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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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RIN 1890–AA19

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Direct Grant Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adopts as final regulations of the Department the interim final regulations that were published on December 19, 2014. This action adopts the OMB guidance in title 2 of the CFR as final regulations of the Department. The Secretary amends the interim final regulations to correct technical errors contained in the amendments.

DATES: These regulations are effective December 2, 2015.

FOR FURTHER INFORMATION CONTACT: Phillip Juengst, U.S. Department of Education, 400 Maryland Avenue SW., Room 6056, PCP, Washington, DC 20202–4450. Telephone: (202) 245–8030 or by email: *phillip.juengst@ed.gov.*

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SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: On December 19, 2014, all of the Federal award-making agencies published a joint Interim Final Rule (IFR) in the **Federal Register**, implementing the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards (Uniform Guidance). The purpose of this action is to adopt the Uniform Guidance in 2 CFR part 200, except for 2 CFR 200.102(a), CFR 200.207(a). This adoption gives regulatory effect to the OMB guidance and supplements that guidance, as needed, for the Department. The authority to amend chapter XXXIV of title 2 of the Code of Federal Regulations and subtitle A and chapters I, II, III, IV, V, and VI of title 34 of the Code of Federal Regulations is 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200, unless otherwise noted.

Summary of the Major Provisions of This Regulatory Action: This rule allows the Department to incorporate into regulation and thus bring into effect the Uniform Guidance as required by OMB and reduces administrative burden and risk of waste, fraud, and abuse for the funds awarded by the Department through grants and cooperative agreements.

Costs and Benefits: The Secretary believes that these regulations do not impose significant costs on entities that would receive assistance through Department of Education programs. The benefits of the regulations far outweigh any potential costs incurred by entities. The benefits of the amendments in these regulations include eliminating duplicative and conflicting guidance contained in eight previously separate sets of OMB guidance documents; streamlining reporting requirements; reducing burden for entities that have never received an indirect cost rate; and setting standard business processes using data definitions to reduce administrative burden on non-Federal entities that conduct business with multiple federal agencies.

On December 19, 2014, the Secretary published an IFR for these amendments in the **Federal Register** (79 FR 75871).

Except for minor editorial and technical revisions, there are no differences between the IFR and these final regulations.

Technical Changes

The Secretary makes two amendments to the interim final regulations to correct errors made in the adoption of the Uniform Guidance. First, in amending § 75.135 to reference the Uniform Guidance, the Department failed to amend paragraph (b) of that section to reference the correct requirement in part 200. Second, in amending 34 CFR part 75, the Department inadvertently removed § 75.263 when we should have just revised the cross references in that section to refer to the appropriate citation in the Uniform Guidance. These two errors are corrected in these final regulations.

Public Comment: In response to our invitation in the IFR, one party submitted comments directed at the Department's proposed adoption of the interim final regulations in 2 CFR part 200. Generally, we do not address technical and other minor changes raised by the comments.

Analysis of Comments and Changes: An analysis of the comments follows.

Comment: The commenter requested clarification on whether or not the Department would grant local educational agencies (LEAs) a one-year grace period for implementing the procurement standards in 2 CFR 200.317 through 200.326. The commenter also sought clarity on the specific date that the procurement standards would go into effect for LEAs after the grace period.

Discussion: The Uniform Guidance regulations, as adopted by the Department, 79 FR 75872 (December 19, 2014) authorize all non-Federal entities (including LEAs) to delay implementation of the procurement requirements in 2 CFR 200.318 through 200.326 for one fiscal year after the regulations would otherwise apply to a grant. A recent technical amendment to the Uniform Guidance expanded that grace period to two years. See 80 FR 54407 (September 10, 2015). As such, each LEA will have the option of delaying implementation of the procurement standards until the end of its second fiscal year that begins after the effective date of the Uniform Guidance (December 26, 2014). For LEAs with a fiscal year that ends on June 30, 2015 that decide to defer implementation for the full two years, the LEA's new procurement standards would not have to be effective until July 1, 2017.

Changes: None.

