–2 would describe the components of a resource management plan. The existing definition of ''resource management plan'' lists eight elements that a plan ''generally establishes'' (see existing § 1601.0–5(n)). The proposed rule would revise these elements and divide them into ''plan components'' and ''implementation strategies'' (see proposed § 1610.1–3). The plan components would provide planning-level direction with which future management activities and decisions must be consistent (*i.e.,* planning-level management direction). Implementation strategies would provide more detailed

[5] Office of Management and Budget, ''OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication,'' (67 FR 8452).

[6] U.S. Department of the Interior, ''Information Quality Guidelines Pursuant To Section 515 Of The Treasury And General Government Appropriations Act For Fiscal Year 2001,'' *http://www.doi.gov/ocio/information_management/upload/515Guides.pdf.*

[7] Bureau of Land Management, ''Information Quality Guidelines—Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Bureau of Land Management,'' *http://www.blm.gov/style/medialib/blm/national/national_page.Par.7549.File.dat/guidelines.pdf.*

[8] The implementation strategy is available at: *http://www.blm.gov/wo/st/en/info/blm-library/publications/blm_publications/advancing_science.html.*

information to guide how the BLM intends to implement future actions consistent with the planning-level management direction.

Proposed § 1610.1–2 describes the following six ''plan components'' which every resource management plan will include: Goals, objectives, designations, resource use determinations, monitoring and evaluation standards, and certain lands identified as available for disposal, as applicable. Plan components provide planning-level management direction and would therefore only be changed through plan amendments or revisions under proposed new § 1610.1–2(c), although typographical and mapping errors, or minor changes in mapping or data associated with a plan component could continue to be updated through plan maintenance, consistent with current BLM policy and practice (see proposed § 1610.6–4). The approval of plan components would be subject to protest procedures (see proposed § 1610.6–2).

This proposed distinction between plan components and implementation strategies would facilitate the preparation of landscape-minded resource management plans. The proposed rule would more clearly distinguish between the planning-level management direction reflected in the plan components of an approved resource management plan and related implementation strategies, which facilitate the implementation of future actions consistent with the plan components, but would not be considered a component of the resource management plan. By doing so, the proposed rule would enable the BLM to provide planning-level management direction through the development of plan components, while using adaptive approaches to implement future actions under the plan. It would also provide consistency throughout the BLM in how plans are structured. The following paragraphs discuss plan components in detail.

The six proposed plan components are based on the first four elements and the eighth element described in the existing definition of a resource management plan (see existing §§ 1601.0–5(n)(1) through 1601.0–5(n)(4) and 1601.0–5(n)(8)). Under the proposed rule, these elements would be called plan components and each component would be provided a distinct name and a precise definition to facilitate understanding and consistent implementation.

Proposed §§ 1610.1–2(a)(1) and 1610.1–2(a)(2) describe the first two types of plan components—goals and objectives.

The *goals* of a resource management plan would be broad statements of desired outcomes addressing resource, environmental, ecological, social, and economic characteristics within a planning area or a portion of the planning area. The BLM would direct the management of the land and resources within the planning area toward the goals. This plan component would replace ''resource condition goals'' described in existing § 1601.0–5(n)(3). We propose to remove the words ''resource condition'' as goals may address other characteristics within a planning area as well. The BLM intends no change from existing practice; rather, the proposed change would improve consistency and the proposed rule would match current practice.

Second, the *objectives* would replace the ''resource condition . . . objectives'' described in existing § 1601.0–5(n)(3) and would represent concise statements of desired resource conditions that guide progress toward one or more goals. The proposed rule would establish a new requirement that objectives must be specific and measurable and should have established time-frames for achievement. This would improve the BLM's ability to evaluate whether the objectives are being met and to track progress towards their achievement. Since future resource management actions would be required to conform to the plan components, including the objectives (see the definition of ''conformity or conformance'' in proposed § 1601.0–5); the proposed requirement for measurable objectives would assist the BLM when determining if a proposed action is in conformance with the resource management plan objectives. For example, if the NEPA analysis revealed that a proposed action would prohibit the achievement of an objective, the proposed action would not be in conformance with the resource management plan.

Measurable objectives would be defined using the most appropriate scale of measurement for that objective. For example, an objective to manage an area as visual resource class one, two, or three is based on an ordinal scale of measurement. An ordinal scale ranks categories in order (1st, 2nd, 3rd, etc.), but there is no relative degree of difference between the categories. In contrast, an objective related to managing for a specific proportion of vegetation cover (*e.g.,* total acreage) is based on a ratio scale of measurement. A ratio scale has a fixed zero value and allows the comparison of differences of values.

To the extent practical, objectives should identify standards to mitigate undesirable effects to resource conditions and should provide integrated consideration of resource, environmental, ecological, social, and economic factors (see 43 U.S.C. 1712(c)(2)). The proposed changes would support implementation of the BLM mitigation policy through the development of standards to be used for mitigating undesirable effects to resource conditions. For example, an objective might identify a mitigation standard for no net loss to a sensitive species would provide a standard to guide future authorizations in avoiding, minimizing, and compensating for any unavoidable remaining impacts to the sensitive species. The proposed changes would also support the use of adaptive management where appropriate, as a measurable objective could identify a threshold that triggers a response, such as the initiation of a plan amendment. If such a threshold were identified as part of a measurable objective, the BLM would use the monitoring and evaluation process to determine whether the threshold had been met (see the discussion on monitoring and evaluation at the preamble for proposed § 1610.6–4).

Although both goals and objectives are currently described in the definition of a resource management plan as an element that is ''generally'' included (see existing § 1601.0–5(n)), the proposed rule would explicitly require the inclusion of goals and objectives; this proposed change is consistent with current BLM policy established in the existing Land Use Planning Handbook. The proposed rule would also provide clarity on the definition of the terms, which would improve understanding and consistency in implementation.

Proposed § 1610.1–2(b) would describe four additional plan components that are developed either to achieve the goals and objectives of the resource management plan, or to comply with applicable legal requirements or policies, consistent with the principles of multiple use and sustained yield or other applicable law, such as national monuments established under the Antiquities Act of 1906 (16 U.S.C. 431–433), which must use and observe the principles specific to their establishment. These four plan components include designations, resource use determinations, monitoring and evaluation standards, and lands identified as available for disposal, as applicable. These plan components would also provide planning-level management direction while supporting

achievement of the goals and objectives of the resource management plan.

Paragraph (b)(1) of this section describes ''*designations,*'' which would replace the existing element of a resource management plan described as ''land areas for . . . designation, including ACEC designation'' (see existing § 1601.0–5(n)(1)). Designations, as proposed, would identify areas of public land where management is directed toward one or more priority resource values or uses. A designation would highlight these areas to clearly communicate the BLM's intention to prioritize these resource values or uses when developing management direction or making future management decisions in the area. Designations would include both ''planning designations'' which are identified through the BLM land use planning process and ''non-discretionary designations'' which are identified by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities.

Planning designations would be identified through the BLM land use planning process in order to achieve the goals and objectives of the plan or to comply with applicable legal requirements or policies. An example of existing designations or allocations that would become planning designations that could be identified in order to achieve the goals and objectives of the plan is a research natural area, a special recreation management area, a backcountry conservation area, a wildlife corridor area, or a solar energy zone. An example of a planning designation that would be identified in order to comply with applicable legal requirements or policies is an ACEC. The BLM intends to develop a list of planning designations available for use during the planning process as part of the forthcoming revision of the Land Use Planning Handbook. It is not, however, the BLM's intention that all public lands would be included in a planning designation; rather, the proposed rule and the forthcoming revision of the Land Use Planning Handbook would clarify that this is an existing planning tool that is available during the planning process to highlight and prioritize unique or special areas that require management that is different from surrounding lands.

Non-discretionary designations, in contrast, are identified by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities. For instance, Under the Wilderness Act of 1964, Congress has the exclusive authority to designate or change the boundaries of wilderness areas. The BLM and other Federal land management agencies manage wilderness areas consistent with Congressional direction. The BLM manages National Conservation Areas (NCA) and similarly designated lands such as Cooperative Management and Protection Areas, Outstanding Natural Areas, and one Forest Reserve (the Headwaters Forest Reserve in northern California) pursuant to Congressional direction.

Non-discretionary designations made by the Secretary of the Interior, Congress, or the President are not established or amended through the BLM land use planning process. These non-discretionary designations would, however, be identified in a resource management plan, and management direction for the designation, including plan components, would be developed, consistent with the over-arching direction provided in the proclamation, legislation, or order through which the non-discretionary designation was established.

There would be no substantive change in the proposed rule, other than identifying designations as a plan component and specifying that planning designations can be applied either to achieve the goals and objectives of the resource management plan or to comply with legal requirements or policies. Further, the proposed rule would clarify the difference between a designation and other plan components, such as a resource use determination. The BLM believes that differentiating between resource use determinations and designations in the regulations would help to improve general understanding of terminology.

*Resource use determinations* are another type of proposed plan component and would replace several existing elements of a resource management plan, including ''land areas for limited, restricted, or exclusive use,'' ''allowable resource uses,'' and ''program constraints,'' (see existing § 1601.0–5(n)). A resource use determination would identify areas of public lands or mineral estate where specific uses are excluded, restricted, or allowed in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies. In contrast to designations, which indicate where one or more resources or uses is prioritized over other resources or uses, resource use determinations identify where a use is excluded, restricted, or allowed, but do not identify a priority for one or more multiple-uses. Examples of resource use determinations include: areas identified as available or unavailable for livestock grazing, open or closed to mineral leasing, or open to mineral leasing subject to standard terms and conditions or major or moderate constraints, or open, limited, or closed to Off-Highway-Vehicle use. In most circumstances, a resource use determination indicating that a use is allowed, or allowed with restrictions in an area, would not represent a final decision allowing future use authorizations in the area, rather it would indicate that future authorizations for the activities would be in conformance with the resource management plan and may be considered for approval following site-specific NEPA analysis.

The proposed rule would provide a more precise characterization of land use allowances, exclusions, and restrictions than the existing definition of a resource management plan. This proposed change would improve understanding and consistency in implementation, as well as consistent use of terminology. The BLM intends no substantive change in practice associated with this new terminology; however, under the proposed rule there would be changes in how the various parts of a resource management plan are categorized.

For example, under this proposed rule, some common ''management actions'' described in resource management plans prepared under the existing planning regulations would be classified as ''resource use determinations,'' such as any explicit restrictions to an allowed use at the land use planning level. For example, mineral lease stipulations such as No Surface Occupancy or Controlled Surface Use would be considered resource use determinations, as these constraints represent restrictions to an allowed use that are explicitly required at the land use planning level. This is important because resource use determinations would be changed only through plan amendments or revisions. This proposed change would not represent a change in current practice under the existing regulations, as planning-level restrictions to an allowed use are currently subject to protest procedures and may be changed only through plan amendments. Rather, the proposed change would ensure that restrictions to an allowed use, using current planning terminology, are classified as a resource use determination under the proposed new definitions.

In addition, under the proposed descriptions of planning designations and resource use determinations, the BLM affirms that both planning designations and resource use

determinations may be defined explicitly by geographic boundaries, or implicitly by describing the specific conditions or criteria under which a resource or use would be prioritized, or a use would be excluded, restricted, or allowed. In situations where a criteria-based approach is used, the BLM would develop maps showing where the criteria apply based on current data and conditions. These options for defining planning designations and resource use determinations are consistent with current practice and do not represent a change from existing policy, though it would represent a change in terminology.

For example, under the existing planning regulations, the BLM applied both approaches when developing the ''Approved Resource Management Plan Amendments and Record of Decision (ROD) for Solar Energy Development in Six Southwestern States'' (Western Solar Energy Plan). The Western Solar Energy Plan developed a list of areas where utility-scale solar energy development was prohibited. Some of these areas were defined by explicit geographic boundaries, such as lands in the Ivanpah Valley in California and Nevada. Others were defined by the presence of a specific land use designation in an applicable land use plan (*e.g.,* ACECs) or the presence of a specific resource or condition (*e.g.,* designated or proposed critical habitat for ESA-listed species). The geographic boundaries for these areas will change over time as land use plans are revised or amended and new information on resource conditions is developed. For the purposes of the Western Solar Energy Plan and its associated NEPA analysis, the BLM mapped and estimated the acreage for all exclusion areas based on best available information; however, those maps will be updated over time. Through the proposed description of planning designations and resource use determinations, the BLM affirms that an explicit geographic-based approach or an implicit criteria-based approach would both continue to be acceptable for defining a planning designation or a resource use determination.

*Monitoring and evaluation standards* are another type of plan component. These standards would replace the existing element of a resource management plan entitled ''Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision'' (see existing § 1601.0–5(n)(8)). As proposed, monitoring and evaluation standards would include ''indicators and intervals for monitoring and evaluation to determine whether the objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan.'' Indicators and intervals for monitoring would be tied directly to the quantifiable objectives to clearly indicate how each objective would be measured (*i.e.,* the indicator) and how often it would be measured (*i.e.,* the interval). Intervals for evaluating the resource management plan would identify the frequency for evaluating the resource management plan in its entirety to determine whether a plan amendment or revision is warranted.

Lands identified as available for disposal from BLM administration under section 203 of FLPMA would constitute the final type of plan component and would replace the existing element of a resource management plan described as ''land areas . . . for transfer from Bureau of Land Management Administration'' (see existing § 1601.0–5(n)(1)). Section 203 of FLPMA provides for the sale of tracts of public land where the Secretary (implemented by the BLM under delegated authority) determines through the land use planning process that the sale meets specified criteria. The proposed rule would specify that lands identified as available for disposal under section 203 of FLPMA would be considered a plan component, however disposal of lands may not be applicable to every resource management plan. For example, it is unlikely that a resource management plan developed for a national monument or national conservation area would identify lands as available for disposal. As a plan component, identification of lands as available for disposal would only be changed through amendment or revision, consistent with current BLM policy.

The BLM requests public comment on the proposed plan components. In particular, the BLM requests public comment on the distinction between planning designations, which identify areas where specific resources or uses would be prioritized, and resource use determinations, which identify areas where specific uses would be excluded, restricted, or allowed, and whether these two components should be combined into a single plan component. For example, resource use determinations could be revised to be a type of planning designation.

*Section 1610.1–3 Implementation Strategies*

Proposed § 1610.1–3 describes other types of information, called implementation strategies, that may be developed in conjunction with a resource management plan and included as an appendix to the resource management plan, but do not represent planning level management direction and are not considered components of the resource management plan. Implementation strategies provide examples of how the BLM intends to implement future actions consistent with the planning-level management direction. For example, an implementation strategy might describe an integrated pest management strategy to address invasive species, including potential actions the BLM may take such as active removal of invasive species, and the methods BLM may use to take these actions. This strategy would be designed to achieve a measurable objective, such as a desired plant community composition.

Implementation strategies provide examples of how the BLM might achieve the resource management plan objectives, but in any particular resource management plan they would not provide an exhaustive list of every future action the BLM might take to achieve the resource management plan's objectives. Nor do they represent a commitment or a decision to implement the potential actions described in the implementation strategy. A future implementation decision occurs after adoption of a plan. As a result, future actions associated with, or incorporating an implementation strategy, would not occur until the implementation stage and would therefore require site-specific NEPA analysis and compliance with other relevant laws before a final decision is made and any action is taken.

Unlike the plan components, implementation strategies could be updated at any time to incorporate new information and such updates do not require a plan amendment or plan maintenance (for more information see the discussion at the preamble for paragraph (c) of this section).

Proposed § 1610.1–3 would describe two types of implementation strategies: Management measures and monitoring procedures. The proposed rule affirms that the development of other types of implementation strategies may occur through future policy and guidance, as is currently the case.

*Management measures* would replace several existing elements of a resource management plan, including ''general

management practices needed to achieve the above items,'' ''support action, including such measures as resource protection, access development, realty action, cadastral survey, etc., as necessary to achieve the above,'' ''need for an area to be covered by more detailed and specific plans,'' and ''general implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action'' (see existing § 1601.0–5(n)). As proposed, management measures would identify one or more potential actions the BLM may take or require of permitted activities in order to achieve the resource management plan goals and objectives.

Under this proposed rule, management measures could include resource management practices, best management practices, standard operating procedures, the preparation of more detailed and specific plans, or other measures as appropriate. Management measures developed in conjunction with a resource management plan would not be an exhaustive catalog of possible approaches, but would only describe future actions that the BLM may take, consistent with the plan components. Specific examples of management measures include the application of vegetation treatments to improve wildlife habitat or reduce fuel-loading for wildfire prevention; re-vegetation to achieve restoration objectives; or identification of the need to prepare a travel management plan for a particular area.

As proposed, the BLM would update a list of management measures, as needed, to reflect new information such as changes in resource conditions or a BLM determination that the management measure is not effective in achieving the goals and objectives of the resource management plan based on the results of monitoring and evaluation. The proposed rule would facilitate the use of adaptive approaches for implementation and improve the BLM's ability to respond to and incorporate new information. At the same time, a particular management measure, if and when implemented, would support progress toward the measureable objectives of the resource management plan and must be implemented consistent with all plan components, thus changes made to the list of management measures would be constrained by the parameters of the measurable plan objectives and other plan components. For example, if a management measure described the BLM's intent to implement habitat improvements through vegetation manipulation in an area in order to achieve a vegetation related plan objective, and the results of monitoring and evaluation indicated over time that habitat improvements were resulting in a negative impact on vegetation objectives, the BLM could update the list of management measures to remove or update the ineffective methods. Site-specific NEPA analysis would be conducted before any management measure was implemented.

Management measures, as the rule proposes, might be included with a resource management plan, and would be either examples of, or likely approaches that, indicate to the public how the BLM intends to implement future actions consistent with the plan, but the approval of a resource management plan does not represent a final decision for a management measure nor does it constrain BLM's discretion to develop management measures to apply to future implementation decisions. The final decision for a future action associated with a management measure would occur at the implementation stage and would require site-specific NEPA analysis. Any changes made to the list of management measures described in a resource management plan would be made available for public review at least 30 days prior to their implementation.

In addition, the BLM would provide for any public involvement required by NEPA before authorizing the implementation of site-specific actions. For example, preparation of an EA, or documenting reliance on a categorical exclusion (if available), or determination of NEPA adequacy before authorizing implementation of a vegetation management treatment to improve wildlife habitat; or the preparation of an EIS before authorizing a right-of-way application that incorporated best management practices identified in the resource management plan.

Although management measures would represent a new term and category in the planning regulations, the types of actions that would be included as management measures and the process for updating that information would be consistent with current BLM practice and interpretation of the existing planning regulations. For example, the BLM often provides a list of best management practices associated with permitted activities as an appendix to the resource management plan. The proposed changes would provide clarification in the regulations and improve consistency in implementation across the BLM.

Monitoring procedures would also be a type of implementation strategy under proposed § 1610.1–3(a)(2). Monitoring procedures would describe methods for monitoring the resource management plan, consistent with the monitoring standards (see proposed § 1610.1–2(b)(3)). Under the proposed rule, these procedures would be updated as new information becomes available—either as monitoring technology develops, for instance, or more is known about the resource being monitored. For example, advances in remote sensing and geospatial technologies have provided more accurate and cost effective methods to monitor vegetation and wildlife activity in recent years and will likely continue to improve in the future; under the proposed rule these advances in technology could be incorporated into revised monitoring procedures. For a detailed discussion of monitoring and evaluation, see the preamble for § 1610.6–4.

Proposed § 1610.1–3(b) would state that implementation strategies are not a plan component but are intended to assist the BLM in implementing the plan components. The proposed language affirms that an implementation strategy does not provide planning-level management direction and is therefore not a component of the resource management plan; implementation strategies must, however, be in conformance with the resource management plan. Nonetheless, the BLM intends that implementation strategies would be included as appendices to the resource management plan and made available for public review in conjunction with the publication of the proposed resource management plan (see proposed § 1610.5–5).

Proposed § 1610.1–3(c) would explain that implementation strategies could be updated at any time in the future in response to new information and these updates would not require a plan amendment or the formal public involvement and interagency coordination process described in proposed §§ 1610.2 and 1610.3. This is because implementation strategies are not plan components. Rather, they are simply provided as background information to help the public have a better understanding of what a future site specific implementation action might look like. It is important to note that implementation strategies, and future updates to implementation strategies, would be subject to the high quality information requirement described in proposed § 1610.1–1(c). The BLM would be required to make any changes to implementation

strategies available for public review at least 30 days prior to their implementation, unless notification is provided through site-specific NEPA, to provide transparency to the public.

The BLM requests public comments on the proposed distinction between plan components and implementation strategies. In particular, the BLM requests public comments on the procedures for updating implementation strategies, including the need for, timing and potential scope of public involvement.

*Section 1610.2 Public Involvement*

In the heading of this section and throughout the planning regulations, the BLM proposes to replace the term ''public participation'' with ''public involvement'' to be more consistent with FLPMA. The BLM intends no change in practice or meaning from this proposed revision. Public involvement is central to the BLM land use planning process under FLPMA. Section 202(a) directs the Secretary, ''with public involvement'' and consistent with FLPMA, to ''develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. . . .'' Section 202(f) requires that the Secretary ''allow an opportunity for public involvement and by regulation shall establish procedures . . . to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.'' Section 103(d) of FLPMA broadly defines the term ''public involvement'' as ''the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.''

The BLM interprets this definition as encompassing notice by varied means, including by making a planning document available electronically (*e.g.,* on the BLM Web site), providing direct notice to individuals or groups that have asked to receive notice about public involvement opportunities (*e.g.,* by electronic means such as email or by U.S. mail), or publishing general notice for the public (*e.g.,* in a local newspaper or in the **Federal Register**). We propose to revise § 1610.2 to indicate more clearly the points in the planning process when the BLM would provide notice through one or more of these means.

In addition, the BLM proposes to distinguish in the regulations between making a document ''available for public review'' and specifically requesting public comments. Where the BLM makes documents available for public review, the BLM believes it is important for the public to have an opportunity to see the BLM's progress. The public is welcome to bring any questions or concerns to the BLM's attention based on public review and the BLM will consider their input. In these circumstances, however, the BLM is not requesting comments and does not provide a time-period for submission of comments or anticipate formally summarizing or responding to any public comments received. This is not a change from existing practice, but would clarify the BLM's intent when we use this terminology.

In contrast, where the BLM ''requests written comments,'' the BLM will provide a minimum of 30 days for response (see proposed § 1610.2–2(a)). As appropriate, the BLM also summarizes and responds to substantive comments. For example, the BLM summarizes public comments raised during scoping, develops planning issues based on the comments, and issues a scoping report. Similarly, the BLM summarizes and responds to substantive public comments submitted on a draft resource management plan and draft EIS.

In some situations, the BLM may request written comments, but would not provide a written response. For example, the BLM may request public comment on a draft EA-level amendment without issuing a written response. Again, this is not a change from existing practice, but would clarify to the public the BLM's intent when we use this terminology.

We propose to restructure § 1610.2 to clearly indicate the different aspects of public involvement in the land use planning process. General provisions are followed by specific sections, including: Public notice; public comment periods; and availability of the resource management plan. The following table and paragraphs explain the specific proposed changes to § 1610.2 and the supporting rationale. They also request public comments on specific provisions.

TABLE 1—COMPARISON OF PUBLIC INVOLVEMENT OPPORTUNITIES IN EXISTING VS. PROPOSED REGULATIONS

| Step in planning process for the preparation of a resource management plan or an EIS-level amendment | Level of public involvement | |
|---|---|---|
| | Existing regulations | Proposed regulations |
| Planning assessment | 1610.1: The planning assessment would be a new requirement under the proposed rule, and therefore is not applicable to the existing regulations. | 1610.4: The public would be provided opportunities to provide existing data or information or to suggest policies, guidance, or plans for consideration in the planning assessment. The BLM would identify public views in relation to the planning area, which may include public meetings. The planning assessment would be documented in a report, which would be made available for public review. The BLM could waive the requirement to conduct a planning assessment for minor EIS-level amendments or if an existing planning assessment is determined to be adequate. |
| Identification of planning issues | 1610.2(c) and 1610.4–1: The BLM publishes a NOI in the **Federal Register** and publishes a notice in appropriate local media. The public is provided a minimum of 30-days to comment. | 1610.2–1(f) and 1610.5–1: Same as existing regulations. |

TABLE 1—COMPARISON OF PUBLIC INVOLVEMENT OPPORTUNITIES IN EXISTING VS. PROPOSED REGULATIONS—Continued

| Step in planning process for the preparation of a resource management plan or an EIS-level amendment | Level of public involvement | |
|---|---|---|
| | Existing regulations | Proposed regulations |
| Development of planning criteria .... | 1610.4–2: Proposed planning criteria are published in a NOI in the **Federal Register** and made available for public comment through the scoping period and comment on the draft resource management plan. | 1610.5–2 and 1610.5–3: Planning criteria would no longer be required under the proposed rule. Instead, the BLM would describe the rationale for the differences between alternatives as well as the basis for analysis. Preliminary versions of both would be made available for public review prior to the publication of the draft resource management plan or EIS-level amendment. |
| Inventory data and information collection. | 1610.4–3: No opportunities for public involvement are provided at this step. | 1610.4: This step would be replaced with the planning assessment. The public would be provided opportunities to provide existing data or information or to suggest policies, guidance, or plans for consideration in the planning assessment. The BLM would identify public views in relation to the planning area, which may include public meetings. The planning assessment would be documented in a report, which would be made available for public review. |
| Analysis of the management situation. | 1610.4–4: No opportunities for public involvement are provided at this step. | 1610.4: This step would be replaced with the planning assessment. The public would be provided opportunities to provide existing data or information or to suggest policies, guidance, or plans for consideration in the planning assessment. The BLM would identify public views in relation to the planning area, which may include public meetings. The planning assessment would be documented in a report, which would be made available for public review. |
| Formulation of resource management alternatives. | 1610.4–5: No opportunities for public involvement are provided at this step. | 1610.5–2: The preliminary alternatives and preliminary rationale for alternatives would be made available for public review before publication of the draft resource management plan or EIS-level amendment. |
| Estimation of effects of alternatives | 1610.4–6: No opportunities for public involvement are provided at this step. | 1610.5–3: The preliminary procedures, assumptions, and indicators to be used when estimating the effects of alternatives would be made available for public review before publication of the draft resource management plan or EIS-level amendment. |
| Preparation of the draft resource management plan and selection of preferred alternatives. | 1610.4–7: No opportunities for public involvement are provided at this step. | 1610.5–4: Same as existing regulations. |
| Publication of the draft resource management plan. | 1610.2(e): The BLM requests public comment on the draft resource management plan and draft EIS and provides 90 calendar days for response. | 1610.2–2: When requesting written comments on a draft resource management plan and draft EIS, the BLM would notify the public and provide at least 60 calendar days for response.<br>When requesting written comments on an EIS-level amendment, the BLM would notify the public and provide at least 45 calendar days for response. |
| Selection of the proposed resource management plan and preparation of implementation strategies. | 1610.4–8: The BLM publishes the proposed resource management plan and final EIS. | 1610.5–5: The BLM would publish the proposed resource management plan or plan amendment and final EIS and also would publish any implementation strategies. The BLM expects that the implementation strategies would be included as appendices to the proposed resource management plan. |
| Protest ..... | 1610.5–2: The BLM provides 30 calendar days for the public to protest plan approval. The public must submit a hard-copy of the protest to the BLM. | 1610.6–2: The BLM would still provide 30 calendar days for the public to protest plan approval, but the proposed rule would describe more specific requirements on what constitutes a valid protest and allow for dismissal of any protest that does not meet these requirements. The public may submit a hard-copy or an electronic-copy of the protest to the BLM. |
| Resource management plan approval. | 1610.5–1: The BLM must provide public notice and opportunity for comment on any significant change made to the proposed plan before approval of the plan. | 1610.6–1: If the BLM intends to select an alternative that is substantially different than the proposed resource management plan or plan amendment, the BLM would notify the public and request written comments on the change before approval of the resource management plan or plan amendment. The BLM would notify the public when a resource management plan or plan amendment has been approved. |
| Monitoring and evaluation ..... | 1610.4–9: No opportunities for public involvement are provided at this step. | 1610.6–4: The BLM would document the evaluation of the resource management plan in a report made available for public review. |
| Plan maintenance ..... | 1610.5–4: No opportunities for public involvement are provided at this step. | 1610.5–4: When changes are made to an approved resource management plan through plan maintenance, the BLM would notify the public and make the changes available for public review at least 30 days prior to their implementation. |

Proposed § 1610.2(a) remains relatively unchanged from existing regulations and would state that the BLM will provide the public with opportunities to become meaningfully involved in and comment on the preparation and amendment of resource management plans. We propose removing references to ''related

guidance'' in order to focus this provision on the preparation and amendment of resource management plans. During the planning process, the public may submit comments on ''related guidance'' to the BLM, but the BLM does not provide a separate and distinct comment period for related guidance. For example, the public may comment on related guidance during scoping or as a comment on the draft resource management plan and draft EIS and the BLM would consider this comment. This is not a change in existing practice or policy, but would provide clarity to the public on opportunities for comment.

We also propose to remove language on giving ''early notice of planning activities'' from this section. This language is vague and unnecessary because proposed § 1610.2–1(e) would carry forward the existing requirement that the BLM notify the public at least 15 days before any public involvement activities. The BLM would provide further advance notice beyond the 15-day requirement to the extent possible, consistent with current practice.

Proposed § 1610.2(a) would also carry forward the existing requirement that public involvement in the planning process conform to the requirements of NEPA and its associated implementing regulations. The word ''shall'' would be replaced with ''will'' and the paragraph would be revised to use active voice for improved readability.

Existing § 1610.2(b) requires the BLM to publish a planning schedule early in each fiscal year in order to advise the public of the status of each plan being prepared or scheduled to start during the year, the major planning actions expected during the fiscal year, and the projected new planning starts for the next three fiscal years. The BLM proposes to revise this requirement. Proposed § 1610.2(c) would replace existing § 1610.2(b) and would require the BLM to post the status of each resource management plan in process of preparation or scheduled to be started on the BLM's Web site before the close of each fiscal year. The BLM often does not know its budget, priorities, or on-the-ground needs several years in advance; in recent years the BLM has operated under a continuing resolution to the budget for several months into the fiscal year, and is therefore unable to accurately predict a planning schedule with the specificity required in existing regulations.

The BLM's current practice is to post a planning schedule for resource management plans currently under preparation or approved to initiate preparation of a resource management plan on the national BLM planning Web site when this information is available. The proposed change would give the BLM flexibility in communicating its planning schedule, including by posting the schedule electronically, and would be consistent with current practice. It would also reflect the fact that budgetary constraints and the need to address new and emerging resource issues make it difficult to accurately predict a planning schedule beyond the current fiscal year.

Proposed paragraph (c) of this section would not include the related requirement for requesting public comments on the projected new planning starts so that comments can be considered when refining priorities. The proposed change would make the planning regulations consistent with current BLM practice, but would represent a change from existing regulations.

Proposed § 1610.2(b) would be adapted from § 1610.2(d) and (e) of the existing planning regulations. It would maintain the existing requirement that public involvement activities conducted by the BLM be documented by a record or summary of the principal issues discussed and comments made. It further provides that the record or summary would be available to the public and open for 30 days to any participant who wishes to review the record or summary. There would be no change in BLM operation or impact on the public under the proposed rule. For example, the BLM would continue to prepare a scoping report following the identification of planning issues (see proposed § 1610.5–1) summarizing scoping meetings and written scoping comments under proposed § 1610.2(b).

Existing § 1610.2(c) requires the BLM to publish a Notice in the **Federal Register** whenever beginning any new plan, revision, or amendment. This requirement is carried forward in proposed § 1610.2–1(f) and revised. Proposed § 1610.2–1(f) will be discussed in the corresponding section of this analysis.

*Section 1610.2–1 Public Notice*

Proposed § 1610.2–1 would describe the requirements for when and how the BLM would provide public notice related to opportunities for public involvement. We also propose to replace the word ''shall'' with ''will'' throughout these sections for improved readability.

Proposed § 1610.2–1(a) contains the provisions of existing § 1610.2(f) with edits for consistency with other proposed changes and lists the steps in the planning process when the BLM would notify the public and provide opportunities for public involvement in the preparation of a resource management plan, or an EIS-level amendment, as appropriate, to the areas and people involved. The steps would be: (1) Preparation of the planning assessment, as appropriate; (2) Identification of planning issues; (3) Review of the preliminary resource management alternatives and rationale for alternatives; (4) Review of the procedures, assumptions, and indicators, as outlined in the basis for analysis; (5) Comment on the draft resource management plan; and (6) Protest of the proposed resource management plan. These steps would include new opportunities for public involvement early in the planning process, such as during the planning assessment, as appropriate. The words ''as appropriate'' are included with the ''preparation of the planning assessment'' because the planning assessment would not be required for minor EIS-level amendments or when an existing planning assessment is determined to be adequate to inform the preparation of an EIS-level amendment. Each of these new opportunities is addressed in the corresponding section of this section-by-section analysis.

The BLM is also considering the option where the provisions of proposed § 1610.2–1(a) would apply to the preparation of a resource management plan, but would not apply to EIS-level amendments. The BLM recognizes that EIS-level amendments tend to be smaller in scope than the preparation of a resource management plan, and therefore, it may be appropriate to provide different opportunities for public involvement. Under this alternative, the proposed rule would describe the steps when the BLM would notify the public and provide opportunities for public involvement in the preparation of an EIS-level amendment, as appropriate to the areas and people involved. These steps would include: (1) Identification of planning issues; (2) Comment on the draft resource management plan; and (3) Protest of the proposed resource management plan. The BLM requests public comment on this alternative option and whether EIS-level amendments require the same opportunities for public involvement as when the BLM prepares a resource management plan.

Proposed § 1610.2–1(b) would list the steps in the planning process when the BLM would notify the public and provide opportunities for public involvement in the preparation of a plan amendment where an EA is prepared

(EA-level amendment), as appropriate to the areas and people involved. The steps would be: (1) Identification of planning issues; (2) Comment on the draft resource management plan amendment, as appropriate; and (3) Protest of the proposed resource management plan amendment.

The existing regulations do not require that BLM provide opportunities for public involvement during the identification of planning issues for EA-level amendments, however the BLM often chooses to provide such opportunities. Under the proposed rule, public involvement would be required when identifying planning issues for EA-level amendments. The proposed change would support the goal of establishing early opportunities for public involvement in the planning process, including EA-level amendments. The proposed rule would not, however, require that the BLM request public comment on draft EA-level amendments, consistent with the existing regulations. The BLM often chooses to request public comments on draft EA-level amendments, and in such circumstances the public would be provided 30 calendar days for response (see proposed § 1610.2–2(a)).

Proposed § 1610.2–1(c) through (e) would be general provisions that apply whenever the BLM provides public notice relating to the preparation or amendment of a resource management plan. Under proposed § 1610.2–1(c), we propose new requirements that the BLM announce opportunities for public involvement by posting a notice on the BLM Web site and at all BLM offices within the planning area.

These new requirements would be consistent with current practice in many BLM offices and would ensure consistency in implementation throughout the BLM. This new provision would provide certainty to the public on where they could find information on all public involvement opportunities. The BLM anticipates providing additional notifications using formats that are relevant and accessible to the various publics interested in or affected by the planning effort. For example, the BLM could also post an announcement at a local library, post-office, or other frequently visited location; issue a local, regional, or national press release; notify community leaders of the opportunity; or post an announcement using various social media. The use of these additional formats would vary based on the location and public interest in the planning effort.

Proposed § 1610.2–1(d) provides that individuals or groups could ask the BLM to notify them of opportunities for public involvement related to the preparation and amendment of a resource management plan. The BLM would notify those individuals or groups through written or electronic means, such as a letter sent by U.S. mail or email.

Under existing regulations (§ 1610.2(d)), the Field Manager must maintain a mailing list of those individuals or groups known to be interested in or affected by a resource management plan or that have asked to be placed on the list and notify those individuals or groups of public participation activities. The proposed change would remove the requirement for the BLM to maintain a list of groups or individuals ''known to be interested in or affected by a resource management plan,'' which places an unnecessary burden on the BLM to find contact information for groups or individuals that may not be readily available. The proposed rule would instead require the BLM to notify any groups or individuals that have explicitly requested to be notified of opportunities for public involvement.

Finally, under proposed § 1610.2–1(e), the BLM would continue to notify the public at least 15 days before any public involvement activities where the public is invited to attend, such as a public meeting. This requirement is the same as that in § 1610.2(e) of the existing regulations. It is intended to allow members of the public to plan their schedules and make arrangements to attend scoping meetings, ''open house'' style workshops, or other public meetings that are part of the BLM land use planning process. The BLM would provide further advance notice beyond the 15-day requirement to the extent possible, consistent with current practice.

Proposed § 1610.2–1(f)(1) provides that when initiating the identification of planning issues, in addition to posting a notice on the BLM's Web site and at all BLM offices in the planning area and providing direct notice in writing to those individuals or groups who have requested notification, the BLM would also publish a notice in appropriate local media, including in newspapers of general circulation in the planning area. This requirement would apply regardless of the level of NEPA analysis (*e.g.,* whether the BLM prepares an EA or an EIS).

Proposed § 1610.2–1(f)(2), which applies more narrowly, provides that the BLM would also publish a NOI in the **Federal Register** where a resource management plan or amendment requires the preparation of an EIS. This section would retain existing language stating that the NOI also may constitute the NEPA scoping notice (see 40 CFR 1501.7 and 43 CFR 46.235(a)). We propose to eliminate the existing requirement to publish a **Federal Register** notice at the beginning of every planning effort and to maintain the existing requirement to publish a NOI in the **Federal Register** where the BLM prepares an EIS for a resource management plan or plan amendment. The proposed change would align the BLM planning regulations with NEPA requirements. Publishing a NOI to prepare an EIS for a resource management plan or plan amendment in the **Federal Register** is consistent with NEPA requirements (40 CFR 1501.7 and 1508.22) and CEQ direction that agencies ''integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts'' (40 CFR 1501.2). Publishing an NOI for these EISs also contributes to an efficient, integrated process by offering an opportunity to integrate planning with NEPA scoping requirements.[9]

This provision, would remove the requirement to publish a NOI in the **Federal Register** where the BLM prepares an EA for a resource management plan amendment. The BLM believes that the proposed change would make the planning process, as well as the NEPA process, less confusing to the public by aligning planning requirements with existing NEPA requirements. For example, a member of the public that has participated in the preparation of an EA associated with a plan amendment might expect an EA that does not require a plan amendment to provide the same public notice. Under the proposed rule, there would be improved consistency between NEPA requirements and planning requirements.

Removing the requirement to publish an NOI for EA-level amendments would also improve efficiency and reduce the cost of amendments that have no

[9] CEQ and DOI NEPA regulations encourage such integration. *See* 40 CFR 1501.7(b)(4) (providing that as part of the NEPA scoping process, a lead agency may ''(h)old an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has'') and 43 CFR 46.235(a) (stating that scoping ''provides an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process'').

significant impacts, while the BLM still would provide notice in local media and to interested members of the public through direct communication, such as email. We believe this change would improve the BLM's ability to make minor amendments to plans in a timely manner. However, the BLM requests public comment on whether a requirement to publish an NOI for an EA-level amendment is necessary in the planning regulations, and if so, why.

The proposed rule would not include the existing language from § 1610.2(c) allowing the Field Manager to decide whether it is appropriate to publish a notice in media in adjoining States. This language is no longer needed. As proposed, § 1610.2–1(f) would allow the BLM discretion to identify ''appropriate local media,'' and this encompasses media in adjoining states. There is not expected to be a change implementation of this requirement.

Proposed § 1610.2–1(f)(3) outlines the information that would be included in the notices described in § 1610.2–1(f)(1) and (2) and contains the provisions of existing § 1610.2(c)(1) through (8), respectively, as follows.

There would be no changes to the requirement in proposed paragraph (f)(3)(i) of this section. We propose to specify in proposed paragraph (f)(3)(ii) of this section that the ''plan'' in reference is a ''resource management plan.'' There would be no changes to the requirement in proposed paragraph (f)(3)(iii) of this section. In proposed paragraph (f)(3)(iv) of this section, we would replace ''disciplines'' with ''expertise,'' to reflect that BLM staff may have expertise outside of their formal discipline, and an ''interdisciplinary approach'' should be based on expertise, not formal disciplines. We would also specify that the ''plan'' in reference is a ''resource management plan'' and the purpose of having a range of expertise represented is to ''achieve an interdisciplinary approach.'' There would be no substantive change in practice or policy. In proposed paragraph (f)(3)(v), we would add language indicating that the notice should include the kind and extent of public involvement activities ''as known at the time.'' Although there would be no substantive change in practice or policy, this would clarify that the BLM may always provide additional opportunities for public involvement as planning proceeds. There would be no substantive changes to the requirements in proposed paragraphs (f)(3)(vi) through (f)(3)(viii) of this section.

The BLM believes the proposed approach, as described in paragraphs (a) through (f) of this section, would provide an effective method of public notification, because it relies on a combined approach of: (1) Posting such notices on the BLM's Web site and at BLM offices in the planning area; (2) Providing direct notice by email or in writing to those individuals or groups who have requested notification; (3) Providing notice in the **Federal Register** or local media at certain milestones consistent with the requirements of proposed § 1610.2–1(f); and (4) Providing notice using other means, as appropriate. However, the BLM requests public comments on this approach and on what, if any, other means of notification of opportunities for public involvement in land use planning would be appropriate at different points in the planning process and why these methods are preferable to the proposed rule.

Proposed § 1610.2–1(g) contain the provisions of existing § 1610.2(f)(5) and provide that if the BLM intends to select an alternative that is substantially different than the proposed resource management plan, the BLM would notify the public and provide an opportunity for public comment on the change. These requirements are intended to ensure that the public has an opportunity to comment on important changes that are made late in the planning process, such as those that result from protest resolution or the recommendations of a Governor during the Governor's consistency review.

Proposed § 1610.2–1(h) would require the BLM to notify the public when a resource management plan or plan amendment has been approved, consistent with current practice. The BLM expects to post this notification on the BLM Web site, at the local BLM office where the plan was prepared, and by direct notification to those individuals and groups that have asked to receive notice of specific planning efforts. This notification would help those who are interested to stay up-to-date on plans and increase transparency.

Proposed § 1610.2–1(i) would establish a new requirement that the BLM notify the public any time changes are made to an approved resource management plan through plan maintenance and make those changes available to the public at least 30 days before the change is implemented. The proposed change would provide transparency to the public on minor changes made to plan components, such as the correction of typographical or mapping errors or to reflect minor changes in mapping or data. The BLM expects that this notification would be provided by posting the changes to the BLM Web site.

Proposed § 1610.2–1(j) would require that the BLM also notify the public any time a change is made to an implementation strategy and make those changes available to the public at least 30 days before their implementation. This notification would provide transparency to the public on changes to implementation strategies, such as management measures or monitoring procedures (for more information, see the discussion on implementation strategies at the preamble for proposed § 1610.1–3(c)).

Proposed § 1610.2–2(a) through (c) would address the length of public comment periods and would replace most of existing § 1610.2(e). Proposed § 1610.2–2(a) provides that when requesting written comments, the BLM would provide a comment period of at least 30 calendar days, unless a longer period is required by law or regulation. For example, when the BLM requests scoping comments, a minimum 30 day comment period would be required; if the BLM offers a public comment period for a plan amendment where an EA is prepared, a minimum 30 day comment period would be required. This section maintains the requirement from existing § 1610.2(e) to provide at least 30 calendar days for public comment, while clarifying that in certain circumstances the BLM is legally required to offer a longer comment period.

Proposed § 1610.2–2(b) describes the public comment period the BLM would provide for draft EIS-level amendments. Proposed § 1610.2–2(b) states that the BLM would provide at least 45 calendar days for public comment on the draft plan amendment and draft EIS. This would be shorter than the 90-day public comment period that applies to all EIS-level plan amendments under the existing planning regulations, but would be consistent with existing NEPA requirements. The BLM believes that aligning planning requirements with NEPA requirements would make the planning process, as well as the NEPA process, less confusing to the public.

Proposed § 1610.2–2(c) describes the public comment period the BLM would provide for draft resource management plans and draft EISs. Proposed § 1610.2–2(c) states that the BLM would provide at least 60 calendar days for public comment on the draft resource management plan and draft EIS. This would be shorter than the 90-day public comment period that applies to all draft resource management plans under the existing planning regulations. Proposed § 1610.2–2(c) would retain the existing

provision that the public comment period begins when the EPA publishes a notice of availability (NOA) of the draft EIS in the **Federal Register**.

The BLM believes it is appropriate to reduce the length of public comment periods on draft EIS-level amendments and draft resource management plans because the public would be provided an opportunity to review the preliminary resource management alternatives, rationale for alternatives, and the basis for analysis prior to the publication of the draft EIS-level amendment or draft resource management plan (see proposed §§ 1610.5–2 and 1610.5–3). This would be a change from current policy where the public is not provided an opportunity to review these items until the publication of the draft EIS-level amendment or draft resource management plan. The BLM believes that providing earlier opportunities for public review of the resource management alternatives, rationale for alternatives, and the basis for analysis while also reducing the length of public comment periods for draft EIS-level amendments and draft resource management plans, would provide the appropriate balance between providing new opportunities for meaningful public involvement, while still maintaining an efficient timeline for preparing EIS-level amendments and resource management plans.

Because plan amendments are narrower in scope than the preparation of a resource management plan, the BLM believes that it would be appropriate to specify a slightly shorter public comment period for EIS-level amendments than for draft resource management plans in the regulations. The proposed rule would allow responsible officials discretion to offer longer public comment periods or grant extensions as appropriate, on a case-specific basis. The BLM requests public comment on the proposed changes and how the BLM could otherwise maintain an efficient timeline for the preparation of EIS-level amendments and resource management plans while also providing for meaningful public involvement.

Consistent with the existing regulations, the proposed rule would not explicitly address situations where the BLM prepares an EA for a plan amendment (EA-level amendment) and the BLM offers an opportunity for public comment. In this situation, however, the BLM would provide at least 30 calendar days for public comment on the draft plan amendment, unless a longer period is required by law or regulation, consistent with the requirements of proposed § 1610.2–1(c). The public comment period would begin on the date the BLM notifies the public of the availability of the draft plan amendment and EA.

While the BLM often offers a public comment period on an EA-level plan amendment, NEPA does not require one,[10] nor do the existing or proposed planning regulations. There may be situations where there is no public interest in a minor EA-level amendment and a formal public comment period would not be necessary. The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on this topic.

The following table provides a comparison of some public involvement opportunities in the proposed rule for EA-level amendments, EIS-level amendments, and resource management plans.

TABLE 2—NOTICE AND COMMENT

| Step in the planning process | EA-level amendments | EIS-level amendments | Resource management plans |
|---|---|---|---|
| Planning Assessment. | The BLM would not conduct a planning assessment for EA-level amendments. | To formally initiate the planning assessment, the BLM would post a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. | To formally initiate the planning assessment, the BLM would post a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. |
| Plan Initiation ..... | The BLM would publish a notice in appropriate local media, on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. | The BLM would publish a NOI in the **Federal Register** and would publish a notice in appropriate local media, on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. | The BLM would publish a NOI in the **Federal Register** and would publish a notice in appropriate local media, on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. |
| Identification of planning issues. | The BLM would offer a minimum 30 day comment period. | The BLM would offer a minimum 30 day comment period. | The BLM would offer a minimum 30 day comment period. |
| Review of the preliminary alternatives, rationale for alternatives, and the basis for analysis. | These steps would not apply to EA-level amendments. | The BLM would post the preliminary alternatives, rationale for alternatives, and the basis for analysis on the BLM Web Site. The BLM would post notice of their availability on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. | The BLM would post the preliminary alternatives, rationale for alternatives, and the basis for analysis on the BLM Web Site. The BLM would post notice of their availability on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. |

[10] NEPA requires public involvement, to the extent practicable, in the preparation of an environmental assessment, but it need not take the form of a public comment period. 40 CFR 1504.1(b) and 43 CFR 46.305(a); see 40 CFR 1506.6; *BLM National Environmental Policy Act Handbook* (H–1790–1), 8.2, p. 76.

TABLE 2—NOTICE AND COMMENT—Continued

| Step in the planning process | EA-level amendments | EIS-level amendments | Resource management plans |
|---|---|---|---|
| Comment on the draft plan or amendment. | If the BLM requests written comment, BLM would offer a minimum 30 day comment period. The BLM would announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. | The BLM would offer a 45 day comment period. The BLM would announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA would publish an NOA in the **Federal Register**. | The BLM would offer a 60 day comment period. The BLM would announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA would publish an NOA in the **Federal Register**. |
| Protest | The BLM would offer a 30 day protest period. The BLM would announce the start of the protest period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. | The BLM would offer a 30 day protest period. The BLM would announce the start of the protest period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA would publish an NOA in the **Federal Register**. | The BLM would offer a 30 day protest period. The BLM would announce the start of the protest period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA would publish an NOA in the **Federal Register**. |
| Comment on a substantive change made after release of a proposed plan or amendment (*i.e.,* if the BLM intends to select an alternative that is substantially different than the proposed plan or amendment). | The BLM would offer a 30 day comment period. The BLM would announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. | The BLM would offer a 30 day comment period. The BLM would announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. | The BLM would offer a 30 day comment period. The BLM would announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. |
| Plan approval | The BLM would notify the public by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. | The BLM would notify the public by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. | The BLM would notify the public by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. |

*Section 1610.2–3 Availability of the Resource Management Plan*

Proposed § 1610.2–3 addresses the availability of resource management plans. Proposed § 1610.2–3(a) would contain revised language from existing § 1610.2(g) and require that the BLM make copies of the draft, proposed, and approved resource management plan or plan amendment reasonably available for public review. The proposed rule would require, at a minimum, that the BLM make copies of these documents available electronically and at all BLM offices within the planning area.

For example, the BLM could make documents available electronically by posting documents on the BLM Web site, or if high-speed Internet access is limited in an area, by sending participants a Compact Disc or a USB flash drive in the mail. The BLM would also make resource management plans available for public viewing at all BLM offices within the planning area. While this is a change from existing regulations, it is consistent with current practice for most BLM offices. The proposed language would replace the existing requirements to make copies of the resource management plan available at the State, District, and Field office (see existing §§ 1610.2(g)(1) through (3)) and copies of supporting documents available at the office where the plan was prepared. The proposed changes would increase electronic availability of documents and change the BLM offices where the document is required to be available for viewing.

We propose to remove the existing requirement to make ''supporting documents'' available to the public as this term is vague and it is unclear what is considered a supporting document. The BLM makes key supporting documents, such as a biological opinion or other relevant reports, available to the public as appendices to the resource management plan or plan amendment. These types of supporting documents would therefore be posted on the BLM's Web site or made available at BLM offices within the planning area. The BLM would not, however, post the entire project file, including email records or other types of communication, to the BLM's Web site or make the entire project file available at BLM offices within the planning area. This would be inconsistent with current practice and policy and would place an unnecessary burden on the BLM. These types of supporting documents are made available to the public through other means, such as a Freedom of Information Act request.

The proposed requirements to make resource management plans available electronically reflect that digital technology and Internet access is far more widely available than it was when these regulations were last updated. These proposed requirements would advance BLM policy on transitioning to electronic distribution of NEPA and planning documents (IM 2013–144, Transitioning from Printing Hard Copies

of National Environmental Policy Act and Planning Documents to Providing Documents in Electronic Formats (June 21, 2013), *http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2013/IM_2013-144.html*), and with the DOI Environmental Statement Memorandum No. 13–7, ''Publication and Distribution of DOI NEPA Compliance Documents via Electronic Methods'' (Jan. 7, 2013), *http://www.doi.gov/pmb/oepc/upload/ESM13-7.pdf*. The proposed changes would ensure consistency in how the BLM makes documents available to the public, increase transparency, and help to ensure that the public has access to current versions of plans without missing amendments that only appear in paper copies. Electronic posting of planning documents also may help to reduce high printing costs.

The BLM recognizes, however, that there are many communities with limited technological and Internet availability, such as rural communities and some environmental justice communities.[11] The BLM would continue to work to involve these communities in the development of resource management plans and make associated materials available in the most appropriate formats. For example, resource management plans could be made available at public libraries, community centers, or other locations frequented by local communities.

Proposed § 1610.2–3(b) would clarify the requirements in existing § 1610.2(g) that the BLM would make single printed copies of a resource management plan available to individual members of the public upon request during the public involvement process, and that after the BLM has approved a plan, the BLM may charge a fee for additional printed copies. The BLM is considering an alternative option in the regulations to make these copies available through digital means, such as a compact disc or other digital storage device, instead of printed copies. This option would allow the agency to continue to move away from printing paper copies in the future as technology continues to become more available to the public. The BLM requests public comment on whether making a printed copy of resource management plans available to individual members of the public is necessary, or if a digital copy of resource management plan would be appropriate.

Proposed § 1610.2–3(b) would also maintain the language in existing § 1610.2(g) concerning fees for reproducing requested documents beyond those used as part of the public involvement process, although it refers to a ''resource management plan'' instead of a ''revision'' and ''public involvement'' instead of ''public participation.'' This word change would reflect changes made throughout this proposed rule and the use of the FLPMA term ''public involvement.'' These proposed changes would not be a change in practice or policy.

We propose to remove existing § 1610.2(j) and (k). The BLM prepared the coal program regulations simultaneously with the first land use planning regulations under FLPMA in the late 1970's and certain coal-related provisions remain in 43 CFR subpart 1610. The BLM believes that these coal-related provisions are inappropriate in the planning regulations, as they are either duplicative of the coal program regulations, or reference procedures that are inconsistent with current practice and policy.