Comment: The commenter requested clarification of the phrase ''tangible

personal benefit'' in 2 CFR 200.318(c)(1).

Discussion: The phrase ''tangible personal benefit'' is new language added to the general conflict of interest section of the general procurement standards that existed previously under the Education Department General Administrative Regulations (EDGAR) 34 CFR 80.36(b)(3) and OMB Circular A–102. The language was expanded from just ''financial or other interest in'' to also include ''or a tangible personal benefit from'' a firm considered for a contract from a grantee. This new language stresses the importance of ensuring that employees who select, award, and administer contracts supported by a Federal award are free from any real or apparent conflict of interest, including financial interests and other non-financial benefits that result in a personal benefit for the employee (such as improved employment opportunities, business referrals, political influence, etc.).

Changes: None.

Comment: The commenter expressed concern regarding the conflict of interest rules in 2 CFR 200.319(a), specifically with regard to vendors with specialized expertise that may collaborate with grant applicants, because these vendors would be excluded from competing for a contract (if the applicant is awarded a grant) due to their organizational conflict of interest. The commenter requested that the Department issue guidance allowing vendors to provide minimal input to applicants, such as LEAs, for the purpose of informing a Request for Proposal (RFP) and to not prohibit these vendors from competing for the RFP because of a conflict of interest.

Discussion: The Department understands that an LEA may need to inform itself about the capacity and capability of potential contractors in order to prepare an RFP. In the course of doing so, an LEA may contact a number of vendors to collect information necessary for developing the RFP, as long as the LEA poses its request for information broadly so that any potential vendor has an opportunity to provide input. Soliciting input from one or two vendors would create, in most cases, an unfair competitive advantage constituting an organizational conflict of interest.

Changes: None.

Comment: The commenter raised concerns with regard to the prohibition of using ''brand name'' instead of ''an equal'' product in order to avoid restrictive competition under 2 CFR 200.319(a)(6). Specifically, the commenter noted that in some cases, a school may have already invested in a particular technology infrastructure or selected a particular instructional framework and it would be impractical or impossible to switch to another product or instructional approach. The commenter requested that the Department issue guidance to clarify when specifying a ''brand name'' might be appropriate and not considered a restriction on competition under 2 CFR 200.319(a)(6).

Discussion: The new procurement requirements in the Uniform Guidance do not require an LEA to abandon a technology or instructional approach just because a similar technology or instructional approach would cost less. The Department also understands that in some limited situations, specifying a ''brand name'' may not restrict competition under 2 CFR 200.319(a)(6). If an LEA has already invested in a particular infrastructure or instructional framework, specifying a ''brand name'' compatible with the infrastructure or framework may be appropriate. However, the procurement regulations are designed to ensure competition so the selected proposal is most advantageous to the program, with price and other factors considered. Thus, the LEA needs to compete to find the lowest cost supplier of the technology or instructional approach (other factors) desired by the LEA. The Department will consider developing additional guidance on this issue.

Changes: None.

Comment: The commenter noted two instances in which it believes that procurement by noncompetitive proposals (sole sourcing) should be allowed under 2 CFR 200.320(f)(1) where ''the item is available only from a single source.'' The first situation involves instances where an LEA has an existing technology infrastructure or instructional framework and requires specific hardware or software; the second situation involves instances where schools engage in pilot trials for educational technologies or instructional strategies or materials and want to ''scale up'' the piloted product.

Discussion: Generally, procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source. The use of this procurement method is permitted under very limited circumstances, but one basis for an authorized sole source contract is when the item is available only from a single source (2 CFR 200.320(f)(1)). If particular software or hardware is required because of an LEA's existing technology infrastructure or instructional framework and the hardware or software is truly only available from one source, noncompetitive procurement may be appropriate. The LEA must maintain records documenting the rationale for why sole sourcing was used (2 CFR 200.318(i)). If the desired software or hardware is available from more than one vendor, the LEA must use a competitive process, as described in 2 CFR 200.320(d).