Existing § 1610.2(j) requires consultation with surface owners when resource management plans involve areas of potential mining for coal by means other than underground mining. Input and consent from a qualified surface owner is required at the leasing stage under 43 CFR 3427.1, therefore existing 1610.2(j) is duplicative of the consultation requirements at 43 CFR 3427.1 and unnecessary.

Existing § 1610.2(k) would also be removed in the proposed rule. Existing § 1610.2(k) is consistent with a process of ''regional coal leasing,'' described in subpart 3420, which the BLM used in designated coal production regions (defined in § 3400.5) at the time the planning regulations were originally published. Since 1990, all coal production regions have been decertified and the BLM now uses the ''lease by application'' process described in subpart 3425, where approval for coal leasing is conducted for each individual application, as opposed to at the resource management plan level. Since publication of the resource management plan only designates areas as open to coal leasing and no longer approves coal leases over the entire open area, this public hearing is no longer appropriate. Under the ''lease by application'' process, a hearing would be held for each coal lease application, consistent with the BLM coal regulations at § 3425.4(a)(1) and current BLM practice. Removing § 1610.2(k) would help reduce confusion, avoid redundancy with existing requirements in the coal regulations, and keep coal specific requirements in the coal regulations, where they are more appropriate. These proposed regulatory changes would not be a change in current practice or policy.[12]

*Section 1610.3 Coordination With Other Federal Agencies, State and Local Governments, and Indian Tribes*

We propose to remove the words ''federally recognized'' before Indian tribes throughout §§ 1610.3–1 and 1610.3–2 for consistent use in terminology. These references would no longer be necessary with the inclusion of the proposed definition for Indian tribes in § 1601.0–5. We also propose to replace the word ''shall'' with ''will'' throughout these sections, unless otherwise indicated, and to specify that a ''plan'' is a ''resource management plan'' for improved readability. These proposed changes would not be a change in practice or policy.

*Section 1610.3–1 Coordination of Planning Efforts*

The BLM proposes to add introductory language to proposed § 1610.3–1(a) to clarify that this section describes the ''objectives of coordination.'' The BLM proposes to amend § 1610.3–1(a) by replacing the reference to ''State Directors and Field Managers'' with ''the BLM'' because the responsibility of coordination are those of the BLM and they extend beyond any individual. The BLM proposes a similar change in proposed § 1610.3–1(c), where ''State Directors and District and Area Managers'' would be replaced with ''[t]he BLM.'' It is the BLM's responsibility to provide other Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs. Elsewhere throughout proposed § 1610.3–1(b) through (f), we would replace references to ''Field Manager(s)'' with ''responsible official(s)'' and we would replace references to ''State Director(s)'' with ''deciding official(s).'' The new terms,

[11] ''Executive Order 12898—Federal Actions to address Environmental Justice in Minority Populations and Low-Income Populations'' directs Federal agencies to identify and address 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 (59 FR 7629).

[12] As a separate matter, Secretarial Order 3338 issued on January 15, 2016, requires the BLM to conduct a comprehensive review to modernize the federal coal program, including a discretionary Programmatic Environmental Impact Statement. The regulatory changes proposed above are unrelated to and will not impact the Secretarial Order or the BLM's comprehensive review.

which are defined in proposed § 1601.0–5, would refer to specific official responsibilities.

We propose to add language to the first sentence of proposed § 1610.3–1(a) to clarify that coordination is accomplished ''to the extent consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations.'' There would be no change from current practice or policy. The BLM only wishes to clarify that BLM must comply with Federal laws and regulations.

In proposed paragraph (a)(3) of this section, the word ''practicable'' would be replaced with ''practical'' for improved readability and consistency with FLPMA (see 43 U.S.C. 1712(c)(9)). Proposed paragraph (a)(4) of this section would remove the word ''public'' from ''early public notice'' for improved clarity. The BLM intends no change in practice or policy from these proposed changes.

We propose to add introductory language to proposed § 1610.3–1(b) to indicate that this section describes procedures and requirements related to ''cooperating agencies.'' This paragraph would also be broken down into subparagraphs to improve readability and would be revised as follows.

The first sentence of proposed § 1610.3–1(b) would be revised to state ''[w]hen preparing a resource management plan, the responsible official will follow applicable regulations regarding the invitation of eligible governmental entities (see 43 CFR 46.225) to participate as cooperating agencies. We would replace ''developing'' with ''preparing'' for consistent use in terminology. The BLM intends no change in meaning or practice. We also propose to replace ''eligible Federal agencies, State and local governments, and Indian tribes'' with ''eligible governmental entities'' for consistency with the DOI NEPA regulations, and to specify that the responsible official will follow applicable regulations regarding the invitation of eligible governmental entities, including the DOI NEPA regulations at 43 CFR 46.225. The BLM intends no change in practice or policy from these proposed changes.

The second sentence of proposed § 1610.3–1(b) would be revised to reflect the fact that a plan is not amended by an EIS, rather the EIS is prepared to inform the amendment.

We propose to remove the last three sentences of existing § 1610.3–1(b), which state that ''State Directors and Field Managers will consider any requests of other Federal agencies, state and local governments, and federally recognized Indian tribes for cooperating agency status. Field Managers who deny such requests will inform the State Director of the denial. The State Director will determine if the denial is appropriate.'' This existing language is unnecessary with the new proposed language that responsible officials will follow applicable regulations regarding the invitation of eligible governmental entities to participate as cooperating agencies.

Proposed paragraph (b)(1) of this section would describe that a memorandum of understanding (MOU) will be used for a non-Federal cooperating agency and will include a commitment to maintain confidentiality of documents and deliberations prior to their public release. The proposed change is consistent with the DOI NEPA implementation regulations (see 43 CFR 46.225(d)). Although a written agreement is not explicitly required for Federal cooperating agencies, the BLM often chooses to prepare such an agreement to clarify the roles and responsibilities of all parties. No change in practice or policy is intended by the addition of proposed paragraph (b)(1).

Proposed paragraph (b)(2) would identify the various steps during the planning process when the responsible official would collaborate with cooperating agencies. The BLM promulgated regulations in 2005 (70 FR 14561), which required BLM Field Managers to collaborate with cooperating agencies at steps throughout the planning process (see existing § 1610.4). The proposed change would consolidate these references that are currently inserted throughout existing § 1610.4 and identify additional steps where cooperating agencies would be involved, including the preparation of the planning assessment and the preparation of the proposed resource management plan and implementation strategies. The BLM intends no change in practice or policy by consolidating these references; rather, the BLM believes that consolidating these references provides improved readability and clarity. The BLM, however, requests public comment on this proposed change and whether the existing format (*i.e.,* cooperating agency references incorporated throughout § 1610.4) or the consolidation of cooperating agency references, as proposed, provides better clarity and readability.

Under the proposed rule, the BLM would provide an additional role for cooperating agencies during the new planning assessment step. While NEPA regulations require a lead agency to invite cooperating agencies to participate in the NEPA process ''at the earliest possible time'' (40 CFR 1501.6(a)(1); *see* 43 CFR 46.200(a) and (b)), the BLM recognizes that eligible governmental entities may be reluctant to agree to serve as cooperating agencies for a planning effort before the scoping process yields a fuller understanding of the scope of the plan or revision and the supporting NEPA analysis.

The BLM further recognizes that DOI NEPA regulations and the proposed rule (see paragraph (b)(1) of this section) would require the BLM to work with non-Federal cooperating agencies to develop a MOU that outlines agencies' respective roles, assignments, schedules, and other commitments and such a cooperating agency MOU may not yet be completed during the planning assessment step.

Nonetheless, the BLM does not foresee any problems working with eligible governmental entities without an MOU during the planning assessment step, because this step primarily involves information gathering by the BLM. Additionally, the BLM believes the planning assessment would afford the BLM and eligible governmental entities alike valuable time to build working relationships and share information that would inform the planning assessment and contribute to the formation of fruitful cooperating agency relationships. However, the BLM may need to withhold confidential information, such as locations of sensitive cultural resources, until an MOU has been formalized. The BLM requests comments on how to engage with eligible governmental entities during the proposed planning assessment step, prior to memorializing a cooperating agency relationship.

We propose to add introductory language to proposed § 1610.3–1(c) to indicate that this section describes general ''coordination requirements'' and to divide the existing paragraph (c) into three separate paragraphs (proposed paragraphs (c), (c)(1), and (c)(2)) for improved readability.

Proposed paragraph (c)(1) of this section would provide that ''deciding officials should seek the input of the Governor(s) on the timing, scope and coordination of resource management planning; definition of planning areas; scheduling of public involvement activities; and resource management opportunities and constraints on public lands.'' Proposed changes would replace ''policy advice'' with ''input'' because the topics listed in this provision are not ''policy,'' therefore the phrase ''policy advice'' is inaccurate. We propose to replace ''plan components'' with

''resource management planning'' because the existing language would be inconsistent with new terminology and definitions in the proposed rule (see proposed § 1610.1–2). We proposed to replace ''multiple use'' with ''resource management'' because the Governor may provide input on other types of resource management besides multiple use. For example, the Governor may wish to provide input on management related to wildfire or the spread of invasive species, and the BLM would consider such input. The BLM intends no change from current practice or policy from these proposed changes.

The BLM proposes to remove existing § 1610.3–1(d). This section is unnecessary and inappropriate in the regulations. FLPMA provides direction that BLM's resource management plans must be consistent with State, local, and tribal land use plans to the extent practical and to the extent consistent with Federal laws and regulations. Any guidance developed to inform the preparation of a resource management plan would also be required to be consistent with Federal law (see proposed § 1610.1–1(a)(1)), and would therefore be mindful of FLPMA requirements for consistency. Further, guidance is an internal BLM process, which does not constitute a formal decision regarding resource management.

Proposed § 1610.3–1(c)(3) would contain the provisions of existing § 1610.3–1(e) and would be revised to reflect proposed changes to § 1610.2 concerning public involvement and to use active voice for improved readability. The proposed rule would specify that State procedures for coordination with Federal agencies would be followed, ''if such procedures exist.'' The BLM intends no change in practice or policy from this added language; rather, we would clarify that such procedures can only be followed if they exist.

The second sentence of proposed § 1610.3–1(c)(3) would be revised to state that ''[t]he responsible official will notify Federal agencies, the elected heads of county boards, other local government units, and elected government officials of Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment.'' We would clarify that heads of county boards are ''elected'' and would replace ''Tribal Chairmen'' and ''Alaska Native Leaders'' with ''elected government officials of Indian tribes'' to reflect the fact that not all government officials of Indian tribes are referred to as ''Chairmen'' and for consistent use in terminology. The proposed definition of ''Indian tribe'' would encompass ''Tribal Chairmen'' and ''Alaska Native Leaders.'' No change in practice or policy is intended by these proposed word changes. The second sentence would also rephrase the existing requirement for BLM to notify Federal agencies, the elected heads of county boards, other local government units, and elected government officials of Indian tribes that the responsible official has reason to believe would be ''concerned with'' the resource management plan or plan amendment to those that would be ''interested in'' the resource management plan or plan amendment. This would be consistent with current BLM practice and would reflect the fact that the BLM believes that any interest in the resource management plan or amendment, not just concern, warrants notification.

Proposed § 1610.3–1(c)(4) would contain the provisions of existing § 1610.3–1(f). We propose to replace ''resource management plan proposals'' with ''resource management plans and plan amendments'' to clarify that this step refers to all of the opportunities for public involvement described in § 1610.2, and not just the ''proposed'' resource management plan. The BLM intends no change from current practice or policy.

We propose to revise and move the final sentence of existing § 1610.3–1(f) to proposed § 1610.3–2(a)(3). The existing language refers to consistency requirements and is therefore more appropriately addressed in § 1610.3–2.

Proposed § 1610.3–1(d) would contain the provisions of existing § 1610.3–1(g). We propose to add introductory language to proposed § 1610.3–1(d) to indicate that this section describes requirements related to ''resource advisory councils.'' No substantive changes are proposed to this section.

*Section 1610.3–2 Consistency Requirements*

The BLM proposes to replace the word ''shall'' with ''will'' throughout this section for improved readability.

We propose to revise existing § 1610.3–2(a) to read as follows: ''Resource management plans will be consistent with officially approved or adopted land use plans of other Federal agencies, State and local governments and Indian tribes to the maximum extent the BLM finds practical and consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations.'' The proposed language would reflect FLPMA requirements for consistency with the land use plans of other Federal agencies, State and local governments and Indian tribes (see section 202(c)(9) of FLPMA). Proposed language would specify that these land use plans must be ''officially approved or adopted'' (see the definition for ''officially approved or adopted land use plans'' in proposed § 1601.0–5). These proposed changes would represent a change from current regulations, but would be consistent with current BLM practice and statutory direction provided by FLPMA.

We propose to remove existing § 1610.3–2(b). The existing section exceeds the statutory requirements of section 202(c)(9) of FLPMA by providing that in the absence of officially approved and adopted plans, resource management plans should be consistent with ''policies and programs'' of other Federal agencies, State and local governments, and Indian tribes. The BLM believes that such ''policies and programs'' should be reflected in the land use plans of other Federal agencies, State and local governments, and Indian tribes, and therefore would be adequately considered through the consideration of their land use plans. Further, it is inappropriate for the BLM to seek consistency with policies and programs that may or may not be officially approved or adopted by the Federal agencies, State and local governments, and Indian tribes. We also propose to remove references to consistency with ''policies and programs'' from throughout § 1610.3–2. The proposed changes represent a change from the existing regulations.

Proposed § 1610.3–2(a)(1) would revise and replace existing section 1610.3–2(c). The first two references to ''State Directors and Field Managers'' in the first sentence would be replaced with ''the BLM,'' because the requirement to keep apprised of State and local governmental and Indian tribal policies, plans, and programs is attributed to the BLM, rather than specific employees. We would also replace ''practicable'' with ''practical'' for improved readability. These proposed changes would not be a change in practice or policy.

Proposed § 1610.3–2(a)(1) would specify that ''BLM will, to the extent practical, keep apprised of the officially approved and adopted land use plans of State and local governments and Indian tribes and give consideration to those plans that are germane in the development of resource management plans.'' We would remove the words ''policies and programs'' (for more

information, see the discussion on consistency for existing § 1610.3–2(b)) and add language requiring that BLM consider those plans that are germane to the resource management plan. The proposed changes would be consistent with section 202(c)(9) of FLPMA.

Proposed § 1610.3–2(a)(2) contains a provision from existing § 1610.3–2(c). We propose to replace ''accountable for ensuring consistency'' with ''required to address the consistency requirements of this section.'' The BLM cannot ''ensure'' consistency, but seeks consistency to the extent practical and to the extent consistent with Federal laws and regulations and the purposes, policies, and programs of such laws and regulations. For example, if a State, local, or tribal land use plan was not consistent with a Federal law, the BLM would not be able to ensure consistency with the State, local, or tribal land use plan. The BLM also proposes to replace the reference to State Directors and Field Managers (''they'') with ''responsible official,'' thereby providing that the BLM will not be accountable for addressing the consistency requirements of 1610.3–2 if the ''responsible official'' has not received written notice of an apparent inconsistency from State and local governments or Indian tribes, rather than ''State Directors and Field Managers.'' Because the responsible official would be the BLM employee who is delegated the authority to prepare a resource management plan or plan amendment, it is important that the responsible official receives written notice of an apparent inconsistency so that it can be considered during the planning process. The BLM cannot ensure that notice sent to someone other than the responsible official would be redirected and delivered in a reasonable time-frame, although we would attempt to do so to the best of our ability.

The proposed change would provide clarity to State and local government officials and Indian tribes of the appropriate BLM official to notify of inconsistencies; however, it would also reduce the number of individuals that could be notified under the existing regulations from two individuals (the State Director and Field Manager) to one individual in the proposed rule (the responsible official). The BLM believes that the proposed change would improve the BLM's ability to consider potential inconsistencies at the earliest time possible, thereby promoting efficiency in the planning process.

Proposed § 1610.3–2(a)(3) would contain the provisions of existing § 1610.3–1(f). There would be no substantive changes to this section except to use active voice and consistent terminology for improved readability.

In other provisions of proposed § 1610.3–2 references to ''Field Manager(s)'' would be replaced with ''responsible official(s)'' and references to ''State Director(s)'' would be replaced with ''deciding official(s)'' to reflect these individuals' roles or responsibilities.

Proposed § 1610.3–2(b) contains the provisions of existing § 1610.3–2(e). Proposed changes would provide consistency with edits made throughout § 1610.3–2 and make clarifying edits to the existing Governor's consistency review provision. These changes are intended to provide clarity and ensure consistency with current BLM practice and with FLPMA. The proposed changes would help to eliminate confusion in the existing provision. The proposed rule would also break these provisions into multiple paragraphs to improve readability.

The proposed section would replace references to ''State Director'' with ''deciding official'' consistent with the new terms used throughout these proposed regulations and would replace ''shall'' with ''will'' for improved readability, unless otherwise noted. There would be no change in practice or policy.

The proposed rule would specify that the document submitted to the Governor by the deciding official would identify ''relevant'' known inconsistencies with ''officially approved and adopted land use plans of State and local governments.'' Proposed changes would limit the inconsistencies identified by the deciding official to those that are relevant and to inconsistencies with officially approved and adopted land use plans, consistent with proposed §§ 1601.0–5 and 1610.3–2(a).

Proposed § 1610.3–2(b)(1) would state that within 60 days after receiving a proposed plan or amendment, the Governor(s) may submit a written document to the deciding official identifying inconsistencies with the officially approved and adopted land use plans of State and local governments and provide recommendations to remedy them. Proposed new language would clarify that the Governor's recommendations should address identified inconsistencies with State and local plans, rather than other aspects of a resource management plan. This language would not preclude the BLM from considering or responding to a Governor's recommendations on other subjects, but it would underscore that the BLM's focus at this late stage of the planning process is on consistency with State or local plans. There would be no change in meaning or practice associated with the proposed change other than focusing the Governor's review on consistency with officially approved and adopted State and local plans.

Proposed § 1610.3–2(b)(1)(ii) would introduce a new provision, where the Governor may waive or shorten the 60-day consistency review period in writing. This provision would facilitate a more efficient planning process by reducing the length of the review period in situations where the Governor has no comments to submit. For example, if representatives from the Governor's Office participated as cooperators and found the plan to be adequately consistent with officially approved and adopted State and local plans, then the Governor may have no further comments and wish to expedite the review period. This change is consistent with current practice under the existing regulations, as the Governor is not precluded from waiving or shortening the consistency review period under the existing regulations. The addition of this language, however, would provide more transparency to the public on the Governor's consistency review process and affirm the availability of this option for the Governor.

The BLM welcomes public comments and suggestions on ways to improve the Governor's consistency review to make it more effective and efficient for both the Governor and the BLM. In this proposed rule, the BLM has identified additional opportunities early in the process to identify the officially approved and adopted land use plans of State and local governments or Indian tribes and resolve inconsistencies between those plans and the resource management plan alternatives that the BLM would consider. In light of these early opportunities, the BLM is considering whether to adjust the timeline or appeal process for the Governor's consistency review and requests public comments and suggestions on these issues.

Proposed § 1610.3–2(b)(2) would retain existing language that the plan or amendment would be presumed to be consistent if the Governor(s) does not respond to the BLM within the 60-day period, however, revisions would improve readability. There would be no change in practice or meaning associated with these revisions.

Proposed § 1610.3–2(b)(3) would clarify existing language and reflect terms used in this proposed rule. It would provide that ''[i]f the document submitted by the Governor(s) recommends substantive changes that

were not considered during the public involvement process, the BLM will notify the public and provide opportunity for public comment on these changes.'' This would clarify that the public must be provided an opportunity to comment on any changes recommended by the Governor that were not previously considered during the public involvement process before the Director renders a decision. While this would not be a change from BLM practice under existing regulations, the proposed clarifications provide a more precise description of the public's opportunity to comment on the Governor's recommended changes to remedy inconsistencies.

Under proposed § 1610.3–2(b)(4), the deciding official (revised from the State Director) would notify the Governor(s) in writing of his or her decision regarding the Governor(s)' recommendations. We propose new requirements that the notification include the deciding official's reason for the decision and that the notification be mandatory, replacing the existing requirement to notify the Governor only if their recommendations are not accepted. These proposed changes would not be a change in practice or policy, other than ensuring that the Governor is notified of any decision related to the Governor's recommendations.

Proposed paragraph (b)(4)(i) of this section would maintain the existing process by which the Governor(s) may submit a written appeal to the BLM Director within 30 days after receiving the deciding official's decision.

Proposed paragraphs (b)(4)(ii) of this section would replace existing language requiring the BLM Director to accept the recommendations of the Governor(s) if the BLM Director determines that the recommendations ''provide for a reasonable balance between the national interest and the State's interest.'' We propose to instead state that the BLM Director will consider the Governor(s)' comments in rendering a decision. The proposed change would be consistent with current practice and reflect that the BLM Director must consider many factors when rendering a decision, including whether the Governor(s)' recommendations are consistent with Federal laws and regulations applicable to public lands, such as FLPMA.

Proposed paragraph (b)(4)(ii) of this section would retain the existing requirement, with clarifying edits, that the BLM Director will notify the Governor(s) in writing of his or her decision regarding the appeal. In addition, proposed paragraph (b)(4)(ii) of this section would replace the existing requirement to publish the reasons for the BLM's decision in the **Federal Register** with commitments to notify the public of the decision and to make the written decision available to the public. The BLM would instead provide this notification on the BLM Web site, by posting a notice at BLM offices within the planning area, by sending an email to the mailing list, or by other means as appropriate.

The BLM believes that it would be appropriate to move away from relying on **Federal Register** notices for this purpose, given that Internet communications are both readily available and widely used. Further, at this late stage of the planning process, individuals or organizations interested in the planning effort would have had many opportunities to request to be added to the mailing list (see proposed § 1610.2–1(d)) to receive notifications related to the planning effort. Removal of the requirement to publish a notice in the **Federal Register** would provide for a more efficient planning process by removing an unnecessary step in the process. However, the BLM requests public comments on whether a notice in the **Federal Register**at this step is advisable.

*Section 1610.4 Planning Assessment*

Existing § 1610.4 consists only of the section heading ''Resource management planning process.'' This section is revised as follows.

Proposed § 1610.4, ''Planning assessment,'' would combine and revise the existing steps for inventory data and information collection (existing § 1610.4–3) and the analysis of the management situation (AMS) (existing § 1610.4–4) into a new planning assessment step. The planning assessment would occur before the BLM initiates the preparation of a resource management plan and would be consistent with the nature, scope, scale, and timing of the planning effort. This change would result in a more informed scoping process; however, several existing provisions would be removed because they would no longer be relevant at this early stage. These changes are described in detail at each corresponding section of the proposed planning assessment.

The proposed planning assessment would include new opportunities for public involvement, coordination with other Federal agencies, State and local governments, and Indian tribes, and collaboration with cooperating agencies. The BLM anticipates that greater coordination, collaboration and public involvement, particularly early in the planning process, would result in efficiencies by ensuring that the BLM considers a wide range of relevant policies, information, and perspectives even before scoping.[13]

The proposed planning assessment is intended to help the BLM better understand resource, environmental, ecological, social, and economic conditions, and identify public views and resource management priorities for the planning area. The planning assessment would occur early in the process, before the formal initiation of a planning effort and before the steps that the BLM traditionally has taken first—namely, the identification of issues and the development of planning criteria. The BLM believes that conducting an upfront assessment would provide useful baseline information to inform subsequent steps, such as the preparation of a preliminary purpose and need statement, the identification of planning issues, and the formulation of resource management alternatives. The planning assessment would include new opportunities for collaboration and public involvement and measures that would increase transparency. Further, the proposed planning assessment would be similar to the assessment procedures in the U.S. Forest Service 2012 Planning Rule (*see* 36 CFR 219.6(a)), and would therefore create a new opportunity for inter-agency coordination.

Proposed § 1610.4 serves as an introduction and provides that the planning assessment would be required before the BLM initiates the preparation of a resource management plan.

Proposed § 1610.4–1(a) would address ''information gathering'' and would replace and enhance the existing inventory data and information collection requirements (see existing § 1610.4–3), providing that the responsible official would follow the four requirements described in proposed paragraphs (a)(1) through (a)(4) of this section.

Under paragraph (a)(1) of this section, the responsible official would arrange for relevant resource, environmental, ecological, social, economic, and institutional data or information to be

[13] *See* OMB and President's CEQ Memorandum on Environmental Collaboration and Conflict Resolution (Sept. 7, 2012), 4.b., p. 3 (''Given possible cost savings through improved outcomes, fewer appeals and less litigation, department and agency leadership should identify and support upfront investments in collaborative processes and conflict resolution . . .'') and 5, p. 4 (Federal departments and agencies should prioritize integrating collaboration and conflict resolution objectives and ''a focus on up-front collaboration as a key principle in agency mission statements and strategic plans''), available at: *https://ceq.doe.gov/ceq_regulations/OMB_CEQ_Env_Collab_Conflict_Resolution_20120907.pdf.*

gathered, or assembled if it is already available, in a manner that aids application in the planning process. This would replace language in existing § 1610.4–3 that requires the BLM to ''arrange for resource, environmental, social, economic and institutional data and information to be collected or assembled if already available.'' We propose to replace the word ''collected'' with ''gathered'' to avoid potential confusion with the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). We propose to include ''the identification of potential ACECs'' in this step to specify when potential ACECs should be identified (see proposed § 1610.8–2). It is important to note that as planning proceeds the BLM may identify the need for additional information gathering or new information may become available. The BLM would consider this new information, such as the identification of a potential ACEC, to the best of our ability.

Proposed paragraph (a)(1) of this section would encompass the BLM's statutory obligation for inventory of ''public lands and their resource and other values,'' as described in section 201(a) of FLPMA, and would also provide for the gathering and consideration of the best available scientific information, or other types of high quality information, provided by sources outside of the BLM.

The proposed rule would not carry forward language from existing § 1610.4–3 requiring that ''new information and inventory data. . . emphasize significant issues and decisions with the greatest potential impact.'' At this early stage in the planning process, the BLM recognizes that all significant issues may not yet be known and without conducting a broad assessment, the BLM may not be able to reasonably identify all of the significant issues. At the same time, the BLM must conduct a planning assessment based on reasonable budgets and timeframes, and therefore must limit the scope of its data and information gathering to that which is ''relevant'' to the incipient planning process. The BLM intends that ''relevant'' data and information would include inventory of the land and resources (see 43 U.S.C. 1711(a)) and any other available high quality information, including the best available scientific information relevant to the planning process and necessary to address the applicable factors described in proposed § 1610.4(c).

We propose to include a provision to avoid unnecessary data-gathering, similar to the existing provision in the development of planning criteria regulations (see existing § 1610.4–2(a)(2)). The BLM intends to emphasize that inventory data and information gathered for the planning assessment should be geared to inform the overall planning process, including subsequent monitoring and implementation of the resource management plan. The responsible official would determine what information is relevant to the planning process based on available resources and existing requirements, such as inventory of the land and resources that is required under FLPMA, the previous results of monitoring and evaluation, or existing assessments or strategies that overlay the planning area.

In paragraph (a)(2) of this section, we propose a new regulatory requirement, consistent with current practice, that the responsible official ''[i]dentify relevant national, regional, or local policies, guidance, strategies or plans for consideration in the planning assessment,'' such as Executive Orders issued by the President, Secretarial Orders issued by the Secretary of the Interior, DOI or BLM policy, BLM Director or deciding official guidance, mitigation strategies, interagency initiatives, State or multi-State resource plans, or local government resource plans. Recent examples might include: Secretarial Order 3336—*Rangeland Fire Prevention, Management and Restoration* (Jan. 5, 2015); the *National Cohesive Wildland Fire Management Strategy* (Apr. 2014) (*http://www.forestsandrangelands.gov/strategy*); the BLM *Regional Mitigation Strategy for the Dry Lake Solar Energy Zone* (Mar. 2014) (*https://www.blm.gov/epl-front-office/projects/nepa/42096/52086/56778/Regional_Mitigation_Strategy_for_the_Dry_Lake_Solar_Energy_Zone,_Technical_Note_444_(March_2014).pdf*); a State wildlife action plan such as the Nevada Wildlife Action Plan which was prepared by the Nevada Department of Wildlife and approved by the U.S. Fish and Wildlife Service (*http://www.ndow.org/Nevada_Wildlife/Conservation/Nevada_Wildlife_Action_Plan/*); or a community wildfire protection plan (*http://www.forestsandrangelands.gov/communities/cwpp.shtml*).

Identifying such policies and strategies up front is important because successful planning needs to be informed by, and advance, policies and strategies that cross traditional administrative boundaries. This step would also enable the BLM Director and the deciding official to provide guidance on resource management priorities for a planning effort before the formal initiation of the planning effort (see proposed § 1610.1–1(a)).

In paragraph (a)(3) of this section, we propose to add a new regulatory requirement that the responsible official ''[p]rovide opportunities for other Federal agencies, State and local governments, Indian tribes and the public to provide existing data and information or suggest other policies, guidance, strategies, or plans'' for the BLM to consider in the planning assessment. For example, a State wildlife agency might ask the BLM to consider a conservation plan for a sensitive species; a member of the public might ask the BLM to consider the results of a peer-reviewed study relevant to the planning area; or a recreation user group might ask the BLM to consider data identifying areas of high recreation use in the planning area. This opportunity would be provided through a general request for information from the public. In addition to accepting written input, the BLM may provide opportunities through in-person meetings or workshops, webinars, collaborative Web sites, or other innovative information gathering techniques.

This proposed requirement would establish a new public involvement opportunity during the planning assessment, which would support the Planning 2.0 goal to provide new and enhanced opportunities for collaborative planning. It would also help the BLM consider relevant data and information in the planning assessment.

Proposed paragraph (a)(4) of this section would require that the BLM identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area. The BLM anticipates that these views would be identified by hosting public meetings, although the BLM may also use other techniques, such as a collaborative Web site, for example. Proposed paragraph (a)(4) would help the Bureau to better understand public values in relation to the planning area, including what is important to the public, where important areas are located, and why these areas and values are important to members of the public. Under current practice, the BLM identifies public views during the identification of planning issues. By providing this opportunity during the planning assessment, the BLM would be able to summarize public views in the planning assessment report (see proposed § 1610.4(d)). This would provide increased transparency, would help to inform the preparation of a

preliminary purpose and need statement, and would help to focus the identification of planning issues.

The BLM requests public comments on whether the regulations should describe any other types of information that may be relevant to the planning assessment.

Proposed § 1610.4 (b) would address ''information quality'' for the planning assessment. The responsible official would evaluate the data and information gathered or provided to the BLM to determine if it is ''high quality information appropriate for use in the planning assessment, and to identify any data gaps or further information needs.'' In this new step, the BLM would evaluate what information is high quality and therefore appropriate for use in the planning assessment, as discussed in the preamble to proposed §§ 1601.0–5 and 1610.1–1(c). Although the BLM currently uses high quality information to inform the planning process, we believe that including this new step in the planning regulations is important because it clearly communicates to the public that any information submitted to the BLM must meet this standard in order to be further considered in the planning assessment. After identifying the information appropriate for use in the planning assessment, the responsible official, in collaboration with any cooperating agencies, would use this information to assess the resource, environmental, ecological, social, and economic conditions of the planning area.

Proposed § 1610.4(c) would describe the factors that the responsible official would consider when assessing the resource, environmental, ecological, social, and economic conditions of the planning area for the planning assessment. The responsible official would consider and document these factors whenever they are applicable, however, the responsible official would not be limited to the proposed factors.

These factors would contain elements from the nine factors in § 1610.4–4(a) through (i) of the existing planning regulations, which outline the AMS. The proposed planning assessment would also include some factors that were not included in the existing regulations regarding the AMS (see existing § 1610.4–4). These new factors are intended to help inform the planning process and include types of information the BLM may already consider under the existing regulations. The inclusion of these factors in the regulations would provide the public with a better understanding of the types of information that would be considered during the preparation of a resource management plan. The BLM anticipates no direct impacts to the public from these proposed additions. The following paragraphs highlight the proposed changes and rationale.

Proposed paragraph (c)(1) of this section would revise existing § 1610.4–4(a), providing that the BLM consider ''the types of resource management authorized by FLPMA and other relevant authorities'' during the planning assessment. We propose to replace Federal Land Policy and Management Act with the acronym FLPMA, replace ''resource use and protection'' with ''resource management'' and replace ''legislation'' with ''authorities.'' There would no change in meaning or practice associated with these edits.

Proposed paragraph (c)(2) of this section would include ''land status and ownership, existing resource uses, infrastructure, and access patterns in the planning area.'' This factor, although often included in the AMS under current practice, is not identified in the current regulations and would provide important baseline information on current uses within the planning area to inform the identification of planning issues and the formulation of alternatives, and to identify opportunities or need for cross-boundary collaboration with adjacent landowners.

Proposed paragraph (c)(3) of this section would refer to current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions. This information is typically included in the AMS under current practice, but is not identified in the current regulations. It is important that current conditions serve as a starting point for the planning assessment. This information provides the basis for the affected environment and assists in the identification of planning issues and formulation of a reasonable range of alternatives for analysis. Trends in resource or other conditions, such as economic trends, wildlife population trends, or recreation use trends, could also provide useful information for the planning process. If this information were available, the BLM would consider it during the planning assessment.

Proposed paragraph (c)(4) of this section would refer to ''known resource thresholds, constraints, or limitations.'' This would modify and expand on existing § 1610.4–4(i), which refers to ''critical threshold levels which should be considered in the formulation of planned alternatives.'' Known resource thresholds would be identified based on the best available scientific information. For instance, a known threshold might include a minimum viable population number for an endangered species as determined by the U.S. Fish and Wildlife Service, or a minimum area of critical habitat, such as breeding grounds or winter range, as determined by peer-reviewed scientific research. The BLM believes this concept is important to the planning process because it would inform the development of plan components in the resource management plan, including disturbance limits, mitigation standards, or decision points for applying adaptive management. For example, a land use plan could establish an objective to support viable populations for a sensitive species by protecting important habitat. If a known threshold for the species was identified in the planning assessment, this information could be used to establish a decision point to consider a plan amendment if the population numbers dropped below the threshold.

Proposed paragraph (c)(4) of this section would also refer to known resource constraints or limitations. Under this new provision, the BLM would identify any known constraints or limitations to resource management that should be considered in order to effectively manage resources consistent with its multiple use and sustained yield mandate, including any known and potential conflicts between multiple uses. For example, the BLM may identify uses that are known to be incompatible with important habitat for a sensitive species based on the best available scientific information in order to provide for the long-term sustainability of the species.

The BLM would also identify any related or indirect constraints to resource management. For example, wildfire propensity in an area might provide a constraint to future allowed uses, because in addition to use disturbance, the protection of habitat for a sensitive species could also be affected by natural disturbance; or rights-of-way corridors might be constrained by natural features in certain areas, limiting where a transmission corridor could be located on the landscape. The BLM does not anticipate that all resource limitations would be identified at this stage of planning; many would be identified later through the formulation of alternatives and the estimation of their effects. At this early stage in planning, the BLM would identify known limitations based on best available scientific information, such as peer-reviewed research. This information would be useful to inform the identification of planning issues and

resource management alternatives, and would promote a transparent and efficient planning process.

Proposed paragraph (c)(5) of this section would refer to areas of potential importance within the planning area. This information is typically included in the AMS under current practice, but is not identified in the current regulations. The identification of these areas would inform the identification of planning issues and the formulation of alternatives. The following paragraphs describe the different types of ''areas of importance'' that would be included. Although a planning assessment could describe other areas of importance, the BLM requests public comment on any other areas of importance that should be required in the planning regulations.

Proposed paragraph (c)(5)(i) of this section would refer to areas of tribal, traditional, or cultural importance. These could include areas important for subsistence use, important cultural sites, traditional cultural properties, or a cultural landscape. Although the BLM would identify these areas during the planning assessment, sensitive or confidential areas may not be made available to the public or included in the planning assessment report.

Proposed paragraph (c)(5)(ii) of this section would refer to habitat for special status species, including state and/or federally listed threatened and endangered species.

Proposed paragraph (c)(5)(iii) of this section would refer to other areas of key fish and wildlife habitat such as big game wintering and summer areas, bird nesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact habitat. The identification of these areas is important at the onset of planning, as fish and wildlife habitat often crosses jurisdictional-boundaries and conservation of such habitat may require landscape-scale management approaches.

Proposed paragraph (c)(5)(iv) of this section would refer to areas of ecological importance, such as areas that increase the ability of terrestrial and aquatic ecosystems within the planning area to adapt to, resist, or recover from change. For example, areas of ecological importance might include refugia identified to help sensitive species respond to the effects of climate change or wetlands that help to buffer the effects of weather fluctuations by storing floodwaters and maintaining surface water flow during dry periods.

Proposed paragraph (c)(5)(v) of this section would refer to lands with wilderness characteristics, candidate wild and scenic rivers, or areas of significant scenic value.

Proposed paragraph (c)(5)(vi) of this section would refer to areas of significant historical value, including paleontological sites.

Proposed paragraph (c)(5)(vii) of this section would refer to existing designations in the planning area, such as wilderness, wilderness study areas, wild and scenic rivers, national scenic or historic trails, or existing ACECs.

Proposed paragraph (c)(5)(viii) of this section would refer to areas with potential for renewable or non-renewable energy development or energy transmission.

Proposed paragraph (c)(5)(ix) of this section would refer to areas of importance for recreation activities or access. These might include high use recreation sites or areas with limited access points.

Proposed paragraph (c)(5)(x) of this section would refer to areas of importance for public health and safety, such as abandoned mine lands or natural hazards.

Proposed paragraph (c)(6) of this section would refer to dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change. This information is not identified in the current regulations, but would be useful to inform the formulation of alternatives and assess the need for adaptive management approaches or cross-boundary collaboration with other land managers. For example, halting the spread of invasive species may require collaboration between adjacent landowners such as the BLM, the USFS, or willing private landowners.

Proposed paragraph (c)(7) of this section would be adapted from the beginning of existing § 1610.4–4(d), which directs BLM to consider the ''estimated sustained levels of the various goods, services and uses that may be attained'' and would instead refer to identifying the ''various goods and services that people obtain from the planning area, including ecological services.'' In this proposed factor, the phrase ''goods and services'' would include the many ecological services (*i.e.,* ecosystem services) that are provided by the public lands, in addition to the ''principal or major uses'' described in section 103(l) of FLPMA and other multiples uses.

''Ecosystem goods and services include a range of human benefits resulting from appropriate ecosystem structure and function, such as flood control from intact wetlands and carbon sequestration from healthy forests. Some involve commodities sold in markets, for example, (forest products resulting from) timber production. Others, such as wetlands protection and carbon sequestration, do not commonly involve markets, and thus reflect nonmarket values.'' [14] The ''principal or major uses'' described in section 103(l) of FLPMA include domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

As proposed, this section would only refer to ''goods and services,'' and remove the word ''uses,'' because ''uses'' in this context are encompassed by the phrase ''goods and services.'' This proposed change would help to avoid confusion with the development of resource use determinations, which are also referred to as ''allowable uses'' in the existing Land Use Planning Handbook. At this early stage in the planning process, the BLM believes it is appropriate to identify the goods and services that people could obtain from the planning area, but it is not yet appropriate to establish allowable uses (resource use determinations). The proposed word change would help to avoid confusion, but there is no intended change in meaning.

Proposed paragraph (c)(7)(i) of this section would also incorporate language from existing § 1610.4(g), which directs the BLM to consider the ''degree of local dependence on resources from public lands.'' The BLM would instead consider the degree of local, regional, national, or international dependence on goods and services. ''Resources'' would be replaced with ''goods and services'' to provide a more precise explanation of what the BLM considers in regards to those resources. For example, the BLM could identify the degree of local dependence on potable water from groundwater recharge in the planning area (*i.e.,* local dependence on a service associated with water resources). The BLM believes that use of more precise terminology in the regulations will improve understanding of this provision; no change in meaning is intended by this proposed word change.

In addition to the degree of local dependence on goods and services, the BLM may also consider the degree of regional, national, or international

[14] See BLM Instruction Memorandum No. 2013–131 (Change 1), ''Guidance on Estimating Nonmarket Environmental Values,'' Attachment 1–2, ''Estimating Nonmarket Environmental Values'' (Sep. 12, 2013), *http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2013/IM_2013–131__Ch1.print.html.*

dependence on goods and services. This is particularly important when planning across traditional administrative boundaries and implementing landscape-scale management approaches. Examples of regional or national dependence include goals for renewable energy generation on Federal lands under the President's Climate Action Plan (June 2013), (*https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf*), and the Nation's reliance on the BLM-administered Federal Helium Reserve (*http://www.blm.gov/nm/st/en/prog/energy/helium_program.html*).

Proposed paragraph (c)(7)(ii) would incorporate language from existing § 1610.4–4(c) and would refer to ''available forecasts and analyses related to the supply and demand for these goods and services.'' We propose to broaden this provision to include both supply and demand and to apply to ''goods and services,'' including ecological services, instead of ''resource demands.'' Proposed paragraph (c)(7)(iii) of this section would refer to ''the estimated sustained levels of the various goods and services that may be produced based on a sustained yield basis.'' For example, the BLM could estimate the sustained levels of potable water from groundwater recharge based on the current and projected rainfall averages for an area.

This factor is adapted from existing § 1610.4–4(d) which links estimated sustained levels to those that may be attained ''under existing biological and physical conditions and under differing management practices and degrees of management intensity which are economically viable under benefit cost or cost effectiveness standards prescribed in national or State Director [deciding official] guidance.'' We propose to simplify the language in this factor for improved readability and understanding. At this early stage in the planning process, the BLM believes that the planning assessment should focus on the capability of resources to provide goods and services on a sustained yield basis. This information is important for the development of resource management plans based on the principles of multiple use and sustained yield and would assist the BLM in developing a range of alternatives that is consistent with our FLPMA mandate.

In addition to these changes, we propose to remove some of the factors that are currently described in § 1610.4–4 regarding the AMS and not include them in the planning assessment.

The proposed planning assessment would not include ''specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes'' (see existing § 1610.4–4(e)). At this early stage in the process, the BLM would identify these plans, but would not have sufficient information to identify ''requirements and constraints'' related to consistency, as the BLM would not yet be developing resource management alternatives. This step is more appropriately considered when developing the draft resource management plan.

Paragraph (c) of this section would also not include ''[o]pportunities to meet goals and objectives defined in national and State Director guidance'' (see existing § 1610.4–4(b)). This language would no longer be necessary, because proposed § 1610.4(a)(2) would direct the responsible official to identify BLM guidance that is relevant to the planning assessment. This proposed section would ensure that the responsible official considers BLM guidance.

We would also not carry forward into the planning assessment ''Opportunities to resolve public issues and management concerns'' (see existing § 1610.4–4(f)). The planning assessment would typically be conducted before the identification of planning issues and the BLM may not yet have the information necessary to resolve public issues and management concerns. The BLM would instead identify these opportunities during the formulation of alternatives (see proposed § 1610.5–2). We believe that this is the appropriate step to consider these opportunities because it allows the BLM to consider more than one opportunity and compare their impacts through the effects analysis (see proposed § 1610.4–5). The proposed change would be consistent with current practice and policy, as the AMS is currently prepared after the identification of planning issues.

We also propose removing ''the extent of coal lands which may be further considered under provisions of § 3420.2–3(a) of this title'' from the existing regulations (see existing § 1610.4–4(h)) because it references a regulation that does not currently exist (§ 3420.2–3(a)). Removing § 1610.4–4(h) would help reduce confusion, avoid redundancy with existing requirements in the coal regulations, and keep coal specific requirements in the coal regulations, where they are more appropriate. These proposed changes would not be a change in practice or policy.

Proposed § 1610.4(d) states that the responsible official would document the planning assessment in a report made available for public review and this report would include the identification and rationale for potential ACECs. The responsible official would post the report on the BLM Web site and make copies available at BLM offices within the planning area and other locations, as appropriate. The proposed provision would introduce a new requirement for the BLM, as the current regulations do not require the AMS be made available to the public. The planning assessment report would be made available before scoping so that it can inform the scoping process and help in the identification of planning issues. The BLM intends that the planning assessment would inform stakeholders' input throughout the development of the resource management plan and provide increased transparency to the planning process.

Proposed § 1610.4(d) would also establish that, to the extent practical, the BLM should make non-sensitive geospatial information used in the planning assessment available to the public on the BLM's Web site. The proposed change would provide for public transparency and support meaningful public involvement in the planning process.

Finally, proposed § 1610.4(e) would require that the BLM conduct a planning assessment before initiating the preparation of an EIS-level amendment. The planning assessment would only apply to the geographic area being considered for amendment and the content of the planning assessment would only include information relevant to the plan amendment. For example, if the BLM was considering an amendment solely to a visual resource class, the planning assessment would only consider information relevant to a potential change in visual resource class within the geographic area of the potential amendment. The deciding official would have the discretion to waive the requirement to conduct a planning assessment for EIS-level amendments for minor amendments or if an existing planning assessment is determined to be adequate. For example, if a resource management plan was recently completed and there was no significant new information of relevance to the plan amendment, the existing planning assessment would be determined adequate and used to inform the preparation of the EIS-level amendments. Similarly, if an EIS-level amendment was proposing ''minor'' changes to a plan component, then a planning assessment may not be necessary.

The BLM is also considering including a specific regulatory provision

that a planning assessment would be required before the BLM prepares a resource management plan and optional when the BLM prepares an EIS-level amendment. Under such a provision, the BLM would assess the need for a planning assessment for EIS-level amendments on a case-by-case basis. The BLM requests public comment on the proposed planning assessment requirements for EIS-level amendments.

*Section 1610.5 Preparation of a Resource Management Plan*

This section serves as an introduction to §§ 1610.5–1 through 1610.5–5, which outline the process the BLM would follow when preparing a resource management plan, or an EIS-level plan amendment, under section 202 of FLPMA. These sections would be based on existing § 1610.4 ''Resource management planning process.'' Other revisions from the existing regulations are discussed in the appropriate sections of this preamble.

The BLM proposes to remove existing § 1610.4–2 ''Development of Planning Criteria.'' This section would no longer be necessary under the proposed rule. Existing paragraph (a)(1) of this section would be incorporated into proposed new § 1610.5–2(b). Existing paragraph (a)(2) of this section would be incorporated into proposed §§ 1610.4(a)(1) and 1610.5–3(a). For more information, see the discussion at the preamble for proposed §§ 1610.4(a)(1), 1610.5–2(b), and 1610.5–3(a)). The BLM also proposes to remove existing §§ 1610.4–3 ''Inventory data and information collection'' and 1610.4–4 ''Analysis of the management situation'' and combine many of the provisions into new § 1610.4 ''Planning assessment.'' Finally, we propose to remove existing § 1610.4–9 ''Monitoring and evaluation'' and incorporate many of the provisions into proposed § 1610.6–4.

We propose to remove the words ''federally recognized'' before Indian tribes throughout these sections for consistent use in terminology. These references would no longer be necessary with the inclusion of the proposed definition for Indian tribes in § 1601.0–5. We propose to remove the phrase ''in collaboration with any cooperating agencies'' from throughout these sections. These references would be consolidated and moved to proposed § 1610.3–1(b)(3) (for more information, see the discussion on ''cooperating agencies'' at proposed § 1610.3–1(b)(3). We propose to replace ''shall'' with ''will'' throughout these sections for improved readability.

*Section 1610.5–1 Identification of Planning Issues*

The BLM proposes to base this section on existing § 1610.4–1, with revisions to clarify existing text, ensure consistency with other proposed changes, and to require the preparation of a preliminary purpose and need statement.

Proposed paragraph (a) of this section would establish a new requirement for the BLM to prepare a preliminary statement of purpose and need and to make this statement available for public review when initiating the identification of planning issues. The statement of purpose and need would be informed by Director and deciding official guidance, public views, the planning assessment, the results of previous monitoring and evaluation, and Federal laws and regulations, and the purposes, policies, and programs of such laws and regulations. Preparation of a statement of purpose and need is currently required under the DOI NEPA implementation regulations (see 43 CFR 46.415(a) and 46.420(a)(1)). The proposed rule would establish a new additional requirement that the preliminary statement of purpose and need be made available to the public before the identification of planning issues. The proposed change would provide transparency to the public and support the Planning 2.0 goal to provide earlier opportunities for public involvement.

Although the BLM would not formally request public comment on the preliminary statement of purpose and need, the public would be welcome to provide feedback. This is important because the statement of purpose and need informs the development of all subsequent steps in the preparation of a resource management plan. For example, the BLM does not formulate or analyze a resource management alternative (see §§ 1610.5–2 and 1610.5–3) unless it is consistent with the statement of purpose and need.

Proposed paragraph (b) of this section is based on existing § 1610.4–1. In this section, the BLM would remove ''[a]t the outset of the planning process,'' due to the new planning assessment and the preparation of a preliminary statement of purpose and need, both of which would occur prior to the identification of planning issues. An upfront planning assessment would result in more information on resource, environmental, ecological, social and economic conditions for the planning area being available to the public and the BLM during the identification of planning issues. There would be no impact from this proposed change, other than the availability of more information at this point in the process.

The type of suggestions provided by the public would be revised from the existing regulations (see existing § 1610.4–1) to include ''concerns, needs, opportunities, conflicts, or constraints related to resource management.'' We propose to remove ''resource use, development, and protection opportunities'' as these are encompassed by the proposed language and are therefore unnecessary. There would be no change from current practice.

The final sentence of proposed paragraph (b) of this section would state that the identification of planning issues ''should be integrated'' with the scoping process required by regulations implementing the NEPA. The proposed language would not represent a change in practice or policy, rather we would clarify that although the identification of planning issues should be integrated with the NEPA scoping process, these are two distinct steps with distinct regulatory requirements. The BLM must comply with the planning regulations and the regulations implementing the NEPA during the preparation or amendment of a resource management plan.

Proposed paragraph (b) of this section would also reflect new terms used throughout this proposed rule. The term ''Field Manager'' would be replaced with ''responsible official'' to maintain consistency with other proposed changes. The term ''planning issue'' would replace ''issues'' for consistency with the newly added definition for planning issues (see § 1601.0–5) and to clarify what type of ''issues'' are intended. The term ''information'' would be added, to clarify that the BLM analyzes data and information when we determine planning issues, consistent with current BLM practice. The ''planning assessment,'' as proposed, would replace the existing examples of other available data. The planning assessment would include the existing examples, thus the proposed change would be consistent with new terminology introduced in the proposed rule (see proposed § 1610.4), but would not represent a change from current practice in the types of available data and information that the BLM analyzes.

Here, and throughout the proposed rule, we use the term ''information'' consistent with the definition of information provided in the OMB ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies'' (67 FR 8452). '' 'Information' means any

communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.'' As discussed in § 1610.1–1(c) of this preamble, the BLM uses ''high quality'' information, which is meant to include the best available science, to inform the resource management planning process. The BLM intends no change in practice with the changes to proposed § 1610.5–1, other than to provide increased transparency by making a preliminary statement of purpose and need available to the public.

*Section 1610.5–2 Formulation of Resource Management Alternatives*

Proposed § 1610.5–2 would be based on existing § 1610.4–5. We propose to revise the heading of this section to read ''[f]ormulation of resource management alternatives.'' The proposed change would add the words ''resource management'' to more precisely describe the alternatives and for consistent use in terminology. No change in practice or policy is intended by the proposed change.

Paragraph (a) of this section describes the requirements for developing resource management alternatives. In the first sentence in paragraph (a) of this section, the BLM proposes to add introductory language indicating that this section describes ''[a]lternatives development,'' for improved readability and to remove the phrase, ''At the direction of the Field Manager,'' because it is the obligation of the BLM, not of any individual, to consider all reasonable resource management alternatives and develop several for detailed study. The BLM proposes to add the abbreviation ''alternatives'' for ''resource management alternatives'' for improved readability.

Proposed paragraph (a)(1) of this section would require that the alternatives developed be informed by Director or deciding official guidance, the planning assessment, and the planning issues. Proposed language would replace the existing requirement that alternatives ''reflect the variety of issues and guidance applicable to resource uses.'' The proposed language is consistent with other proposed changes and more accurately describes the information that informs the development of alternatives. The statement of purpose and need would also inform the development of alternatives, but this would occur through the planning issues. There would be no substantive change from current practice or policy, other than the availability of the planning assessment to inform the development of alternatives.

Proposed paragraph (a)(2) of this section would be based on the fourth sentence of existing § 1610.4–5, and would state that ''[i]n order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, reasonable variations may be treated as sub-alternatives.'' We propose to replace the phrase ''all reasonable variations shall be treated as subalternatives'' with ''reasonable variations may be treated as subalternatives.'' The proposed change would provide the BLM flexibility to develop subalternatives when appropriate, but would not explicitly require the use of subalternatives. In some instances, it may be appropriate to develop a new alternative, rather than a subalternative. In other situations, a subalternative may not be necessary because it is already covered under the full spectrum of examples in existing alternatives. The proposed changes would be consistent with CEQ guidance that ''when there are a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of examples, must be analyzed.'' [15] The BLM intends no change from current practice or policy from this proposed revision.

Proposed paragraph (a)(3) of this section would be based on the fifth sentence of existing § 1610.4–5. Under this proposed paragraph, the BLM would include a no action alternative. We propose to replace ''resource use'' with ''resource management'' because the no-action alternative applies to resource management in general, and not just resource use. There would be no change in practice or policy from the proposed change.

Proposed paragraph (a)(4) of this section would be based on the sixth sentence of existing § 1610.4–5. Under this proposed paragraph, the BLM would note in the resource management plan any alternatives that are eliminated from detailed study, along with the rationale for their elimination. No substantive changes would be made to this sentence.