LEAs that engage in pilot trials of educational technologies or instructional materials that then wish to ''scale up'' are not exempted from competitive procurement. Procurement transactions must be conducted in a manner providing full and open competition, as described in 2 CFR 200.319. If an LEA wants to experiment with a new educational technology or instructional strategy or material, it may do so without violating conflict of interest requirements by holding an open procurement competition, identifying the specifications for the technology, strategy, or material and stating the initial contract would be for a pilot of that product with an option to ''scale up'' the product if the pilot proves successful.

Changes: None.

Comment: The commenter raised concerns regarding the cost and efficiency of competitive bidding required under 2 CFR 200.320, noting that it would be more cost effective for the LEA to perform a cost analysis rather than use a Request for Proposal (RFP) process. The commenter encouraged the Department to allow for instances when the small purchase procedures could be used for procurements that exceed the Simplified Acquisition Threshold, including when the item is a commercially available product.

Discussion: The Department has allowed for limited instances when small purchase procedures may be used for procurements that exceed the simplified acquisition threshold. These limited instances are specified in a section in EDGAR that was established in 2013, 34 CFR 75.135, which authorizes discretionary grant applicants to use the informal small purchase procedures to procure evaluation service providers and providers of any other service that is essential to the grant, provided that the service provider is identified in the grant application. The service provider must be needed to meet a statutory, regulatory, or priority requirement related to the competition. See the final rulemaking document, published at 78 FR 49352, August 13, 2013, for a fuller discussion of the requirements in § 75.135. These limited exceptions do

not include allowing the use of small purchase procedures just because an item is a commercial (off the self) product and not one that is custom-built based on unique specifications.

Changes: None.

Comment: The commenter sought clarification from the Department on whether or not price comparison under 2 CFR 200.323 could be considered a form of price competition, such that a non-federal entity would not be required to negotiated price as a separate element.

Discussion: Price comparison is not a form of price competition that would exempt a non-federal entity from negotiating profit as a separate element of the price.

Changes: None.

Comment: The commenter sought clarification on the definition of ''procurement'' for determining whether or not the transaction meets the small purchase or simplified acquisition threshold.

Discussion: The word ''procurement'' is used consistently throughout the Uniform Guidance and the Department does not intend to use that term differently in its implementation of the Uniform Guidance. The simplified acquisition threshold is the ''dollar amount below which a non-Federal entity may purchase property or services using small purchase methods'' (2 CFR 200.88). If a non-Federal entity seeks to acquire property or services that have an anticipated dollar value exceeding the simplified acquisition threshold, the non-Federal entity must use a competitive process and cannot use small purchase procedures unless the procurement meets the requirements of 34 CFR 75.135. Procurement actions must not be split into separate procurements to avoid competition thresholds.

Changes: None.

After consideration of all the comments regarding the IFR, the Secretary makes no changes to the regulations adopting the Uniform Guidance that were published on December 19, 2014 except for the two technical amendments discussed earlier in this preamble.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

These regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these regulations.

Assessment of Educational Impact

In the IFR we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the IFR and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in

an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Dated: October 27, 2015.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, the interim rule amending chapter XXXIV of 2 CFR and subtitle A and chapter I of title 34 of the Code of Federal Regulations, which was published at 79 FR 75871 on December 19, 2014, is adopted as a final rule with the following changes:

Title 34—Education

Subtitle A—Office of the Secretary, Department of Education

PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

§ 75.135 [Amended]

■ 2. Section 75.135(b) is amended by removing ''34 CFR 80.36(d)(1),'' and adding in its place ''2 CFR 200.320(b),''.

■ 3. Section 75.263 is added to read as follows.

§ 75.263 Pre-award costs; waiver of approval.

A grantee may, notwithstanding any requirement in 2 CFR part 200, incur pre-award costs as specified in 2 CFR 200.308(d)(1) unless—

(a) ED regulations other than 2 CFR part 200 or a statute prohibit these costs; or

(b) The conditions of the award prohibit these costs.