Proposed new paragraph (b) of this section would establish a new requirement that the BLM describe the rationale for the differences between alternatives. This requirement would incorporate and expand on the requirements of existing § 1610.4–2(a)(1) that the resource management plan be ''tailored to the issues previously identified.'' The proposed rationale for alternatives would include: A description of how each alternative addresses the planning issues, consistent with the principles of multiple use and sustained yield, or other applicable law; a description of management direction that is common to all alternatives; and a description of how management direction varies across alternatives to address the planning issues. The BLM believes that the rationale for alternatives would provide transparency to the public on the reasons for the formulation of alternatives and would ensure that the resource management plan is ''tailored to the issues previously identified.''

Proposed paragraph (c) of this section would add a new public involvement opportunity. The responsible official would make the preliminary resource management alternatives and the preliminary rationale for these alternatives available for public review prior to the publication of the draft resource management plan and draft EIS. The BLM intends that the preliminary alternatives and rationale for alternatives ordinarily would be made available for public review prior to the estimation of effects of alternatives.

This public review would serve as a ''check'' of the preliminary alternatives and would afford the public an opportunity to bring to the BLM's attention any possible alternatives that may have been overlooked before the BLM conducts the environmental impact analysis and prepares a draft resource management plan and draft EIS. The BLM anticipates that this review would increase efficiency by avoiding the need to re-do or supplement NEPA analyses if alternatives are identified during the public comment period on the draft resource management plan and draft EIS. Accordingly, the BLM would build time for this public review of preliminary alternatives and rationale for alternatives into their planning schedules. This public review would also increase transparency in the BLM's planning process.

As previously discussed, the BLM does not request written comments when making documents available for public review. However, the public is welcome to contact the BLM with any appropriate concerns.

We expect that generally the preliminary alternatives and rationale for alternatives would be posted on the BLM's Web site and made available at BLM offices within the planning area. The BLM may consider hosting public

[15] ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations.'' 46 FR 18026. *http://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf.*

meetings to discuss the alternatives and the forthcoming revision of the Land Use Planning Handbook will describe situations in which the BLM might hold public meetings.

Nonetheless, in some situations, such as when the BLM is under an accelerated schedule to address time-sensitive resource management concerns, the public review of preliminary alternatives and rationale for alternatives may not be practical. For example, a resource management plan amendment might require an accelerated schedule to address the rapid proliferation of a new use in an area which contains sensitive resources. The BLM is therefore considering the alternative options of requiring a public review of preliminary alternatives ''to the extent practical'' or requiring a public review of preliminary alternative when preparing a resource management plan, but not for EIS-level amendments. The BLM requests public comment on whether the public review of preliminary alternatives and rationale for alternatives should be required in all situations, including EIS-level amendments.

Proposed paragraph (d) of this section would state that the BLM may change the preliminary alternatives and the preliminary rationale for alternatives as planning proceeds, if it determines that public suggestions or other new information make such changes necessary. The proposed language supports BLM's intent to consider public input on the preliminary alternatives and make changes accordingly.

*Section 1610.5–3 Estimation of Effects of Alternatives*

Proposed § 1610.5–3 would be based on existing § 1610.4–6 and incorporate elements of existing § 1610.4–2(a)(2).

Proposed paragraph (a) of this section would establish a new requirement that the responsible official identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social, and economic effects of the alternatives considered in detail. These procedures, assumptions, and indicators would be referred to as the ''basis for analysis.'' Although this would be a new requirement in the planning regulations, there are existing examples where the BLM has developed a ''basis for analysis'' before conducting an effects analysis. For example, in the preparation of the western Oregon resource management plans, the BLM described the analytical methodology the BLM intended to use to estimate the effects of alternatives and made this available to the public.

Paragraph (a)(1) of this section would require that the responsible official make the preliminary basis for analysis available for public review prior to the publication of the draft resource management plan and draft EIS. The BLM expects that in most situations this information would be made available to the public concurrently with the preliminary alternatives and rationale for alternatives and prior to conducting the effects analysis. As previously discussed, the BLM does not request written comments when making documents available for public review. However, the public is welcome to contact the BLM with any appropriate concerns.

For the same reasons described as for the preliminary alternatives, the BLM is considering requiring a public review of the basis for analysis ''to the extent practical'' or requiring a public review of the basis for analysis when preparing a resource management plan, but not for plan amendments. The BLM requests public comment on whether the public review of the basis for analysis should be required every time the BLM prepares a resource management plan or an EIS-level amendment.

This paragraph is adapted from an existing requirement of § 1610.4–2(a)(2) that the ''BLM avoids unnecessary . . . analyses.'' The BLM believes that identifying the basis for analysis and making that information available to the public would provide a more precise description in the regulations of how to avoid unnecessary analyses than existing language. The proposed change would also support the Planning 2.0 goal to provide early opportunities for meaningful public involvement.

Proposed paragraph (a)(2) of this section would explain that the BLM could change the preliminary basis for analysis as planning proceeds to respond to new information, including public suggestions.

Proposed paragraph (b) of this section is adapted from existing § 1610.4–6 and adds the introductory phrase ''[e]ffects analysis'' for improved readability. The term ''Field Manager'' would be replaced with ''responsible official'' for the reasons previously explained. The word ''shall'' would be replaced with ''will'' throughout this section for improved readability.

In the first sentence of paragraph (b) of this section, ''physical, biological, economic, and social effects'' would be replaced with ''environmental, ecological, economic, and social effects'' for consistent use in terminology. The proposed language encompasses the existing terminology. The BLM intends no change in practice or policy from the proposed change in terminology.

In the second sentence of paragraph (b) of this section, the proposed rule would replace ''planning criteria'' with ''basis for analysis'' and add ''planning assessment.'' The proposed language would state, ''the estimation of effects must be guided by the basis for analysis, the planning assessment, and procedures implementing NEPA.'' Planning criteria would no longer be required under the proposed rule; the planning assessment and the basis for analysis would instead provide the appropriate information to guide the effects analysis. Proposed changes would incorporate new terminology used in the proposed rule.

*Section 1610.5–4 Preparation of the Draft Resource Management Plan and Selection of Preferred Alternatives*

This section would be based on existing § 1610.4–7. This proposed section replaces references to the ''Field Manager'' with ''responsible official,'' references to ''State Director'' with ''deciding official,'' and makes grammatical edits. The heading of the section would be revised to include the new provision in paragraph (a) of this section regarding the preparation of the draft resource management plan.

Proposed paragraph (a) of this section would state that the responsible official will prepare a draft resource management plan based on the Director and deciding official guidance, the planning assessment, the planning issues, and the estimation of the effects of alternatives. This new language would highlight the unique step in the BLM land use planning process of preparing a draft resource management plan, consistent with current practice, and it would facilitate public understanding of the planning process outlined in § 1610.5. There would be no change from existing requirements associated with this new language, other than to reflect new terminology in this proposed rule and more broadly describe the information the BLM would use to prepare the draft resource management plan and draft EIS.

Proposed paragraph (a) of this section would further state that the draft resource management plan and draft EIS would evaluate the alternatives, identify one or more preferred alternatives, and explain the rationale for the preference. We propose to remove ''estimate their effects according to the planning criteria'' because planning criteria would no longer be prepared under the proposed rule and the estimation of effects of alternatives is already

addressed in proposed § 1610.5–4. We also propose edits that would allow the responsible official to select ''one or more'' preferred alternatives. This would be a change from existing text that directs the field manager to select one preferred alternative. The explicit acknowledgement of ''one or more'' preferred alternatives would make the planning regulations more consistent with the DOI NEPA regulations (43 CFR 46.425(a)), which were promulgated after the BLM Planning regulations were last amended.

The BLM is also considering whether to further revise paragraph (a) of this section for consistency with the DOI NEPA regulations, to read: ''. . . identify the preferred alternative or alternatives, if one or more exist.'' Under this alternative, the BLM might select a single preferred alternative, multiple preferred alternatives, or no preferred alternative. The BLM expects that in most situations a single preferred alternative would be selected, consistent with current practice; however, there may be instances in which either several may be identified, or where none of the alternatives are preferred. The latter instances, in particular, are rare, and usually occur when a plan amendment is being initiated in conjunction with decision-making regarding a site-specific proposal, and it is unclear which of possibly several project alternatives, each designed to reduce adverse environmental consequences, might be preferred. For this reason, the BLM is also considering whether to include a specific regulatory provision addressing these circumstances, to clarify that these are the only kinds of instances in which a preferred alternative need not be identified. The BLM requests public comment on these three alternative options for selection of preferred alternatives.

Regardless of which approach is carried forward into the final rule, the forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on the selection of preferred alternatives.

Finally, we would replace the requirement to select a preferred alternative that ''best meets Director and State Director guidance'' with a requirement to explain the rationale for the preferred alternative(s). There are many factors that might influence the selection of a preferred alternative, in addition to Director or deciding official guidance, such as assessment findings, public involvement, local planning priorities, and identified planning issues. The preferred alternative(s) must be consistent with Federal laws, regulation, and policy guidance, and would represent the alternative that the deciding official believes is most responsive to the planning issues and the planning assessment, which includes Director and deciding official guidance.

Proposed paragraph (b) of this section would be based on existing § 1610.4–7 with clarifying edits. ''Draft plan and [EIS]'' would be replaced with ''draft resource management plan and draft [EIS].'' ''Governor'' would be pluralized to acknowledge that a resource management plan may cross State boundaries and in that situation the draft resource management plan should be provided to the Governors of all States involved. We propose to add a reference to proposed § 1610.3–1(c) to improve readability of the regulations text. There would be no change in practice or policy from these proposed edits.

*1610.5–5 Selection of the Proposed Resource Management Plan and Preparation of Implementation Strategies*

Proposed § 1610.5–5 would be based on existing § 1610.4–8. The BLM proposes to revise the heading to this section to include ''preparation of implementation strategies.'' Proposed changes to paragraph (a) of this section would replace the reference to the ''Field Manager,'' stating that the ''responsible official'' would evaluate the comments received after publication of the draft resource management plan and draft EIS and would prepare the proposed resource management plan and final EIS.

Proposed paragraph (b) of this section would provide that the responsible official prepare implementation strategies for the proposed resource management plan, as appropriate. The proposed language would clarify that should the responsible official determine that implementation strategies are appropriate, then this is the step during the preparation of a resource management plan when these strategies are developed. As previously described, implementation strategies assist in implementing future actions consistent with the plan components, but the implementation strategies are not a component of the resource management plan. Implementation strategies describe potential actions that the BLM may take in the future or methods for monitoring, but the BLM would not make a decision on future actions associated with an implementation strategy until conducting site-specific NEPA analysis. The BLM would prepare implementation strategies for the proposed resource management plan, as appropriate. The BLM would not prepare implementation strategies for draft resource management alternatives and would not be required to conduct NEPA analysis for the implementation strategies.

Proposed paragraph (c) of this section would require that the deciding official publish the proposed resource management plan and file the final EIS with the EPA. The proposed rule would no longer detail the BLM's internal review process. We propose removing references to internal steps such as ''supervisory review'' because these are better established through BLM policy. There would be no change to existing policy or practice, but the proposed rule would leave the BLM with discretion about how to conduct its internal review process.

Proposed paragraph (c) of this section would also provide that the BLM publish any implementation strategies prepared for the proposed resource management plan in conjunction with the proposed resource management plan. The BLM expects that in most situations the implementation strategies would be published as appendices to the proposed resource management plan. In unique circumstances, however, the implementation strategies may be published after the proposed resource management plan.

*Section 1610.6 Resource Management Plan Approval, Implementation and Modification*

Proposed § 1610.6 is adapted from existing § 1610.5. We propose to replace ''use'' with ''implementation'' in the heading to proposed § 1610.6 to more accurately describe the provisions of this section. We also propose to replace the word ''shall'' with ''will,'' unless otherwise noted, throughout these sections for improved readability. The BLM intends no change from current practice or policy.

*Section 1610.6–1 Resource Management Plan Approval and Implementation*

This section is adapted from existing § 1610.5–1. We propose to replace ''and administrative review'' with ''and implementation'' in the heading of this section to focus this section on resource management plan approval and implementation. Similarly, we propose to delete the existing first paragraph, which refers to internal procedures such as ''supervisory review and approval.'' The BLM's internal review procedures are better established through BLM policy.

Paragraphs (a), (b), and (c) of this section contain the provisions of existing § 1610.5–1. The BLM proposes edits to this section to improve understanding of existing requirements, but does not anticipate any change in implementation from existing regulations.

Under proposed paragraph (a) of this section, the deciding official would approve a resource management plan, or EIS-level amendment, no earlier than 30 days after the EPA publishes a **Federal Register** notice of the filing of the final EIS. This is an existing part of the process and regulations, but the proposed rule would use ''deciding official'' instead of the State Director, to maintain consistency with other proposed changes. We propose to remove the existing provision that approval depends on ''final action on any protest that may be filed'' as this requirement is already addressed in 1610.6–1(b) and in the protest procedures at 1610.6–2(b). This provision would be removed because it, like existing paragraph (a), refers to the BLM's internal review process. This proposed revision would not be a change in practice or policy.

Proposed § 1610.6–1(b) would contain some language from existing paragraph (b), with some clarifying edits. In addition to existing provisions stating that plan approval would be withheld until after protests have been resolved, paragraph (b) of this proposed section would also clarify an existing requirement to provide public notice and opportunity for public comment if the BLM intends to select a different alternative, or portion of an alternative, than the proposed resource management plan or plan amendment. Such a change may result from the BLM's decision on a protest or from the BLM's consideration of inconsistencies identified by a Governor. The proposed rule would revise this sentence to explain ''if, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is encompassed by the range of alternatives in the final [EIS] or [EA] but is substantially different than the proposed resource management plan or plan amendment, the BLM will notify the public and request written comments on the change before the resource management plan or plan amendment is approved.'' The proposed language would more precisely describe what is meant by the existing phrase ''any significant change made to the proposed plan.'' The BLM intends no change from current practice or policy; rather the proposed change would provide a more precise description of existing requirements.

Proposed § 1610.6–1(c) contains language from the last sentence of existing paragraph (b) of existing § 1610.5–1 and provides that the approval of a resource management plan or a plan amendment for which an EIS is prepared must be documented in a concise public ROD, consistent with NEPA requirements (40 CFR 1505.2). Current language refers to ''the approval,'' and the proposed change would specify that a ROD would be prepared for approval of a resource management plan or EIS-level amendment. Approvals of EA-level amendments need not be documented in a ROD; however, current BLM policy requires the preparation of a decision record to document these decisions (see BLM NEPA Handbook, H–1790–1).

*Section 1610.6–2 Protest Procedures*

Proposed § 1610.6–2 contains the protest procedures found at existing § 1610.5–2. The BLM proposes to amend this section to update the procedures for the public's submission and the BLM's action on protests of a resource management plan or plan amendment.

Under the introductory text in proposed paragraph (a) of this section, we propose to clarify that a person who participated in the preparation of the resource management plan or plan amendment and has an interest which ''may be adversely affected'' by the approval of a proposed resource management plan or plan amendment may protest such approval. We propose to replace ''planning process'' with ''the preparation of the resource management plan or plan amendment'' to more precisely describe what steps of the ''planning process'' apply to paragraph (a) and for consistency with other proposed changes. Under current practice, the BLM generally considers the ''planning process'' to mean the preparation of a resource management plan or plan amendment. Under the proposed rule, we wish to clarify that the preparation of a resource management plan is just one step of the planning process. Other steps include the planning assessment, the approval of the resource management plan, the implementation of the resource management plan, monitoring and evaluation, and future modification of the resource management plan through plan maintenance, amendment, or revision. A person may only submit a protest, however, if they participated in the preparation of the resource management plan or plan amendment.

We also propose to remove language stating that any person who has an interest which ''is or may be'' adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. Instead, we would state that any person who has an interest which ''may be'' adversely affected by the approval of a proposed resource management plan or plan amendment may protest such approval. We would replace the phrase ''is or may be'' with ''may be'' to eliminate duplicative and unnecessary language. An interest that ''may be adversely affected'' includes an already affected interest. The proposed change would improve readability only; the BLM intends no change to the meaning of this provision.

Existing § 1610.5–2(a)(1) would be split into paragraphs (a)(1) and (a)(2) of proposed § 1610.6–2 and would contain requirements for filing protests, including new provisions for electronic submission.

Proposed paragraph (a)(1) of this section, ''Submission,'' would describe the procedures for submitting a protest. A new provision would state that the protest may be filed as a hard-copy or electronically and the responsible official would specify protest filing procedures for a resource management plan or plan amendment (beyond these general requirements in the planning regulations). Under the existing regulations, a protest must be filed as a hard-copy. Although the BLM would continue to accept hard-copy protest submissions, providing an additional option for electronic submission would reduce a burden on the public by reducing the expense associated with mailing a hard-copy. An electronic format would also streamline the processing of protests, since the protest would already be digitized, thereby eliminating a step from the process. Further, a protest sent by mail may take many days to arrive at the appropriate BLM office and delay the start of the BLM's protest resolution process. Electronic options for protest submission would promote a more efficient protest resolution process. The proposed rule provides flexibility for how protests would be submitted electronically to the BLM. The BLM expects to provide an electronic submission option either through email submission or through the BLM Web site.

Although the BLM believes that electronic submission will promote efficiency, it is also important to note that providing an electronic option for protest submission could also lead to an increased burden on the agency by increasing the number of protest submissions, such as form letters. In this

situation, it would take additional time to process protests. Under current practice, the BLM summarizes protest issues and provides a single response to each issue, regardless of how many times the issue was raised. We intend to continue this practice, thus a possible increase in form letters would not lead to an increase in the number of responses or the complexity of the final protest resolution report.

Proposed paragraph (a)(2) of this section, ''Timing,'' would maintain the existing time periods for submitting a protest, but make edits for improved readability and understanding. There would be no changes to existing requirements. For resource management plans and EIS-level amendments, protests must be filed within 30 days after the date the EPA publishes a NOA of the final EIS in the **Federal Register**. For EA-level amendments, protests must be filed within 30 days after the date the BLM notifies the public of the availability of the proposed plan amendment.

Proposed § 1610.6–2(a)(3), ''Content Requirements,'' would outline the required content of a protest. Proposed paragraph (a)(3)(i) of this section would include a new requirement that protesting parties include their email address (if available) in addition to other identifying information in the protest letter in order to facilitate BLM communications with protesting parties in the event of a question regarding a protest or its filing. It often is easier to communicate by email than by telephone and this requirement would be in line with the BLM's acceptance of protests electronically under proposed § 1610.6–2(a)(1).

Proposed paragraph (a)(3)(ii) of this section would require a statement of how the protestor participated in the planning assessment or the preparation of the resource management plan. This would be a change from existing language that requires a statement of the issue or issues being protested, which would be included in proposed paragraph (a)(2)(iii) of this section. Although existing paragraph (a) states that only a person who participated in the preparation of a resource management plan may submit a protest, proposed paragraph (a)(3)(ii) would place the burden on the protestor to demonstrate their eligibility for submitting a protest. This proposed requirement would make it easier for the BLM to determine eligibility to protest and more efficiently respond to all protests.

Proposed paragraph (a)(3)(iii) would replace the requirement to provide a ''statement of the part or parts of the plan or amendment being protested'' with a new requirement to identify the plan component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations. The proposed change would be consistent with other proposed changes (see proposed § 1610.1–2). Plan components provide planning-level management direction. The final decision to approve a resource management plan or plan amendment represents the final decision to approve the planning level management direction, which will guide all subsequent management decisions.

In contrast, implementation strategies are not subject to protest because they are not a component of the resource management plan. These strategies describe how the BLM may implement future actions that are consistent with the resource management plan, but consideration of a proposed implementation-level action, along with an implementation strategy comes at the implementation stage when the future action is taken. For example, management measures describes actions the BLM may take to implement a future action consistent with the plan components, but the final decision to implement the action would come at a later point in time and would require site-specific NEPA analysis. The decision to implement the future action associated with the implementation strategy would be subject to appeal, or other administrative remedy as appropriate, when that future decision is approved. A management measure to apply a habitat improvement in an area, for example, would require site-specific NEPA analysis and an associated decision. The site-specific decision would be subject to an appeals process at that time.

Proposed paragraph (a)(3)(iv) would require the protest to include a concise explanation of why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations, and identification of the associated issue(s) raised during the planning process. This provision would replace the final sentence of existing paragraph (a)(1)(iv) of this section. We are proposing to require that protests include more specific grounds for challenging a plan component than the existing regulations, which require only ''(a) concise statement explaining why the State Director's decision is believed to be wrong.'' More specific grounds for protests would help the BLM to identify, understand, and respond thoughtfully to valid protest issues, such as inconsistencies with Federal laws or regulations.

This proposed change would also provide a more clear distinction between the protest process and the earlier public comment period on a draft resource management plan and draft EIS. The earlier public comment period offers an opportunity to comment on a wide variety of matters relating to a draft plan. The protest procedures, in contrast, are intended to focus the BLM Director's attention on aspects of a proposed resource management plan that may be inconsistent with legal requirements or policies. The proposed changes are not a change from existing practice or policy. The BLM believes that the proposed change would more effectively communicate to the public what the BLM considers when addressing protests.

Proposed paragraph (a)(3)(v) of this section retains the existing requirement that protests include a copy of all documents addressing the issue(s) raised that the protesting party submitted during the planning process or an indication of the date the issue(s) were discussed for the record. These documents or dates would assist the BLM in responding to protests.

Proposed paragraph (a)(4) of this section on ''availability'' would establish a new requirement that protests would be made available to the public upon request and this would be independent of existing requirements under the Freedom of Information Act. This commitment would demonstrate the value the BLM places on public involvement in resource management planning. The BLM intends for this commitment to ensure transparency and consistency in practice. The BLM is exploring how to make protests available in a timely and efficient manner, including by posting all protest submissions to the BLM Web site, and welcomes public comments on this issue.

Proposed paragraph (b) of this section would reiterate the existing requirement in existing § 1610.6–1(b) that the BLM Director render a decision on all protests before approving a resource management plan or plan amendment, except as otherwise provided in 1610.6–1(b) that approval would be withheld on any portion of a resource management plan or plan amendment where the protest has not been resolved. This means that the BLM could choose to approve the portions of the resource management plan not being protested, while withholding approval on the portion being protested, until final

action has been completed on such protest. Although this does not represent a change in existing policy, we believe that including this requirement with the provisions related to protests will improve understanding of the requirements associated with protests. We propose removing ''promptly'' from this requirement, as the term is vague and does not account for the many variables that affect timelines for protest resolution, including the magnitude and complexity of protest issues, as well as available budgets and competing workloads. This edit clarifies that the timeline to resolve the protest varies extensively across planning efforts. This proposed revision is not a change in practice or policy; the BLM will continue to resolve protests as quickly as possible.

Proposed paragraph (b) would further provide that the BLM notify protesting parties of the decision and would make both the decision and the reasons for the decision on the protest available to the public. The BLM expects that these typically would be posted on the BLM Web site and shared with individuals or groups that have requested email notice in conjunction with the preparation or amendment of a resource management plan. We propose removing the requirement that the BLM send its decision on a protest to the protesting parties by certified mail, return receipt requested. The BLM believes that the wide availability and ease of use of the Internet and electronic communications make these means of notifying the public well-suited for sharing protest decisions with the public. Electronic communications allow the BLM flexibility to make protest decisions available to a potentially large number of protesting parties or members of the public without an overly burdensome workload. These means would also be consistent with BLM policy promoting the use of electronic communications in the land use planning process.[16] Nonetheless, where Internet access is limited or protesting parties or members of the public express concerns about electronic communications, the BLM would provide notice by other means, as necessary.

The final sentence of proposed paragraph (b) would reflect existing § 1610.5–2(b) and explain that the BLM Director's decision is the final decision of the Department of the Interior. This decision may be subject to judicial review. The BLM proposes to change ''shall be'' to ''is,'' to comply with more recent style conventions and improve readability. However, there would be no substantive change to this paragraph.

Proposed paragraph (c) of this section would add a new provision stating that the BLM Director may dismiss any protest that does not meet the requirements of this section. For example, the BLM may dismiss protests where protestors lack standing or protests that are incomplete or untimely. The proposed text does not represent a change in requirements or in existing practice. The BLM Director may currently dismiss protests that do not meet the regulatory requirements. The BLM believes that adding this text would more effectively communicate to potential protestors that their protest may be dismissed if it does not meet the requirements for submission.

*Section 1610.6–3 Conformity and Implementation*

Proposed § 1610.6–3 would be based on existing § 1610.5–3. In proposed paragraph (a) of this section, we propose to remove the phrase ''as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department.'' All future authorizations and actions must conform to the approved resource management plan, thus this language is confusing and unnecessary. No change from current practice is intended by this proposed change. We also propose to add the words ''plan components,'' stating ''All future resource management authorizations and actions . . . must conform to the plan components of the approved resource management plan.'' The proposed edits would be consistent with the definition of ''plan components'' in proposed § 1601.0–5 and the requirements of proposed § 1610.1–2 and would more precisely describe how the BLM interprets conformance.

In paragraph (b) of this section, we propose specifying that the ''plan'' referenced is a ''resource management plan'' and that the requirements of this section also apply following the approval of a plan amendment. We propose replacing ''Field Manager'' with the ''BLM.'' As previously described, replacing the ''Field Manager'' with the ''BLM'' acknowledges responsibilities that might be fulfilled by a BLM employee other than a Field Manager.

Throughout this section, we propose replacing ''shall'' with ''will,'' unless otherwise noted. Proposed revisions throughout this section would only be for improved readability or improved understanding of existing practice or policy.

*Section 1610.6–4 Monitoring and Evaluation*

Proposed new § 1610.6–4 would address monitoring and evaluation of resource management plans following their approval and would incorporate much of the existing language from existing § 1610.4–9 with edits for consistency with other proposed changes. The BLM would monitor and evaluate the resource management plan in accordance with the monitoring and evaluation standards and the monitoring procedures (see proposed §§ 1610.1–2(b)(3) and 1610.1–3(a)(2)) to determine whether there is sufficient cause to warrant amendment or revision of the resource management plan or for other purposes, such as evaluating the effectiveness of implementation strategies.

The final sentence of proposed § 1610.6–4 would establish a new requirement that the BLM document the evaluation of the resource management plan in a report made available for public review. The BLM believes that sharing this information with the public would provide transparency during the implementation of a resource management plan.

*Section 1610.6–5 Maintenance*

Proposed § 1610.6–5 would be based on existing § 1610.5–4 to explain the reasons for updating resource management plans through plan maintenance and to identify the parameters for plan maintenance. Under both existing and proposed regulations, maintenance represents minor changes and updates to a resource management plan that would not change any fundamental aspects of the plan. As proposed, maintenance would not change a plan component, except to correct typographical or mapping errors or to reflect minor changes in mapping or data. Unless otherwise indicated, we propose to replace ''shall'' with ''will'' throughout this section for improved readability.

We propose to delete ''and supporting components'' from the first sentence of this section to avoid confusion. The existing regulations are unclear on what is meant by ''supporting components'' in this provision. Supporting information, such as a visual resources

[16] BLM, Instruction Memorandum No. 2013–144, ''Transitioning from Printing Hard Copies of National Environmental Policy Act and Planning Documents to Providing Documents in Electronic Formats'' (June 21, 2013), *http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2013/IM_2013-144.html*); DOI Office of Environmental Policy and Compliance, Environmental Statement Memorandum No. 13–7, ''Publication and Distribution of DOI NEPA Compliance Documents via Electronic Methods'' (Jan. 7, 2013), *http://www.doi.gov/pmb/oepc/upload/ESM13-7.pdf.*

inventory or a model predicting wildfire propensity, can be updated at any point in time; such a change is not considered plan maintenance as it does not constitute a change to the resource management plan itself. Further, the BLM would not consider supporting information such as the planning assessment or an implementation strategy to be a component of the approved resource management plan because they do not provide planning-level management direction. Rather, the planning assessment provides baseline information to inform the preparation of a resource management plan and the implementation strategies assist in implementing future actions consistent with the resource management plan. These types of support information can be updated at any point in time and such a change is not considered plan maintenance because it does not constitute a change to the resource management plan itself.

We also propose to replace ''shall be maintained'' with ''may be maintained'' in the first sentence. The proposed change would reflect the fact that plans are maintained as necessary, and the BLM has the discretion to assess the urgency of the need to maintain the plan when weighed against available budgets and competing workload priorities.

The proposed rule would also revise the areas described in the regulations that may be updated through plan maintenance. We propose to expand existing language stating that plans are maintained as necessary to ''reflect minor changes in data'' with language stating the plans would be maintained as necessary ''to correct typographical or mapping errors or to reflect minor changes in mapping or data.'' The proposed language provides a more precise and accurate description of changes that are made using plan maintenance under the existing regulations.

We propose to remove language limiting maintenance ''to further refining or documenting a previously approved decision incorporated in the plan'' as well as language indicating that ''maintenance must not result in the expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan.'' Instead, the proposed rule would state that maintenance must not change a plan component of the approved resource management plan, except to correct typographical or mapping errors, or to reflect minor changes in data. The proposed change would make the maintenance provisions consistent with other proposed changes. The plan components would encompass the ''scope of resource uses or restrictions'' and the ''terms, conditions, and decisions'' of the approved resource management plan, therefore there would be no substantive change from current policy.

Existing language is retained which indicates that maintenance is not considered a plan amendment and therefore does not require the same public involvement, interagency coordination, or NEPA analysis as plan amendments. This language is still relevant and applicable because plan components (*i.e.,* the management-level direction of the approved plan) could not be changed through plan maintenance other than to correct typographical or mapping errors or reflect minor changes in mapping or data.

We propose to replace the words ''shall not'' with ''does not'' where the existing regulations state that maintenance ''shall not'' require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3. This proposed change would deviate from other proposed changes where we would replace ''shall'' with ''will.'' No change in meaning or practice is intended by the proposed change. The BLM believes that in this sentence, the proposed language provides better readability and ease of understanding.

Finally, we propose to remove existing language which requires maintenance to be documented in plans and supporting records and instead add a new requirement for the BLM to notify the public when changes are made to an approved resource management plan through plan maintenance and make those changes available to the public at least 30 days prior to their implementation. While the proposed rule does not specify how the BLM would do so, we anticipate that changes would be posted on the BLM Web site and available at BLM offices within the planning area, with direct notice sent to those individuals and groups that have requested such notice. The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on how the BLM will make different types of plan maintenance available to the public. The BLM requests public comment on whether and if so how plan maintenance should be made available to the public.

*Section 1610.6–6 Amendment*

Proposed § 1610.6–6 would be based on existing § 1610.5–5. We propose to amend this section by updating language to be consistent with other changes in this proposed rule. Unless otherwise indicated, ''shall'' would be replaced with ''will'' or ''must,'' for improved readability.

Paragraph (a) of this section would revise the undesignated introductory text in existing § 1610.5–5 to explain that a plan component may be changed through amendment. This represents a change from the existing regulations, which provide that a resource management plan may be changed by amendment. The proposed change is necessary for consistency with changes to § 1610.1, which distinguish between plan components and implementation strategies. As explained in § 1610.1–2 of this preamble, plan components would represent management level direction and would only be changed through amendment or revision.

We propose that an amendment ''may'' be initiated when the BLM determines that monitoring and evaluation findings, new high quality information, including best available scientific information, new or revised policy, a proposed action, ''or other relevant changes in circumstances'' warrant a change to one or more plan components of the approved plan. The proposed change would replace ''shall be initiated'' with ''may be initiated'' to reflect the fact that the BLM must consider available budgets and competing workload priorities when making the determination to initiate a plan amendment.

We also propose edits to make this section easier to read, clarifying that an amendment must be made ''in conjunction'' with an EA or EIS. We would replace the word ''through'' with ''in conjunction'' because the EA or EIS informs the amendment, but is not the mechanism through which the amendment is made. We propose to clarify that the procedures for plan amendments include public involvement (see proposed § 1610.2), interagency coordination and consistency (see § 1610.3), and protest procedures (see proposed § 1610.6–2). We would retain the existing provision that the BLM must evaluate the effect of the amendment on the plan and that if the amendment under consideration is in response to a specific proposal, the requisite analysis for the proposal and the amendment may occur simultaneously. This is consistent with NEPA regulations asking Federal agencies to integrate NEPA with other planning processes (see 40 CFR 1500.2(c) and 1500.4(k)).

Proposed paragraph (b) of this section concerns an amendment for which an EA does not disclose significant impacts and would be revised by replacing references to the ''Field Manager'' with

the ''responsible official'' or the ''BLM.'' It would also replace a reference to the ''State Director'' with the ''deciding official.'' These changes would be consistent with new terms used throughout this proposed rule. This section would also provide that upon approval of a plan amendment, the BLM would issue a public notice of the action taken, and that an amendment may be implemented 30 days after such notice. There would be no substantive changes to this paragraph or the BLM's implementation of it.

We propose to eliminate the existing requirement that the amendment process follow the same procedures as for preparing and approving a resource management plan. Instead, the proposed rule would identify in relevant sections where EIS-level amendments follow the same procedures for preparing and approving a resource management plan. Although the same procedures would be required for most steps of preparing a resource management plan, the proposed change would allow for EIS-level amendments to have a different time period for public comment on the draft plan amendment than for draft resource management plans. EIS-level plan amendments would be subject to a 45-day public comment period on the draft plan amendment and draft EIS, instead of a 60-day public comment period on a draft resource management plan and draft EIS (see proposed § 1610.2–2). The BLM believes the 45-day public comment period, which is consistent with the CEQ requirement (see 40 CFR 1506.10(c)) would be sufficient for many amendments and that this shorter public comment period would improve efficiency when an amendment is warranted. However, the regulations would not prevent the BLM from offering a longer public comment period or extending the public comment period on a draft resource management plan amendment and draft EIS in any particular case, if the planning process would benefit from more than 45 days for public comments. We expect to provide more detailed guidance in the forthcoming revision of the Land Use Planning Handbook on situations that may warrant a longer comment period than the minimum required under NEPA.

We also propose to remove existing language that consideration for an EIS-level amendment is limited to ''that portion of the plan being amended.'' This existing language contradicts the requirement from proposed paragraph (a) that the ''effect of the amendment on other plan components must be evaluated.'' For example, if an amendment would preclude the BLM from achieving other goals and objectives of the approved resource management plan that are not explicitly addressed in the amendment, this is important information for the BLM to be aware of.

Paragraph (c) of this section would be adapted from the existing provision of § 1610.5–5(b) that ''if several plans are being amended simultaneously, a single [EIS] may be prepared to cover all amendments'' for improved readability. Instead, this provision would state that ''if the BLM amends several resource management plans simultaneously, a single programmatic [EIS] or [EA] may be prepared to address all amendments.''

*Section 1610.6–7 Revision*

Proposed § 1610.6–7 would be based on existing § 1610.5–6. We propose to revise this section to improve readability and more clearly explain when the BLM would prepare a revision. In the first sentence of the section the clause that states ''a resource management plan shall be revised . . .'' would be replaced with ''the BLM may revise a resource management plan. . . .'' The proposed rule would use active voice to clearly show that the BLM would be revising the plan, but it also changes the text from a requirement ''shall'' to the discretionary term ''may.'' In both existing regulations and this proposed rule, the revision would occur ''as necessary.'' This change would reflect the fact that the BLM must consider many factors including available budgets, competing workload priorities, and development of new policy when making the determination to revise a resource management plan. While this is a change in the regulations, current BLM practice does take these factors into account when determining what is necessary, so no change in implementation is expected. The proposed rule would more clearly demonstrate this to the public.

The proposed changes would also state that in addition to monitoring and evaluation findings, new data, or new or revised policy, ''other relevant changes in circumstances'' that affect an entire plan or major portions of a plan may require a plan revision. This does not represent a change in practice, but rather reflects the fact that other changes in circumstances could warrant a plan revision. For example, proliferation of the demand for energy development in an area could result in a plan revision if the BLM believed that a plan revision was necessary to adequately address this demand and consider impacts at a regional-scale. This section would maintain the existing requirement that revisions must comply with all of the requirements of the planning regulations for preparing and approving a resource management plan, with minor edits to improve readability.

*Section 1610.6–8 Situations Where Action Can Be Taken Based on Another Agency's Plan, or a Land Use Analysis*

Proposed § 1610.6–8 would be based on existing § 1610.5–7. We propose minor edits in this section with no intended change in practice or policy. We would replace the ''Bureau of Land Management'' with the ''BLM,'' which has already been introduced in this part. We would also replace a reference to the ''Field Manager'' to ''the BLM,'' as the action described applies more to the agency than any particular individual. We would replace ''use'' with ''rely on'' for more accurate use of language.

The BLM proposes to replace ''there are situations of mixed ownership'' with ''including mixed ownership'' in the first sentence of proposed 1610.6–8 for improved readability. No change in meaning is intended by this proposed change.

We propose to add a reference to tribal plans in proposed paragraph (a) of this section, which lists those other agency plans that may be used as the basis for a BLM action. We also propose to replace ''public participation'' with ''public involvement,'' consistent with FLPMA and proposed changes throughout this proposed rule.

We propose to add language to paragraphs (a) and (b) of this section clarifying that in order for the BLM to rely on or adopt another agency's plan, that plan must be consistent with ''Federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations.'' For example, the other agency's plan must comply with NEPA. The proposed change would be consistent with current practice and policy.

We propose to remove ''to comply with law and policy applicable to public lands'' from proposed paragraph (b) because that language would no longer be necessary with the added text.

We propose to remove the final sentence of existing § 1610.5–7 which provides that ''The decision to approve the land use analysis and to lease coal is made by the Departmental official who has been delegated the authority to issue coal leases.'' This language is unnecessary in the planning regulations.

Finally, the reference to § 1610.5–2 would be updated to reflect other changes under this proposed rule. No change in meaning is intended by updating this reference.

*Section 1610.7 Management Decision Review by Congress*

Proposed § 1610.7 would be based on existing § 1610.6 with minor revisions. We propose replacing the ''Federal Land Policy and Management Act'' with ''FLPMA,'' the ''Bureau of Land Management'' with the ''BLM,'' and replacing ''shall'' with ''will'' in this section for improved readability. In the second sentence of this section, however, we propose to replace ''[t]his report shall not be required'' to ''[t]his report is not required'' for improved readability and ease of understanding. We propose to clarify that this report is not required prior to approval of a resource management plan which, if fully or partially implemented, would result in elimination ''of use(s).'' No change in meaning is intended with these proposed changes.

*Section 1610.8 Designation of Areas*

Proposed § 1610.8 would contain the provisions of existing § 1610.7 without amendment.

*Section 1610.8–1 Designation of Areas Unsuitable for Surface Mining*

Proposed § 1610.8–1 would be based on existing § 1610.7–1. We propose replacing references to the ''Field Manager'' and the ''Bureau of Land Management'' with the ''BLM'' in this section. The Field Manager commitments described in this section are those of the BLM, not any one individual. We also propose replacing the word ''shall'' with ''will'' throughout this section, unless otherwise indicated, for improved readability. No change in meaning is intended with these proposed changes.

*Section 1610.8–2 Designation of Areas of Critical Environmental Concern*

Proposed § 1610.8–2 would be based on existing § 1610.7–2. The BLM proposes revising the language throughout existing § 1610.7–2 to use plain language, including changing ''shall'' to ''will,'' or in some instances ''shall'' to ''must'' for improved readability.

Proposed paragraph (a) of this section would contain the undesignated introductory language in existing § 1610.7–2, revised as follows. ''Areas of critical environmental concern'' would be replaced with the abbreviation ''ACEC'' for improved readability. The existing language stating that potential ACECs are identified and considered throughout the resource management planning process would be removed and instead we would state that ''Areas having potential for ACEC designation and protection management will be identified through inventory of public lands and during the planning assessment.'' The proposed change would reflect the fact that FLPMA directs the BLM to identify potential ACECs through the inventory of public lands (see section 201(a) of FLPMA) and consider them for designation through land use planning (see section 202(c)(3) of FLPMA). When the BLM prepares a resource management plan or an EIS-level amendment, potential ACECs would be identified during the planning assessment (see proposed § 1610.4(a)(1)). However the BLM may also conduct inventory at times not associated with the preparation or amendment of a resource management plan, and potential ACECs could be identified at those times as well. The BLM intends no change in practice or policy by the proposed revisions, other than to identify that potential ACECs would be identified during a planning assessment, a new proposed step in the planning process.

Proposed paragraph (a) of this section would also include language from existing 1610.7–2(a), which describes the criteria for identifying a potential ACEC. We would replace ''shall'' with ''will'' to read ''[t]he inventory data will be analyzed to determine whether there are areas containing resources, values, systems or processes or hazards eligible for further consideration for designation as an ACEC.''

We propose to maintain the existing descriptions of the ''relevance'' and ''importance'' criteria in proposed paragraphs (a)(1) and (a)(2) of this section, though ''shall'' would be replaced with ''must'' and we would remove the phrase ''this generally requires more than local significance'' from the description of importance. This phrase is vague and unnecessary in the regulations. There are many existing examples where an area of local significance has been determined to meet the ''importance'' criteria. The proposed change would be consistent with FLPMA and would improve understanding that the importance criteria is based on the degree of significance (*i.e.,* substantial significance and values) and a local value, resource, system, process, or hazard could have ''substantial'' significance.

Proposed paragraph (b) of this section would address the designation of ACECs and would provide that potential ACECs would be considered for designation during the preparation or amendment of a resource management plan. This would replace language in existing § 1610.7–2 stating that ACECs are ''considered throughout the resource management planning process.'' Proposed paragraph (b) would also contain the provision that ''[t]he identification of a potential ACEC shall not, in of itself, change or prevent change of the management or use of public lands,'' which would be moved from the existing definition of ''Areas of Critical Environmental Concern or ACEC'' in 1601.0–5(a) to this section. The term ''shall'' would be replaced with ''does'' for improved readability. No change in meaning is intended by this proposed revision. This provision belongs with the ACEC provisions and this placement avoids including substantive regulatory provisions in the definitions.

We propose new additional language at the end of proposed paragraph (b) which would provide that ''[p]otential ACECs require special management attention (when such areas are developed or used or no development is required) to protect and prevent irreparable damage to the important historic, cultural, or scenic values, fish and wildlife resources or other natural system or process, or to protect life and safety from natural hazards.'' The proposed language is consistent with FLPMA (see section 103(a)) and would provide useful information in regards to designating ACECs. The BLM intends no change in practice or policy from adding this language; rather, the planning regulations would reflect existing statutory direction.

In addition, we propose dividing existing § 1610.7–2(b) into two paragraphs (proposed § 1610.8–2(b)(1) and (2)) to distinguish more clearly between the BLM's notice of potential ACECs and the formal designation of ACECs in the approved plan.

Proposed § 1610.8–2(b)(1) would maintain the existing requirement, with clarifying edits, that upon release of a draft resource management plan or plan amendment involving a potential ACEC, the BLM would notify the public and include a list of each potential ACEC and any special management attention which would follow a formal designation. For clarification purposes, we would replace the term ''upon approval'' with ''upon release'' so that this step is not confused with the formal approval of the proposed plan. This would not represent a change to existing practice. We also propose replacing the term ''proposed ACEC'' with ''potential ACEC'' in order to avoid confusion with the proposed resource management plan. The BLM provides notice of potential ACECs upon release of a draft resource management plan or plan amendment, rather than upon release of a proposed resource management plan

or plan amendment. The BLM intends no change in practice or policy from this proposed word change. We also propose to replace ''resource use limitations'' with ''special management attention.'' The proposed language would be based on the definition of an ACEC provided in FLPMA (section 103(a)) and would also reflect the fact that special management attention is not restricted to resource use limitations. For example, special management attention might include objectives related to plant species composition to maintain habitat for a wildlife resource.

We propose removing the requirements in existing § 1610.7–2(b) to publish a **Federal Register** notice and provide a 60-day public comment period on a potential ACEC designation. Instead, the BLM would be required to notify the public and provide a public comment period appropriate to the level of BLM action (see proposed § 1610.2–1). The proposed planning process provides opportunity to consider impacts to potential ACECs through the development of a range of alternatives and to effectively assess whether special management attention is needed. The proposed planning process also provides substantial opportunity for public involvement. We believe that consistency between ACEC requirements and the other steps of the planning process would be less confusing and would more effectively integrate ACEC consideration into the planning process.

Under the proposed rule, the BLM would notify the public of each potential ACEC and any special management attention which would occur if it were formally designated, by posting a notice on the BLM Web site and at the BLM office where the plan is being prepared (see proposed § 1610.2–1(c)), and through written or email correspondence to those individuals or groups who have requested to receive updates throughout the planning process (see proposed § 1610.2–1(d)).

This proposed change would also mean that for the preparation of a resource management plan, the BLM would provide a 60-day comment period; for EIS-level amendments the BLM would provide a 45-day comment period; and for EA-level amendments, the BLM would not be required to provide a public comment period, however, if the BLM did provide a public comment period it would provide a minimum 30-day comment period (see proposed § 1610.2–2(a)). In most situations the BLM chooses to provide a public comment period for EA-level amendments, however, the proposed change acknowledges that there may be situations where there is no public interest in a draft plan amendment and it would therefore not benefit from a public comment period. In such situations, the planning regulations would not require that the BLM offer a public comment period. For example, an EA-level amendment could be initiated to extend ACEC designation to a recently acquired in-holding within an existing ACEC that was acquired expressly for that purpose. In this situation, there might be no need for or public interest in a comment period.

Paragraph (b)(2) of this section would maintain the existing provision with clarifying edits that the approval of a resource management plan or plan amendment that contains an ACEC constitutes formal designation of an ACEC. We propose to remove the phrase ''plan revision'' as this would be included in the definition of a resource management plan (see proposed § 1601.0–5). This paragraph would also replace the existing requirement for the approved plan to include ''general management practices and uses, including mitigation measures'' with a new requirement to include ''any special management attention'' identified to protect the designated ACEC. The proposed change would reflect the definition of an ACEC provided in FLPMA (section 103(a)). Under the proposed rule, the BLM would provide ''special management attention,'' as required by FLPMA, through the development of plan components. For example, special management attention could include goals, measurable objectives, mitigation standards (as part of a measurable objective), or resource use determinations, among others.

Implementation strategies could also be developed, as needed, to assist in implementing the special management attention provided through the plan components. For example, the BLM may identify specific management measures to achieve vegetation objectives in the ACEC. This represents a change from the existing regulations, which requires inclusion of ''general management practices'' when providing special management attention. The BLM believes that the new requirement for plan objectives to be measurable (see § 1610.1–2(a)(2)) provides a more effective method to apply special management attention because it allows the BLM to track progress toward the achievement of the objective while incorporating new science and information when implementing specific management measures.

*Section 1610.9 Transition Period*

Proposed § 1610.9 would contain the provisions of existing § 1610.8, amended as follows. Existing provisions of § 1610.8 address the transition from management framework plans, the land use plans the BLM prepared beginning in 1969 under authorities that predated FLPMA, to resource management plans, which the BLM has prepared and approved under FLPMA and the planning regulations first adopted in 1979. We propose edits in existing § 1610.8(a) and (b) to refer to ''public involvement'' instead of ''public participation'' and to refer to the ''responsible official'' instead of the ''Field Manager,'' consistent with changes made throughout this proposed rule. We also use ''will'' or ''must'' instead of ''shall'' for improved readability.

We propose to clarify in paragraph (a)(1) that management framework plans may be the basis for considering proposed action if the management framework plan is in compliance with the principle of multiple use and sustained yield ''or other applicable law.'' We would add ''or other applicable law'' because in some situations the BLM must be in compliance with the principles of other legal authorities. For instance, national monuments established under the Antiquities Act of 1906 (16 U.S.C. 431–433) must comply with the principles specific to their establishment. We propose to remove existing § 1610.8(a)(2). This provision is no longer necessary. The BLM would instead rely on proposed § 1610.9(a)(2) when considering proposed actions under a management framework plan.

Proposed new § 1610.9(c) and (d) would address the transition from resource management plans approved under the existing regulations, which first became effective on September 6, 1979 (44 FR 46386) and which were updated with revisions that became effective on July 5, 1983 (48 FR 20364) and April 22, 2005 (55 FR 14561), to resource management plans that will be prepared, revised, or amended under these regulations when they are final.

In considering the transition provisions, it is important to remember that this proposed rule would make changes to the procedures the BLM uses to prepare, revise, or amend resource management plans, and provide more detailed guidance in areas where the current regulations are vague, unclear, or silent. This proposed rule does not change the nature of a resource management plan itself (*i.e.,* a document developed to guide future management

activities on the public lands). Additionally, although we are proposing new terms for the contents of a plan (*e.g.,* plan components), the contents of a plan will not differ substantially from the contents of existing plans. For instance, plan objectives developed under this proposed rule would likely be more specific and measurable than many plan objectives developed under the existing regulations. Nonetheless, plan objectives developed under either set of regulations would guide the BLM's management of the public lands across varied programs.

Accordingly, proposed § 1610.9(c)(1) would discuss how the BLM would evaluate whether a proposed action, such as an oil and gas lease sale, is in conformance with a resource management plan once final regulations resulting from this proposal become effective. We propose that when considering whether a proposed action is in conformance with a resource management plan, the BLM will use an existing resource management plan (*i.e.,* one approved by the BLM before the final regulations that result from this proposal become effective) until it is superseded by a resource management plan or amended by a plan amendment prepared under these regulations when they are final. In such circumstances, the proposed action must either be specifically provided for in the plan or clearly consistent with the terms, conditions, and decisions of the approved plan. Resource management plans prepared under the existing regulations do not identify plan components, thus an evaluation for whether a proposed action is in conformance with the plan must use the terminology that was in place when the plan was approved.

Proposed § 1610.9(c)(2) would address how to evaluate whether an action is in conformance with a resource management plan after the plan has been amended under the proposed regulations. In such circumstances, the amended portions of the plan would use new terminology and identify plan components, whereas the remainder of the plan would not use new terminology. A proposed action must therefore either be consistent with the plan components (proposed new terminology) or the terms, conditions, and decisions of the plan (existing terminology).

Proposed § 1610.9(d) would address resource management plans that are currently being prepared, revised, or amended. We propose that if the preparation, revision, or amendment of a resource management plan was or is formally initiated by publication of a NOI in the **Federal Register** before the final regulations that result from this proposed rule become effective, the BLM may complete the resource management plan or plan amendment under the planning regulations promulgated in 1979 (44 FR 46386) and amended in 1983 (48 FR 20364) and in 2005 (55 FR 14561). This approach would allow BLM offices that have initiated planning to continue with their efforts without the need to re-start or re-do steps in the planning process. This would avoid duplicative efforts and it respects the time that the BLM, other agencies, stakeholders, and members of the public have invested in planning that will be in-progress when the final regulations that result from this proposal become effective. The BLM requests comments on the new transition provisions in § 1610.8(c) and (d).

## Procedural Matters

### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

### *Regulatory Flexibility Act*

This proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act, which can be found in 13 CFR 121.201. For a specific industry identified by the North American Industry Classification System (NAICS), small entities are defined by the SBA as an individual, limited partnership, or small company considered at ''arm's length'' from the control of any parent company, which meet certain size standards. The size standards are expressed either in number of employees or annual receipts. The proposed rule could affect any entity that elects to participate in the BLM's planning process. The industries most likely to be directly affected are listed in the table below along with the relevant SBA size standards. Other industries, such as transportation or manufacturing, may be indirectly affected and are not listed below.

| Industry | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|
| Beef Cattle Ranching and Farming | $0.75 | ..... |
| Forest Nurseries and Gathering of Forest Products | 11.0 | ..... |
| Logging | ..... | 500 |
| Oil and Gas Extraction | ..... | 500 |
| Mining (except Oil and Gas) | ..... | 500 |
| Drilling Oil and Gas Wells | ..... | 500 |
| Support Activities for Oil and Gas Operations | 38.5 | ..... |
| Support Activities for Coal Mining | 20.5 | ..... |
| Support Activities for Metal Mining | 20.5 | ..... |
| Support Activities for Nonmetallic Minerals (except Fuels) | 7.5 | ..... |
| Hydroelectric Power Generation | ..... | 500 |
| Fossil Fuel Electric Power Generation | ..... | 750 |
| Solar, Wind, Geothermal Power Generation | ..... | 250 |

| Industry | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|
| Electric Bulk Power Transmission and Control | ..... | 500 |
| Electric Power Distribution | ..... | 1000 |
| Natural Gas Distribution | ..... | 500 |
| Environmental Consulting Services | 15.0 | ..... |
| Other Amusement and Recreation Industries | 7.5 | ..... |
| Environment, Conservation and Wildlife Organizations | 15.0 | ..... |

These industries may include a large, though unquantifiable, number of small entities. In addition to determining whether a substantial number of small entities are likely to be affected by this rule, the BLM must also determine whether the rule is anticipated to have a significant economic impact on those small entities. The proposed rule is largely administrative in nature and would only affect internal BLM procedures. The direct impacts on the public would be increased opportunities for voluntary public involvement. The magnitude of the impact on any individual or group, including small entities, is expected to be negligible. The actual impacts cannot reasonably be predicted at this stage, as they will depend on the specific context of each planning effort. However, there is no reason to expect that these changes, when implemented across all future planning efforts, would place undue burden on any specific individual or group, including small entities.

Based on the available information, we conclude that the proposed rule would not have a significant economic effect on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required. The BLM prepared a preliminary economic and threshold analysis as part of the record, which is available for review.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule is administrative in nature and affects the BLM's land use planning process and procedures.

This rule does not have an annual effect on the economy of $100 million or more. These procedures and costs are existing requirements and it would be speculative to estimate how many protests the BLM would receive as a result of this proposed rule.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There would be no impact to any prices as a result of this proposed rule.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule is administrative in nature and only impacts the BLM's land use planning process and procedures. The BLM prepared a preliminary economic and threshold analysis as part of the record, which is available for review.