(Authority: 20 U.S.C. 1221e–3 and 3474; 2 CFR 200.308(d)(1))

[FR Doc. 2015–27766 Filed 10–30–15; 8:45 am]

BILLING CODE 4000–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2014–0036]

RIN 3150–AJ37

Cyber Security Event Notifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is adopting new cyber security regulations that govern nuclear power reactor licensees. This final rule codifies certain reporting activities associated with cyber security events contained in security advisories issued by the NRC. This rule establishes new cyber security event notification requirements that contribute to the NRC's analysis of the reliability and effectiveness of licensees' cyber security programs and plays an important role in the continuing effort to provide high assurance that digital computer and communication systems and networks are adequately protected against cyber attacks, up to and including the design basis threat.

DATES: *Effective Date:* This final rule is effective December 2, 2015. *Compliance Date:* Compliance with this final rule is required by May 2, 2016, for those licensed to operate under parts 50 and 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and subject to § 73.54.

ADDRESSES: Please refer to Docket ID NRC–2014–0036 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0036. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Robert H. Beall, Office of Nuclear Reactor Regulation, telephone: 301–415–3874, email: *Robert.Beall@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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I. Background

On July 9, 2008, in SECY–08–0099, ''Final Rulemaking—Power Reactor Security Requirements'' (Agencywide Documents Access and Management System (ADAMS) Accession No. ML081650474), the NRC staff recommended the Commission approve a final rule amending the NRC's Power Reactor Security Requirements. The NRC staff also recommended removing sections in the Power Reactor Security Requirements rule on new and revised security notification requirements in § 73.71 and appendix G of part 73 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Reportable

Safeguards Events,'' and placing them in a new proposed enhanced weapons rulemaking. In SRM–SECY–08–099, dated December 17, 2008 (ADAMS Accession No. ML083520252), the Commission approved the Power Reactor Security final rule and the bifurcation of the security notification requirements in § 73.71 and appendix G to 10 CFR part 73 to the new proposed enhanced weapons rule.

On June 27, 2010, in SECY–10–0085, ''Proposed Rule: Enhanced Weapons, Firearms Background Checks and Security Event Notifications'' (ADAMS Accession No. ML101110121), the NRC staff recommended delegating to the Office of the Executive Director for Operations the authority to issue new cyber security notification changes in the proposed enhanced weapons rule for publication in the **Federal Register**, as well as issue draft implementing guidance on the proposed rule. On October 19, 2010, in SRM–SECY–10–0085, ''Proposed Rule: Enhanced Weapons, Firearms Background Checks and Security Event Notifications'' (ADAMS Accession No. ML102920342), the Commission directed the NRC staff to publish a proposed rule implementing requirements for enhanced weapons, revised physical security event notifications, and adding new cyber security event notifications. This proposed rule was published in the **Federal Register** for comment on February 3, 2011 (76 FR 6199). The public was provided a total of 180 days to review and comment on the proposed rule and associated guidance.

In SECY–12–0125, ''Interim Actions to Execute Commission Preemption Authority Under Section 161A of the Atomic Energy Act of 1954, as Amended,'' dated September 20, 2012 (ADAMS Accession No. ML12171A089), the NRC staff reported their discussions with the U.S. Department of Justice on the need to revise the Firearms Guidelines to limit the firearms background check requirement to only licensees that apply for preemption authority. Subsequently in SRM—SECY–12–0125, dated November 12, 2012 (ADAMS Accession No. ML12326A653), the Commission directed the NRC staff to revise the Firearms Guidelines accordingly, and publish a supplemental proposed enhanced weapons rule for public comment as soon as possible.

On December 20, 2013, in COMSECY–13–0031, ''Bifurcation of the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule'' (ADAMS Accession No. ML13280A366), the NRC staff informed the Commission of its plan to bifurcate the cyber security event notifications from the Enhanced Weapons rule due to delays resulting from the Firearms Guidelines revision. The bifurcation would allow the NRC staff to prepare a separate final rule for cyber security event notifications, therefore avoiding any further delay associated with the aforementioned Firearms Guidelines revision. In addition, this action would supplement the existing cyber security requirements (*i.e.,* § 73.54, ''Protection of Digital Computer and Communication Systems and Networks'') included in the 2009 power reactor security rule (76 FR 6199; February 3, 2011).