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is administrative in nature and only impacts the BLM's land use planning process and procedures. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (Executive Order 12630)*

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This rule is administrative in nature and only impacts internal BLM procedures. A takings implication assessment is not required.

*Federalism (Executive Order 13132)*

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

A Federalism assessment is not required because the rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

The only provisions that could possibly have an effect on States, is the Governor's consistency review and the increased public involvement opportunities, but these provisions would only have minimal impacts, if any.

In the Governor's consistency review, the proposed rule would not significantly impact Governors or change the existing requirements of this section. This section is revised only to clarify an existing process that has caused some confusion. The only change from existing requirements is 1610.3–2(b)(1)(ii), which would allow the Governor to waive or reduce the 60 day period during which the Governor may identify inconsistencies. This could provide a benefit to the Governor in some situations where the timely approval of a plan or amendment is necessary. The BLM is requesting comments on potentially reducing this time period in certain situations. However, as proposed, this time period would not be adjusted other than as previously discussed in proposed § 1610.3–2(b)(1)(ii). Please see the discussion on the Governor's consistency review at the preamble for proposed § 1610.3–2(b)(1)(ii).

The proposed rule could also add more opportunities for public involvement, including through the planning assessment (see § 1610.4), which could result in more engagement with State and local governments.

Neither of these instances would have a significant adverse effect on State governments.

*Civil Justice Reform (Executive Order 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) Meets the criteria of section 3(b)2 requiring that all regulations be written in clear language and contain clear legal standards.

*Consultation With Indian Tribes (Executive Order 13175 and Departmental Policy)*

This rule complies with the requirements of Executive Order 13175

and Department of the Interior Secretarial Order 3317. Specifically, in conjunction with preparation of this proposed rule, the BLM initiated consultation with potentially affected tribes. Examples of consultation to date include written correspondence and meetings/discussions about objectives of this rulemaking effort with representatives of tribal governments.

*Paperwork Reduction Act (44 U.S.C. 3501 et seq.)*

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that 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. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

This proposed rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act (44 U.S.C. 3501–3520). Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c))

An information collection request for this proposed rule has been submitted to OMB for review in accordance with 44 U.S.C. 3507(d). The information collection request is intended to correct the erroneous omission of such a request when the planning regulations at 43 CFR part 1600 were originally promulgated. The proposed rule does not significantly alter the information collection activities in the existing planning regulations.

A copy of the information collection request may be obtained from the BLM by electronic mail request to Shasta Ferranto at *sferranto@blm.gov* or by telephone request to 202–912–7352. The information collection request also may be viewed online at *http://www.reginfo.gov/public/do/PRAMain*.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

If you would like to comment on the information collection requirements of this proposed rule, please send your comments directly to OMB, with a copy to the BLM, as directed in the **ADDRESSES** section of this preamble. Please identify your comments with ''OMB Control Number 1004–XXXX.'' OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by March 28, 2016.

**Summary of Proposed Information Collection Activities**

- *Title:* Resource Management Planning (43 CFR part 1600).
- *Forms:* None.
- *OMB Control Number:* This request for a new control number is for an ongoing collection of information.
- *Description of Respondents:* Participants in the BLM land use planning process (including Governors of States; individuals; households; businesses; associations; and State, local, and tribal governments).
- *Respondents' Obligation:* Required to obtain or retain a benefit.
- *Abstract:* The BLM is requesting a new control number in a proposed rule that would revise existing regulations on procedures used to prepare, revise, or amend land use plans in accordance with FLPMA. This information collection request includes activities that have been ongoing without a control number.
- *Frequency of Collection:* On occasion.
- *Estimated Number of Respondents Annually:* 131.
- *Estimated Annual Burden Hours:* 1,965 hours.
- *Estimated Total Non-Hour Cost:* None.

Consistency

Section 202(c)(9) of FLPMA requires that the Secretary of the Interior ''assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans.'' This responsibility is delegated to the BLM Director and accomplished, in part, through the ''Governor's Consistency Review'' process described in proposed § 1610.3–2(b). This information collection activity is necessary for this process and for compliance with section 202(c)(9) of FLPMA.

Proposed § 1610.3–2(b) would provide an opportunity for Governors of affected States to identify possible inconsistencies between officially approved and adopted land use plans of State and local governments and proposed resource management plans (RMPs) or proposed amendments to RMPs and management framework plans (MFPs). Following receipt of a proposed resource management plan or plan amendment from the BLM, Governors would have a period of 60 days to submit to the deciding official a written document that:

- Identifies any inconsistencies with officially approved and adopted land use plans of State and local governments; and
- Recommends remedies for the identified inconsistencies.

The proposed regulations would provide that the BLM deciding official would notify the Governor in writing of his or her decision regarding these recommendations and the reasons for this decision. Within 30 days of this decision, the Governor would be authorized to appeal this decision to the BLM Director. The BLM Director would consider the Governor(s)' comments in rendering a final decision.

Protests

Section 202(f) of FLPMA requires that the Secretary of the Interior ''allow an opportunity for public involvement and by regulation . . . establish procedures . . . to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of public lands.'' The protest process described in proposed § 1610.6–2 would authorize protests of proposed land use plans and plan amendments before such plans or plan amendments are approved. The collection of information would assist the BLM in complying with section 202(f) of FLPMA. Proposed § 1610.6–2 would provide an opportunity for any person who participated in the preparation of the resource management plan or plan amendment to protest the approval of proposed RMPs and proposed amendments to RMPs and MFPs to the Director of the BLM. The following information would be required for submission of a valid protest:

1. The protestor's name, mailing, address, telephone number, and email address (if available). The BLM would need this information in order to contact the protestor.

2. The protestor's interest that may be adversely affected by the planning process. This information would help the BLM understand whether or not the protestor is eligible to submit a protest.

3. How the protestor participated in the preparation of the resource management plan or plan amendment. This information would help the BLM determine whether or not the protestor is eligible to submit a protest.

4. The plan component or components believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations. This information is necessary because the approval of a resource management plan is the final decision for the Department of the Interior. Plan components represent planning-level management direction with which all future decisions within a planning area must be consistent, thus it is important for the BLM to know if a plan component is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations.

5. A concise explanation of why the plan component is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations and of the associated issue or issues that were raised during the preparation of the resource management plan or plan amendment. This information would be essential to the BLM's understanding of the protest and decision to grant or dismiss the protest.

6. Copies of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record. This information would help the BLM to understand the protest and to reach a decision.

The BLM Director would be required to render a decision on the protest before approval of any portion of the resource management plan or plan amendment being protested. The Director's decision would be the final decision of the Department of the Interior.

Estimated Hour Burdens

The estimated hour burdens of the proposed supplemental collection requirements are shown in the following table. Included in the burden estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each component of the proposed information collection requirements.

ESTIMATES OF ANNUAL HOUR BURDENS

| A. Type of response | B. Number of responses | C. Hours per response | D. Total hours (Column B × Column C) |
|---|---|---|---|
| Consistency Requirements (43 CFR 1610.3–2(b)) | 27 | 15 | 405 |
| Protest Procedures/Governments (43 CFR 1610.6–2) | 16 | 15 | 240 |
| Protest Procedures/Individuals and Households (43 CFR 1610.6–2) | 32 | 15 | 480 |
| Protest Procedures/Businesses and Associations (43 CFR 1610.6–2) | 56 | 15 | 840 |
| Totals | 131 | | 1,965 |

*National Environmental Policy Act*

The BLM does not believe this rule would constitute a major Federal action significantly affecting the quality of the human environment, and has prepared preliminary documentation to this effect, explaining that a detailed statement under the National Environmental Policy Act of 1969 (NEPA) would not be required because the rule is categorically excluded from NEPA review. This rule would be excluded from the requirement to prepare a detailed statement because, as proposed, it would be a regulation entirely procedural in nature. (For further information see 43 CFR 46.210(i)). We have also determined, as a preliminary matter, that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Documentation of the proposed reliance upon a categorical exclusion has been prepared and is available for public review with the other supporting documents for this proposed rule.

*Effects on the Energy Supply (Executive Order 13211)*

This rule is not a significant energy action under the definition of Executive Order 13211. This rule is administrative in nature and affects the BLM's internal procedures. There would be no impact on the development of energy on public lands. A statement of Energy Effects is not required.

*Author*

The principal authors of this rule are Kerry Rodgers and Shasta Ferranto of the Division of Decision Support, Planning and NEPA, Washington Office, Bureau of Land Management, Department of the Interior. They were assisted by Charles Yudson of the Division of Regulatory Affairs, Washington Office, Bureau of Land Management, Department of the Interior.

**List of Subjects in 43 CFR Part 1600**

Administrative practice and procedure, Coal, Environmental impact statements, Environmental protection, Intergovernmental relations, Public lands, State and local governments.

Dated: February 9, 2016.

**Janice M. Schneider,**

*Assistant Secretary, Land and Minerals Management.*

**43 CFR Chapter II**

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR by revising part 1600 to read as follows:

## PART 1600—PLANNING, PROGRAMMING, BUDGETING

### Subpart 1601—Planning

Sec.

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1601.0–3 Authority.
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**Subpart 1610—Resource Management Planning**

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1610.3–1 Coordination of planning efforts.
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1610.4 Planning assessment.
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1610.5–4 Preparation of the draft resource management plan and selection of preferred alternatives.
1610.5–5 Selection of the proposed resource management plan and preparation of implementation strategies.
1610.6 Resource management plan approval, implementation and modification.
1610.6–1 Resource management plan approval and implementation.
1610.6–2 Protest procedures.
1610.6–3 Conformity and implementation.
1610.6–4 Monitoring and evaluation.
1610.6–5 Maintenance.
1610.6–6 Amendment.
1610.6–7 Revision.
1610.7 Management decision review by Congress.
1610.8 Designation of areas.
1610.8–1 Designation of areas unsuitable for surface mining.
1610.8–2 Designation of areas of critical environmental concern.
1610.9 Transition period.

**Authority:** 43 U.S.C. 1711–1712

## Subpart 1601—Planning

### § 1601.0–1 Purpose.

The purpose of this subpart is to establish in regulations a process for the development, approval, maintenance, and amendment of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management (BLM).

### § 1601.0–2 Objective.

The objective of resource management planning by the BLM is to promote the principles of multiple use and sustained yield on public lands unless otherwise provided by law, ensure participation by the public, State and local governments, Indian tribes and Federal agencies in the development of resource management plans, and ensure that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; that will provide for outdoor recreation and human occupancy and use, and which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands.

### § 1601.0–3 Authority.

These regulations are issued under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711–1712); the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901); section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

### § 1601.0–4 Responsibilities.

(a) The Secretary and the Director provide national level policy and procedure guidance for planning. The Director determines the deciding official and the planning area for the preparation of each resource management plan. The Director also determines the deciding official and the planning area for plan amendments that cross State boundaries.

(b) Deciding officials provide quality control and supervisory review, including approval, for the preparation and amendment of resource management plans and related environmental impact statements or environmental assessments. The deciding official determines the planning area for plan amendments that do not cross State boundaries.

(c) Responsible officials prepare resource management plans and plan amendments and related environmental impact statements or environmental assessments.

### § 1601.0–5 Definitions.

As used in this part, the term:

*Areas of Critical Environmental Concern or ACEC* means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards.

*Conformity or conformance* means that a resource management action will be clearly consistent with the plan components of the approved resource management plan.

*Cooperating agency* means an eligible governmental entity (see 43 CFR 46.225(a)) that has entered into an agreement with the BLM to participate in the development of an environmental impact statement or environmental assessment as a cooperating agency under the National Environmental Policy Act and in the planning process as described in § 1610.3–1 of this part. The BLM and the cooperating agency will work together under the terms of the agreement. Cooperating agencies will participate in the various steps of the BLM's planning process as feasible and appropriate, given the scope of their expertise and constraints of their resources.

*Deciding official* means the BLM official who is delegated the authority to approve a resource management plan or plan amendment.

*High quality information* means any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users.

*Implementation strategies* means strategies that assist in implementing future actions consistent with the plan components of the approved resource management plan. An implementation strategy is not a plan component.

*Indian tribe* means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

*Local government* means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulatory authority.

*Mitigation* means the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.

*Multiple use* means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the lands for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic

adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

*Officially approved and adopted land use plans* means land use plans prepared and approved by other Federal agencies, State and local governments, and Indian tribes pursuant to and in accordance with authorization provided by Federal, State, or local constitutions, legislation, or charters which have the force and effect of State law.

*Plan amendment* means an amendment to an approved resource management plan or management framework plan (see § 1610.6–6).

*Plan components* means the elements of a resource management with which future management actions will be consistent.

*Plan maintenance* means minor change(s) to an approved resource management plan to correct typographical or mapping errors or to reflect minor changes in mapping or data (see § 1610.6–5).

*Plan revision* means a revision of an approved resource management plan that affects the entire resource management plan or major portions of the resource management plan (see § 1610.6–7). Preparation or development of a resource management plan includes plan revisions.

*Planning area* means the geographic area for the preparation or amendment of a resource management plan.

*Planning assessment* means an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area. A planning assessment is developed to inform the preparation and, as appropriate, the implementation of a resource management plan.

*Planning issue* means disputes, controversies, or opportunities related to resource management.

*Public* means affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups, and officials of State, local, and Indian tribal governments.

*Public lands* means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the BLM. Public lands do not include lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

*Resource management plan* means a land use plan as described under section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), including plan revisions. Approval of a resource management plan is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.

*Responsible official* means a BLM official who is delegated the authority to prepare a resource management plan or plan amendment.

*Sustained yield* means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

#### § 1601.0–6 Environmental impact statement policy.

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed resource management plan will be accomplished as part of the resource management planning process and, wherever possible, the proposed resource management plan will be published in a single document with the related environmental impact statement.

#### § 1601.0–7 Scope.

(a) These regulations apply to all public lands.

(b) These regulations also govern the preparation of resource management plans when the only public land interest is the mineral estate.

#### § 1601.0–8 Principles.

The development, approval, maintenance, amendment, and revision of resource management plans will provide for public involvement and will be consistent with the principles described in section 202 of FLPMA. Additionally, the BLM will consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at appropriate scales. The BLM also will consider the impacts of resource management plans on, and the uses of, adjacent or nearby Federal and non-Federal lands, and non-public land surface over federally-owned mineral interests.

## Subpart 1610—Resource Management Planning

#### § 1610.1 Resource management planning framework.

#### § 1610.1–1 Guidance and general requirements.

(a) Guidance for preparation and amendment of resource management plans may be provided by the Director and deciding official, as needed, to help the responsible official prepare a specific resource management plan. Such guidance may include the following:

(1) Policy established through Presidential, Secretarial, Director, or deciding official approved documents, so long as such policy is consistent with the Federal laws and regulations applicable to public lands; and

(2) Analysis requirements, planning procedures, and other written information and instructions required to be considered in the planning process.

(b) The BLM will use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences. The expertise of the preparers will be appropriate to the resource values involved, the issues identified during the issue identification and environmental impact statement scoping stage of the planning process, and the principles of multiple use and sustained yield, or other applicable law. The responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.

(c) The BLM will use high quality information to inform the preparation, amendment, and maintenance of resource management plans.

#### § 1610.1–2 Plan components.

(a) Plan components guide future management actions within the planning area. Resource management plans will include the following plan components:

(1) *Goals.* A goal is a broad statement of desired outcomes addressing resource, environmental, ecological, social, or economic characteristics within a planning area, or a portion of

the planning area, toward which management of the land and resources should be directed.

(2) *Objectives.* An objective is a concise statement of desired resource conditions developed to guide progress toward one or more goals. An objective is specific, measurable, and should have established time-frames for achievement. To the extent practical, objectives should also:

(i) Identify standards to mitigate undesirable effects to resource conditions; and

(ii) Provide integrated consideration of resource, environmental, ecological, social, and economic factors.

(b) Resource management plans also will include the following plan components in order to achieve the goals and objectives of the resource management plan, or applicable legal requirements or policies, consistent with the principles of multiple use and sustained yield or other applicable law:

(1) *Designations.* A designation identifies areas of public land where management is directed toward one or more priority resource values or uses.

(i) Planning designations are identified through the BLM's land use planning process in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies such as the designation of areas of critical environmental concern (ACEC) (see § 1610.8–2).

(ii) Non-discretionary designations are designated by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities.

(2) *Resource use determinations.* A resource use determination identifies areas of public lands or mineral estate where specific uses are excluded, restricted, or allowed, in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies.

(3) *Monitoring and evaluation standards.* Monitoring and evaluation standards identify indicators and intervals for monitoring and evaluation to determine whether the resource management plan objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan.

(4) Lands identified as available for disposal from BLM administration under section 203 of FLPMA, as applicable.

(c) A plan component may only be changed through a resource management plan amendment or revision, except to correct typographical or mapping errors or to reflect minor changes in data.

**§ 1610.1–3 Implementation strategies.**

(a) A resource management plan may also include, but is not limited to, the following types of implementation strategies:

(1) *Management measures.* A management measure is one or more potential action(s) the BLM may take in order to achieve the goals and objectives of the resource management plan. Management measures may include, but are not limited to, resource management practices, best management practices, standard operating procedures, provision for the preparation of more detailed and specific plans, or other measures as appropriate;

(2) *Monitoring procedures.* Monitoring procedures describe methods for monitoring the resource management plan (see § 1610.6–4 of this part).

(b) Implementation strategies are not a plan component. Implementation strategies are intended to assist the BLM to carry out the plan components.

(c) Implementation strategies may be updated at any time if the BLM determines that relevant new information is available. Updates to an implementation strategy do not require a plan amendment or the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3. The BLM will make updates to an implementation strategy available for public review at least 30 days prior to their implementation.

**§ 1610.2 Public involvement.**

(a) The BLM will provide the public with opportunities to become meaningfully involved in and comment on the preparation and amendment of resource management plans. Public involvement in the resource management planning process will conform to the requirements of the National Environmental Policy Act and associated implementing regulations.

(b) Public involvement activities conducted by the BLM will be documented by a record or summary of the principal issues discussed and comments made. The record or summary of the principal issues discussed and comments made will be available to the public and open for 30 days to any participant who wishes to review the record or summary.

(c) Before the close of each fiscal year, the BLM will post the status of each resource management plan in process of preparation or scheduled to be started to the BLM's Web site.

**§ 1610.2–1 Public notice.**

(a) When the BLM prepares a resource management plan or amends a resource management plan and prepares an environmental impact statement to inform the amendment, the BLM will notify the public and provide opportunities for public involvement appropriate to the areas and people involved during the following steps in the planning process:

(1) Preparation of the planning assessment, as appropriate (see § 1610.4);

(2) Identification of planning issues (see § 1610.5–1);

(3) Review of the preliminary resource management alternatives and preliminary rationale for alternatives (see § 1610.5–2(c));

(4) Review of the basis for analysis (see § 1610.5–3(a)(1));

(5) Comment on the draft resource management plan (see § 1610.5–4); and

(6) Protest of the proposed resource management plan (see §§ 1610.5–5 and 1610.6–2).

(b) When the BLM amends a resource management plan and prepares an environmental assessment to inform the amendment, the BLM will notify the public and provide opportunities for public involvement appropriate to the areas and people involved during the following steps in the planning process:

(1) Identification of planning issues (see § 1610.6–6(a));

(2) Comment on the draft resource management plan amendment, as appropriate (see § 1610.6–6(a)); and

(3) Protest of the proposed resource management plan amendment (see §§ 1610.5–5 and 1610.6–2).

(c) The BLM will announce opportunities for public involvement by posting a notice on the BLM's Web site, at all BLM offices within the planning area, and at other public locations, as appropriate.

(d) Individuals or groups may request to be notified of opportunities for public involvement related to the preparation or amendment of a resource management plan. The BLM will notify those individuals or groups through written or electronic means.

(e) The BLM will notify the public at least 15 days before any public involvement activities where the public is invited to attend, such as a public meeting.

(f) When initiating the identification of planning issues (see § 1610.5–1), in addition to the public notification requirements of §§ 1610.2–1(c) and 1610.2–1(d), the BLM will notify the public as follows:

(1) When the BLM initiates the preparation of a plan amendment and

an environmental assessment will be prepared to inform the amendment, the BLM will publish a notice in appropriate media, including newspapers of general circulation in the planning area.

(2) When the BLM initiates the preparation of a resource management plan, or a plan amendment and an environmental impact statement will be prepared to inform the amendment, the BLM will also publish a notice of intent in the **Federal Register**. This notice may also constitute the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1501.7).

(3) This notice will include the following:

(i) Description of the proposed planning action;

(ii) Identification of the geographic area for which the resource management plan is to be prepared;

(iii) The general types of issues anticipated;

(iv) The expertise to be represented and used to prepare the resource management plan, in order to achieve an interdisciplinary approach (see § 1610.1–1(b));

(v) The kind and extent of public involvement opportunities to be provided, as known at the time;

(vi) The times, dates, and locations scheduled or anticipated for any public meetings, hearings, conferences, or other gatherings, as known at the time;

(vii) The name, title, address, and telephone number of the BLM official who may be contacted for further information; and

(viii) The location and availability of documents relevant to the planning process.

(g) If, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is encompassed by the range of alternatives in the final environmental impact statement or environmental assessment, but is substantially different than the proposed resource management plan or plan amendment, the BLM will notify the public and request written comments on the change before the resource management plan or plan amendment is approved (see § 1610.6–1(b)).

(h) The BLM will notify the public when a resource management plan or plan amendment has been approved.

(i) When changes are made to an approved resource management plan through plan maintenance, the BLM will notify the public and make the changes available for public review at least 30 days prior to their implementation.

(j) When changes are made to an implementation strategy, the BLM will notify the public and make the changes available for public review at least 30 days prior to their implementation.

#### § 1610.2–2 Public comment periods.

(a) Any time the BLM requests written comments during the preparation or amendment of a resource management plan, the BLM will notify the public and provide for at least 30 calendar days for response, unless a longer period is required by law or regulation.

(b) When requesting written comments on a draft plan amendment and an environmental impact statement is prepared to inform the amendment, the BLM will provide at least 45 calendar days for response. The 45-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental impact statement in the **Federal Register**.

(c) When requesting written comments on a draft resource management plan and draft environmental impact statement, the BLM will provide at least 60 calendar days for response. The 60-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental impact statement in the **Federal Register**.

#### § 1610.2–3 Availability of the resource management plan.

(a) The BLM will make copies of the draft, proposed, and approved resource management plan or plan amendment reasonably available to the public. At a minimum, the BLM will make copies of these documents available electronically and at all BLM offices within the planning area.

(b) Upon request, the BLM will make single printed copies of the draft or proposed resource management plan or plan amendment available to individual members of the public during the public involvement process. After the BLM approves a resource management plan or plan amendment, the BLM may charge a fee for additional printed copies. Fees for reproducing requested documents beyond those used as part of the public involvement activities and other than single printed copies of the resource management plan or plan amendment may be charged according to the Department of the Interior schedule for Freedom of Information Act requests in 43 CFR part 2.

### § 1610.3 Coordination with other Federal agencies, State and local governments, and Indian tribes.

#### § 1610.3–1 Coordination of planning efforts.

(a) *Objectives of coordination.* In addition to the public involvement prescribed by § 1610.2, and to the extent consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations, the following coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes. The objectives of this coordination are for the BLM to:

(1) Keep apprised of non-BLM plans;

(2) Assure that the BLM considers those plans that are germane in the development of resource management plans for public lands;

(3) Assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans;

(4) Provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes, in the development of resource management plans, including early notice of final decisions that may have a significant impact on non-Federal lands; and

(5) Where possible and appropriate, develop resource management plans collaboratively with cooperating agencies.

(b) *Cooperating agencies.* When preparing a resource management plan, the responsible official will follow applicable regulations regarding the invitation of eligible governmental entities (see 43 CFR 46.225) to participate as cooperating agencies. The same requirement applies when the BLM amends a resource management plan and prepares an environmental impact statement to inform the amendment.

(1) When a cooperating agency is a non-Federal agency, a memorandum of understanding will be used and will include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the BLM of any documents, including drafts (see 43 CFR 46.225(d)).

(2) The responsible official will collaborate with cooperating agencies, as feasible and appropriate given their interests, scope of expertise and the constraints of their resources, during the following steps in the planning process:

(i) Preparation of the planning assessment (see § 1610.4);

(ii) Identification of planning issues (see § 1610.5–1);

(iii) Formulation of resource management alternatives (see § 1610.5–2);

(iv) Estimation of effects of alternatives (see § 1610.5–3);

(v) Preparation of the draft resource management plan (see § 1610.5–4); and

(vi) Preparation of the proposed resource management plan and implementation strategies (see § 1610.5–5).

(c) *Coordination requirements.* The BLM will provide Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs.

(1) To facilitate coordination with State governments, deciding officials should seek the input of the Governor(s) on the timing, scope, and coordination of resource management planning; definition of planning areas; scheduling of public involvement activities; and resource management opportunities and constraints on public lands.

(2) Deciding officials may seek written agreements with Governors or their designated representatives on processes and procedural topics such as exchanging information, providing advice and participation, and timeframes for receiving State government participation and review in a timely fashion. If an agreement is not reached, the deciding official will provide opportunity for Governor and State agency review, advice, and suggestions on issues and topics that the deciding official has reason to believe could affect or influence State government programs.

(3) The responsible official will notify relevant State agencies of opportunities for public involvement in the preparation and amendment of resource management plans consistent with State procedures for coordination of Federal activities for circulation among State agencies, if such procedures exist. The responsible official also will notify Federal agencies, the elected heads of county boards, other local government units, and elected government officials of Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment. These notices will be issued simultaneously with the public notices required under § 1610.2–1 of this part.

(4) The BLM will provide Federal agencies, State and local governments, and Indian tribes the time period prescribed under § 1610.2 of this part for review and comment on resource management plans and plan amendments.

(d) *Resource advisory councils.* When an advisory council has been formed under section 309 of FLPMA for the area addressed in a resource management plan or plan amendment, the BLM will inform that council, seek its views, and consider them throughout the planning process.

**§ 1610.3–2 Consistency requirements.**

(a) Resource management plans will be consistent with officially approved or adopted land use plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds practical and consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations.

(1) The BLM will, to the extent practical, keep apprised of officially approved and adopted land use plans of State and local governments and Indian tribes and give consideration to those plans that are germane in the development of resource management plans.

(2) The BLM is not required to address the consistency requirements of this section if the responsible official has not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

(3) If a Federal agency, State and local government, or Indian tribe notifies the responsible official, in writing, of what they believe to be specific inconsistencies between the BLM resource management plan and their officially approved and adopted land use plans, the resource management plan documentation will show how those inconsistencies were addressed and, if possible, resolved.

(4) Where the officially approved and adopted land use plans of State and local government differ from each other, those of the higher authority will normally be followed.

(b) *Governor's consistency review.* Prior to the approval of a proposed resource management plan or plan amendment, the deciding official will submit to the Governor of the State(s) involved, the proposed resource management plan or plan amendment and will identify any relevant known inconsistencies with the officially approved and adopted land use plans of State and local governments.

(1) The Governor(s) may submit a written document to the deciding official within 60 days after receiving the proposed resource management plan or plan amendment that:

(i) Identifies inconsistencies with officially approved and adopted land use plans of State and local governments and provides recommendations to remedy the identified inconsistencies; or

(ii) Waives or reduces the 60-day period.

(2) If the Governor(s) does not respond within the 60-day period, the resource management plan or plan amendment is presumed to be consistent.

(3) If the document submitted by the Governor(s) recommends substantive changes that were not considered during the public involvement process, the BLM will notify the public and request written comments on these changes.

(4) The deciding official will notify the Governor(s) in writing of his or her decision regarding these recommendations and the reasons for this decision.

(i) The Governor(s) may submit a written appeal to the Director within 30 days after receiving the deciding official's decision.

(ii) The Director will consider the Governor(s)' comments in rendering a final decision. The Director will notify the Governor(s) in writing of his or her decision regarding the Governor's appeal. The BLM will notify the public of this decision and make the written decision available to the public.

**§ 1610.4 Planning assessment.**

Before initiating the preparation of a resource management plan the BLM will, consistent with the nature, scope, scale, and timing of the planning effort, complete a planning assessment.

(a) *Information gathering.* The responsible official will:

(1) Arrange for relevant resource, environmental, ecological, social, economic, and institutional data and information to be gathered, or assembled if already available, including the identification of potential ACECs (see § 1610.8–2). Inventory data and information will be gathered in a manner that aids the planning process and avoids unnecessary data-gathering;

(2) Identify relevant national, regional, or local policies, guidance, strategies or plans for consideration in the planning assessment. These may include, but are not limited to, executive or Secretarial orders, Departmental or BLM policy, Director or deciding official guidance, mitigation strategies, interagency initiatives, and State or multi-state resource plans;

(3) Provide opportunities for other Federal agencies, State and local

governments, Indian tribes, and the public to provide existing data and information or suggest other policies, guidance, strategies, or plans described under paragraph (a)(2) of this section, for the BLM's consideration in the planning assessment; and

(4) Identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area.

(b) *Information quality.* The responsible official will evaluate the data and information gathered under paragraph (a) of this section to determine if it is high quality information appropriate for use in the planning assessment and to identify any data gaps or further information needs.

(c) *Assessment.* The responsible official will assess the resource, environmental, ecological, social, and economic conditions of the planning area. At a minimum, the responsible official will consider and document the following factors in this assessment when they are applicable:

(1) Resource management authorized by FLPMA and other relevant authorities;

(2) Land status and ownership, existing resource uses, infrastructure, and access patterns in the planning area;

(3) Current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions;

(4) Known resource thresholds, constraints, or limitations;

(5) Areas of potential importance within the planning area, including:

(i) Areas of tribal, traditional, or cultural importance;

(ii) Habitat for special status species, including State and/or federally-listed threatened and endangered species;

(iii) Other areas of key fish and wildlife habitat such as big game wintering and summer areas, bird nesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact habitat;

(iv) Areas of ecological importance, such as areas that increase the ability of terrestrial and aquatic ecosystems within the planning area to adapt to, resist, or recover from change;

(v) Lands with wilderness characteristics, candidate wild and scenic rivers, or areas of significant scenic value;

(vi) Areas of significant historical value, including paleontological sites;

(vii) Existing designations located in the planning area, such as wilderness, wilderness study areas, wild and scenic rivers, national scenic or historic trails, or ACECs;

(viii) Areas with potential for renewable or non-renewable energy development or energy transmission;

(ix) Areas of importance for recreation activities or access;

(x) Areas of importance for public health and safety, such as abandoned mine lands or natural hazards;

(6) Dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change; and

(7) The various goods and services, including ecological services, that people obtain from the planning area such as:

(i) The degree of local, regional, national, or international importance of these goods and services;

(ii) Available forecasts and analyses related to the supply and demand for these goods and services; and

(iii) The estimated levels of these goods and services that may be produced on a sustained yield basis.

(d) *Planning assessment report.* The responsible official will document the planning assessment in a report made available for public review, which includes the identification and rationale for potential ACECs. To the extent practical, any non-sensitive geospatial information used in the planning assessment should be made available to the public on the BLM's Web site.

(e) *Plan amendments.* Before initiating the preparation of a plan amendment for which an environmental impact statement will be prepared, the BLM will complete a planning assessment for the geographic area being considered for amendment. The deciding official may waive this requirement for minor amendments or if an existing planning assessment is determined to be adequate.

**§ 1610.5 Preparation of a resource management plan.**

When preparing a resource management plan, or a plan amendment for which an environmental impact statement will be prepared, the BLM will follow the process described in §§ 1610.5–1 through 1610.5–7.

**§ 1610.5–1 Identification of planning issues.**

(a) The responsible official will prepare a preliminary statement of purpose and need, which briefly indicates the underlying purpose and need to which the BLM is responding (see 43 CFR 46.420). This statement will be informed by Director and deciding official guidance (see § 1610.1–1(a)), public views (see § 1610.4(a)(4)), the planning assessment (see § 1610.4(c)), the results of any previous monitoring and evaluation within the planning area (see § 1610.6–4), Federal laws and regulations applicable to public lands, and the purposes, policies, and programs of such laws and regulations. The BLM will initiate the identification of planning issues by notifying the public and making the preliminary statement of purpose and need available for public review.

(b) The public, other Federal agencies, State and local governments, and Indian tribes will be given an opportunity to suggest concerns, needs, opportunities, conflicts or constraints related to resource management for consideration in the preparation of the resource management plan. The responsible official will analyze those suggestions and other available data and information, such as the planning assessment (see § 1610.4–1), and determine the planning issues to be addressed during the planning process. Planning issues may be modified during the planning process to incorporate new information. The identification of planning issues should be integrated with the scoping process required by regulations implementing the National Environmental Policy Act (40 CFR 1501.7).

**§ 1610.5–2 Formulation of resource management alternatives.**

(a) *Alternatives development.* The BLM will consider all reasonable resource management alternatives (alternatives) and develop several complete alternatives for detailed study. The decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM.

(1) The alternatives developed will be informed by the Director and deciding official guidance (see § 1610.1(a)), the planning assessment (see § 1610.4), and the planning issues (see § 1610.5–1).

(2) In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, reasonable variations may be treated as sub-alternatives.

(3) One alternative will be for no action, which means continuation of present level or systems of resource management.

(4) The resource management plan will note any alternatives identified and eliminated from detailed study and will briefly discuss the reasons for their elimination.

(b) *Rationale for alternatives.* The resource management plan will describe the rationale for the differences between alternatives. The rationale will include:

(1) A description of how each alternative addresses the planning

issues, consistent with the principles of multiple use and sustained yield, or other applicable law;

(2) A description of management direction that is common to all alternatives; and

(3) A description of how management direction varies across alternatives to address the planning issues.

(c) *Public review of preliminary alternatives.* The responsible official will make the preliminary alternatives and the preliminary rationale for alternatives available for public review prior to the publication of the draft resource management plan and draft environmental impact statement.

(d) *Changes to preliminary alternatives.* The BLM may change the preliminary alternatives and preliminary rationale for alternatives as planning proceeds if it determines that public suggestions or other new information make such changes necessary.

#### § 1610.5–3 Estimation of effects of alternatives.

(a) *Basis for analysis.* The responsible official will identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social, and economic effects of implementing each alternative considered in detail.

(1) The responsible official will make the preliminary procedures, assumptions, and indicators available for public review prior to the publication of the draft resource management plan and draft environmental impact statement.

(2) The BLM may change the procedures, assumptions, and indicators as planning proceeds if it determines that public suggestions or other new information make such changes necessary.

(b) *Effects analysis.* The responsible official will estimate and display the environmental, ecological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects will be guided by the basis for analysis, the planning assessment, and procedures implementing the National Environmental Policy Act. The estimate may be stated in terms of probable ranges where effects cannot be precisely determined.

#### § 1610.5–4 Preparation of the draft resource management plan and selection of preferred alternatives.

(a) The responsible official will prepare a draft resource management plan based on Director and deciding official guidance, the planning assessment, the planning issues, and the estimation of the effects of alternatives. The draft resource management plan and draft environmental impact statement will evaluate the alternatives, identify one or more preferred alternatives, and explain the rationale for the preference. The decision to select a preferred alternative remains the exclusive responsibility of the BLM. The resulting draft resource management plan and draft environmental impact statement will be forwarded to the deciding official for publication and filing with the Environmental Protection Agency.

(b) This draft resource management plan and draft environmental impact statement will be provided for comment to the Governor(s) of the State(s) involved, and to officials of other Federal agencies, State and local governments, and Indian tribes that the deciding official has reason to believe would be interested (see § 1610.3–1(c)). This action constitutes compliance with the requirements of § 3420.1–7 of this title.

#### § 1610.5–5 Selection of the proposed resource management plan and preparation of implementation strategies.

(a) After publication of the draft resource management plan and draft environmental impact statement, the responsible official will evaluate the comments received and prepare the proposed resource management plan and final environmental impact statement.

(b) The responsible official will prepare implementation strategies for the proposed resource management plan, as appropriate.

(c) The deciding official will publish these documents and file the final environmental impact statement with the Environmental Protection Agency.

### § 1610.6 Resource management plan approval, implementation and modification.

#### § 1610.6–1 Resource management plan approval and implementation.

(a) The deciding official may approve the resource management plan or plan amendment for which an environmental impact statement was prepared no earlier than 30 days after the Environmental Protection Agency publishes a notice of availability of the final environmental impact statement in the **Federal Register**.

(b) Approval will be withheld on any portion of a resource management plan or plan amendment being protested (see § 1610.6–2) until final action has been completed on such protest. If, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is encompassed by the range of alternatives in the final environmental impact statement or environmental assessment, but is substantially different than the proposed resource management plan or plan amendment, the BLM will notify the public and request written comments on the change before the resource management plan or plan amendment is approved.

(c) The approval of a resource management plan or a plan amendment for which an environmental impact statement is prepared will be documented in a concise public record of the decision (see 40 CFR 1505.2).

#### § 1610.6–2 Protest procedures.

(a) Any person who participated in the preparation of the resource management plan or plan amendment and has an interest which may be adversely affected by the approval of a proposed resource management plan or plan amendment may protest such approval. A protest may raise only those issues which were submitted for the record during the preparation of the resource management plan or plan amendment (see §§ 1610.4 and 1610.5).

(1) *Submission.* The protest must be in writing and must be filed with the Director. The protest may be filed as a hard-copy or electronically. The responsible official will specify protest filing procedures for each resource management plan or plan amendment, including the method the public may use to submit a protest electronically.

(2) *Timing.* For resource management plans or plan amendments for which an environmental impact statement was prepared, the protest must be filed within 30 days after the date the Environmental Protection Agency published the notice of availability of the final environmental impact statement in the **Federal Register**. For plan amendments for which an environmental assessment was prepared, the protest must be filed within 30 days after the date that the BLM notifies the public of availability of the amendment.

(3) *Content requirements.* The protest must:

(i) Include the name, mailing address, telephone number, email address (if available), and interest of the person filing the protest;

(ii) State how the protestor participated in the preparation of the resource management plan or plan amendment;

(iii) Identify the plan component(s) believed to be inconsistent with Federal laws or regulations applicable to public

lands, or the purposes, policies and programs of such laws and regulations;

(iv) Concisely explain why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs of such laws and regulations and identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment; and

(v) Include a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record.

(4) *Availability.* Upon request, the Director will make protests available to the public.

(b) Except as otherwise provided in § 1610.6–1(b), the Director will render a written decision on all protests before approval of the resource management plan or plan amendment. The Director will notify protesting parties of the decision. The decision on the protest and the reasons for the decision will be made available to the public. The decision of the Director is the final decision of the Department of the Interior.

(c) The Director may dismiss any protest that does not meet the requirements of this section.

**§ 1610.6–3 Conformity and implementation.**

(a) All future resource management authorizations and actions, and subsequent more detailed or specific planning, will conform to the plan components of the approved resource management plan.

(b) After a resource management plan or plan amendment is approved, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement, or other instrument of occupancy and use, the BLM will take appropriate measures, subject to valid existing rights, to make operations and activities under existing permits, contracts, cooperative agreements, or other instruments for occupancy and use, conform to the plan components of the approved resource management plan or plan amendment within a reasonable period of time. Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or plan amendment may appeal such action pursuant to 43 CFR 4.400 at the time the specific action is proposed for implementation.

(c) If a proposed action is not in conformance with a plan component, and the deciding official determines that such action warrants further consideration before a resource management plan revision is scheduled, such consideration will be through a resource management plan amendment in accordance with § 1610.6–6 of this part.

(d) More detailed and site specific plans for coal, oil shale and tar sand resources will be prepared in accordance with specific regulations for those resources: part 3400 of this title for coal; part 3900 of this title for oil shale; and part 3140 of this title for tar sand. These activity plans will be in conformance with land use plans prepared and approved under the provisions of this part.

**§ 1610.6–4 Monitoring and evaluation.**

The BLM will monitor and evaluate the resource management plan in accordance with the monitoring and evaluation standards and monitoring procedures to determine whether there is sufficient cause to warrant amendment or revision of the resource management plan. The responsible official will document the evaluation of the resource management plan in a report made available for public review.

**§ 1610.6–5 Maintenance.**

Resource management plans may be maintained as necessary to correct typographical or mapping errors or to reflect minor changes in mapping or data. Maintenance will not change a plan component of the approved resource management plan, except to correct typographical or mapping errors or to reflect minor changes in mapping or data. Maintenance is not considered a resource management plan amendment and does not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this part or the preparation of an environmental assessment or environmental impact statement. When changes are made to an approved resource management plan through plan maintenance, the BLM will notify the public and make the changes available for public review at least 30 days prior to their implementation.

**§ 1610.6–6 Amendment.**

(a) A plan component may be changed through amendment. An amendment may be initiated when the BLM determines monitoring and evaluation findings, new high quality information, new or revised policy, a proposed action, or other relevant changes in circumstances, such as changes in resource, environmental, ecological, social, or economic conditions, warrants a change to one or more of the plan components of the approved resource management plan. An amendment will be made in conjunction with an environmental assessment of the proposed change, or an environmental impact statement, if necessary. When amending a resource management plan, the BLM will provide for public involvement (see § 1610.2), interagency coordination and consistency (see § 1610.3), and protest (see § 1610.6–2). In all cases, the effect of the amendment on other plan components will be evaluated. If the amendment is being considered in response to a specific proposal, the effects analysis required for the proposal and for the amendment may occur simultaneously.

(b) If the environmental assessment does not disclose significant impacts, the responsible official may make a finding of no significant impact and then make a recommendation on the amendment to the deciding official for approval. Upon approval, the BLM will issue a public notice of the action taken on the amendment. If the amendment is approved, it may be implemented 30 days after such notice.

(c) If the BLM amends several resource management plans simultaneously, a single programmatic environmental impact statement or environmental assessment may be prepared to address all amendments.

**§ 1610.6–7 Revision.**

The BLM may revise a resource management plan, as necessary, when monitoring and evaluation findings (§ 1610.4–9), new data, new or revised policy, or other relevant changes in circumstances affect the entire resource management plan or major portions of the resource management plan. Revisions will comply with all of the requirements of this part for preparing and approving a resource management plan.

**§ 1610.6–8 Situations where action can be taken based on another agency's plan, or a land use analysis.**

These regulations authorize the preparation of a resource management plan for whatever public land interests exist in a given land area, including mixed ownership where the public land estate is under non-Federal surface, or administration of the land is shared by the BLM and another Federal agency. The BLM may rely on the plans or the land use analysis of other agencies when split or shared estate conditions exist in any of the following situations:

(a) Another agency's plan (Federal, tribal, State, or local) may be relied on

as a basis for an action only if it is comprehensive and has considered the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public involvement, and is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations.

(b) After evaluation and review, the BLM may adopt another agency's plan for continued use as a resource management plan so long as the plan is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs of such laws and regulations, and an agreement is reached between the BLM and the other agency to provide for maintenance and amendment of the plan, as necessary.

(c) A land use analysis may be relied on to consider a coal lease when there is no Federal ownership interest in the surface or when coal resources are insufficient to justify plan preparation costs. The land use analysis process, as authorized by the Federal Coal Leasing Amendments Act, consists of an environmental assessment or impact statement, public participation as required by § 1610.2, the consultation and consistency determinations required by § 1610.3, the protest procedure prescribed by § 1610.6–2, and a decision on the coal lease proposal. A land use analysis meets the planning requirements of section 202 of FLPMA.

**§ 1610.7 Management decision review by Congress.**

FLPMA requires that any BLM management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, will be reported by the Secretary to Congress before it can be implemented. This report is not required prior to approval of a resource management plan which, if fully or partially implemented, would result in such an elimination of use(s). The required report will be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use.

**§ 1610.8 Designation of areas.**

**§ 1610.8–1 Designation of areas unsuitable for surface mining.**

(a)(1) The planning process is the chief process by which public land is reviewed to assess whether there are areas unsuitable for all or certain types of surface coal mining operations under section 522(b) of the Surface Mining Control and Reclamation Act. The unsuitability criteria to be applied during the planning process are found in § 3461.1 of this title.

(2) When petitions to designate land unsuitable under section 522(c) of the Surface Mining Control and Reclamation Act are referred to the BLM for comment, the resource management plan, or plan amendment if available, will be the basis for review.

(3) After a resource management plan or plan amendment is approved in which lands are assessed as unsuitable, the BLM will take all necessary steps to implement the results of the unsuitability review as it applies to all or certain types of coal mining.

(b)(1) The resource management planning process is the chief process by which public lands are reviewed for designation as unsuitable for entry or leasing for mining operations for minerals and materials other than coal under section 601 of the Surface Mining Control and Reclamation Act.

(2) When petitions to designate lands unsuitable under section 601 of the Surface Mining Control and Reclamation Act are received by the BLM, the resource management plan, if available, will be the basis for determinations for designation.

(3) After a resource management plan or plan amendment in which lands are designated unsuitable is approved, the BLM will take all necessary steps to implement the results of the unsuitability review as it applies to minerals or materials other than coal.

**§ 1610.8–2 Designation of areas of critical environmental concern.**

(a) Areas having potential for ACEC designation and protection will be identified through inventory of public lands and during the planning assessment. The inventory data will be analyzed to determine whether there are areas containing resources, values, systems or processes, or hazards eligible for further consideration for designation as an ACEC. In order to be a potential ACEC, both of the following criteria must be met:

(1) *Relevance.* There must be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard; and

(2) *Importance.* The value, resource, system, process, or hazard described in paragraph (a)(1) of this section must have substantial significance and values. This generally requires qualities of special worth, consequence, meaning, distinctiveness, or cause for concern. A natural hazard can be important if it is a significant threat to human life or property.

(b) Potential ACECs will be considered for designation during the preparation or amendment of a resource management plan. The identification of a potential ACEC does not, in of itself, change or prevent change of the management or use of public lands. Potential ACECs require special management attention (when such areas are developed or used or no development is required) to protect and prevent irreparable damage to the important historic, cultural, or scenic values, fish and wildlife resources or other natural system or process, or to protect life and safety from natural hazards.

(1) Upon release of a draft resource management plan or plan amendment involving a potential ACEC, the BLM will notify the public of each potential ACEC and any special management attention which would occur if it were formally designated.

(2) The approval of a resource management plan or plan amendment that contains an ACEC constitutes formal designation of an ACEC. The approved plan will include a list of all designated ACECs, and include any special management attention identified to protect the designated ACECs.

**§ 1610.9 Transition period.**

(a) Until superseded by resource management plans, management framework plans may be the basis for considering proposed actions as follows:

(1) The management framework plan must be in compliance with the principle of multiple use and sustained yield, or other applicable law, and must have been developed with public involvement and governmental coordination, but not necessarily precisely as prescribed in §§ 1610.2 and 1610.3 of this part.

(2) For proposed actions a determination will be made by the responsible official whether the proposed action is in conformance with the management framework plan. Such determination will be in writing and will explain the reasons for the determination.

(i) If the proposed action is in conformance with the management framework plan, it may be further considered for decision under procedures applicable to that type of action, including the regulatory provisions of the National Environmental Policy Act.

(ii) If the proposed action is not in conformance with the management framework plan, and if the proposed

action warrants further consideration before a resource management plan is scheduled for preparation, such consideration will be through an amendment to the management framework plan under the provisions of § 1610.6–6 of this part.

(b)(1) If an action is proposed where public lands are not covered by a management framework plan or a resource management plan, an environmental assessment or an environmental impact statement, if necessary, plus any other data and analysis deemed necessary by the BLM to make an informed decision, will be used to assess the impacts of the proposal and to provide a basis for a decision on the proposal.

(2) A land disposal action may be considered before a resource management plan is scheduled for preparation, through a planning analysis, using the process described in § 1610.6–6 of this part for amending a plan.

(c)(1) When considering whether a proposed action is in conformance with a resource management plan, the BLM will use an existing resource management plan approved prior to April 25, 2016 until it is superseded by a resource management plan or plan amendment prepared under the regulations in this part. In such circumstances, the proposed action must either be specifically provided for in the resource management plan or clearly consistent with the terms, conditions, and decisions of the approved plan.

(2) If a resource management plan is amended by a plan amendment prepared under the regulations in this part, a future proposed action must either be consistent with the plan components of the approved resource management plan or the terms, conditions, and decisions of the approved resource management plan.

(d) If the preparation, revision, or amendment of a plan was formally initiated by issuance of a notice of intent in the **Federal Register** prior to April 25, 2016, the BLM may complete and approve the resource management plan or plan amendment pursuant to the requirements of this part or to the provisions of the planning regulations in 43 CFR part 1600 (revised as of October 1, 2015).

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Part IV

## The President

Proclamation 9398—Modifying and Continuing the National Emergency With Respect to Cuba and Continuing To Authorize the Regulation of the Anchorage and Movement of Vessels

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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9398 of February 24, 2016**

## Modifying and Continuing the National Emergency With Respect to Cuba and Continuing To Authorize the Regulation of the Anchorage and Movement of Vessels

**By the President of the United States of America**

**A Proclamation**

By the authority vested in me by the Constitution and the laws of the United States of America, in order to modify and continue the national emergency declared in Proclamation 6867 of March 1, 1996, and expanded by Proclamation 7757 of February 26, 2004, in light of the need to continue the national emergency based on a disturbance or threatened disturbance of the international relations of the United States related to Cuba, and,

WHEREAS the descriptions of the national emergency set forth in Proclamations 6867 and 7757 no longer reflect the international relations of the United States related to Cuba;

WHEREAS longstanding U.S. policy towards Cuba had, at times, tended to isolate the United States from regional and international partners, constrained our ability to influence outcomes throughout the Western Hemisphere, and impaired the use of the full range of tools available to the United States to promote positive change in Cuba;

WHEREAS the following descriptions accurately describe the national emergency with respect to Cuba;

WHEREAS the United States and Cuba reestablished diplomatic relations and opened embassies in each other's capitals on July 20, 2015, and the United States continues to pursue the progressive normalization of relations while aspiring towards a peaceful, prosperous, and democratic Cuba;

WHEREAS the United States has committed to work with the Government of Cuba on matters of mutual concern that advance U.S. national interests, such as migration, human rights, counter-narcotics, environmental protection, and trafficking in persons, among other issues;

WHEREAS the United States is committed to supporting safe, orderly, and legal migration from Cuba through the effective implementation of the 1994–95 U.S.-Cuba Migration Accords;

WHEREAS the Cuban economy is in a relatively weak state, contributing to an outflow of its nationals towards the United States and neighboring countries;

WHEREAS the overarching objective of U.S. policy is stability in the region, and the outflow of Cuban nationals may have a destabilizing effect on the United States and its neighboring countries;

WHEREAS it is United States policy that a mass migration from Cuba would endanger the security of the United States by posing a disturbance or threatened disturbance of the international relations of the United States;

WHEREAS the United States continues to maintain an embargo with respect to Cuba;

WHEREAS the unauthorized entry of vessels subject to the jurisdiction of the United States into Cuban territorial waters is in violation of U.S. law and contrary to U.S. policy;

WHEREAS the unauthorized entry of United States-registered vessels into Cuban territorial waters is detrimental to the foreign policy of the United States, and counter to the purpose of Executive Order 12807, which is to ensure, among other things, safe, orderly, and legal migration;

WHEREAS the possibility of large-scale unauthorized entries of United States-registered vessels would disturb the international relations of the United States by facilitating a possible mass migration of Cuban nationals;

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 1 of title II of Public Law 65–24, ch. 30, June 15, 1917, as amended (50 U.S.C. 191), sections 201, 202, and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, in order to modify the scope of the national emergency declared in Proclamations 6867 and 7757, and to secure the observance of the rights and obligations of the United States, hereby continue the national emergency with regard to Cuba as set forth above and authorize and direct the Secretary of Homeland Security (the ''Secretary'') to make and issue such rules and regulations as the Secretary may find appropriate to regulate the anchorage and movement of vessels, and authorize and approve the Secretary's issuance of such rules and regulations, as authorized by the Act of June 15, 1917. Accordingly, I hereby direct:

**Section 1**. The Secretary may make rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions, or result in unauthorized transactions, and thereby threaten a disturbance of international relations. Any rule or regulation issued pursuant to this proclamation may be effective immediately upon issuance as such rule or regulation shall involve a foreign affairs function of the United States.

**Sec. 2**. The Secretary is authorized, to the extent consistent with international law, to inspect any vessel, foreign or domestic, in the territorial waters of the United States, at any time; to place guards on any such vessel; and, with my consent expressly hereby granted, take full possession and control of any such vessel and remove the officers and crew and all other persons not specifically authorized by the Secretary to go or remain on board the vessel when necessary to secure the rights and obligations of the United States.

**Sec. 3**. The Secretary may request assistance from such departments, agencies, officers, or instrumentalities of the United States as the Secretary deems necessary to carry out the purposes of this proclamation. Such departments, agencies, officers, or instrumentalities shall, consistent with other provisions of law and to the extent practicable, provide requested assistance.

**Sec. 4**. The Secretary may seek assistance from State and local authorities in carrying out the purposes of this proclamation. Because State and local assistance may be essential for an effective response to this emergency, I urge all State and local officials to cooperate with Federal authorities and to take all actions within their lawful authority necessary to prevent the unauthorized departure of vessels intending to enter Cuban territorial waters.

**Sec. 5**. All powers and authorities delegated by this proclamation to the Secretary may be delegated by the Secretary to other officers and agents of the United States Government unless otherwise prohibited by law.

**Sec. 6**. Any provisions of Proclamation 6867 of March 1, 1996, and expanded by Proclamation 7757 of February 26, 2004, that are inconsistent with the provisions of this proclamation are superseded to the extent of such inconsistency.

**Sec. 7**. This proclamation shall be immediately transmitted to the Congress and published in the *Federal Register*.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of February, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

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