As part of the 2011 proposed enhanced weapons rule, the NRC received comments on the proposed cyber security event notification requirements. Changes between the proposed rule and this final cyber security event notifications rule reflect those public comments. Additionally, Draft Regulatory Guide (DG)–5019, Revision 1, ''Reporting and Recording Safeguards Events'' (ADAMS Accession No. ML100830413), was published for public comment on February 3, 2011 (76 FR 6085). The portions of the DG related to cyber security event notifications were also separated out from the original draft guide, and are now included in a new final regulatory guide (RG) (RG 5.83, ''Cyber Security Event Notifications,'' ADAMS Accession No. ML14269A388). Changes between DG–5019, Revision 1, and RG 5.83 reflect public comment. This approach (*i.e.,* publish draft guidance with proposed rules and final guidance with final rules) is consistent with the agency's efforts to incorporate enhancements in the rulemaking process to address Cumulative Effects of Regulation (CER), as approved by SRM—SECY–0032, ''Consideration of the Cumulative Effects of Regulation in the Rulemaking Process,'' dated October 11, 2011 (ADAMS Accession No. ML112840466).

II. Discussion

The NRC is adding cyber security event notification requirements for nuclear power reactor facilities. These additions are necessary because cyber security event notification requirements were not included in the NRC's final rule that added § 73.54, ''Protection of Digital Computer and Communication Systems and Networks,'' to the NRC's regulations (74 FR 13926; March 27, 2009). Section 73.54 requires power reactor licensees to establish and maintain a cyber security program that provides high assurance that digital computer and communication systems and networks are adequately protected against cyber attacks, up to and including the design basis threat as described in § 73.1. Cyber security event notification requirements will contribute to the NRC's analysis of the reliability and effectiveness of licensees' cyber security programs and play an important role in the continuing effort to protect digital computer and communication systems and networks associated with: Safety-related and important-to-safety functions; security functions; emergency preparedness functions, to include offsite communications; and support systems and equipment which, if compromised, would adversely impact safety, security, and emergency preparedness (SSEP) functions. Notifications conducted and written reports generated by licensees will be used by the NRC to respond to emergencies, monitor ongoing events, assess trends and patterns, identify precursors of more significant events, and inform other NRC licensees of cyber security-related events, enabling them to take preemptive actions, if necessary (*e.g.,* increase their security posture). In addition, timely notifications assist the NRC in achieving its strategic communications mission by informing the U.S. Department of Homeland Security (DHS) and Federal intelligence and law enforcement agencies of cyber security-related events that could: (1) Endanger public health and safety or the common defense and security, (2) provide information for threat-assessment processes, or (3) generate public or media inquiries.

The terrorist attacks of September, 11, 2001, demonstrated that adversaries were capable of simultaneously attacking multiple sectors of critical infrastructure. After those attacks, the NRC issued several Security Orders, as well as the Design Basis Threat (DBT) final rule (72 FR 12705; March 19, 2007) and the Power Reactor Security final rule (74 FR 13926; March 27, 2009). These Orders and final rules were steps taken by the NRC to ensure adequate protection of the public health and safety and common defense and security. The DBT final rule, in § 73.1, ''Purpose and Scope,'' describes in general terms the types of attacks licensees must protect against in order to prevent radiological sabotage and to prevent theft or diversion of strategic special nuclear material. An adversary attribute included under the DBT for radiological sabotage is a cyber attack, which is a type of attack that adversaries could remotely launch against multiple targets (*i.e.,* nuclear power reactors) simultaneously. The Power Reactor Security final rule included specific

requirements to provide high assurance that digital computer and communication systems and networks are adequately protected against cyber attacks (§ 73.54). The addition of cyber security event notification requirements supplements § 73.54 by enabling the timely notifications of potential and/or imminent cyber attacks directed against licensees. This allows for more timely assessment and dissemination of threat information, and improves the NRC's ability to respond and take the actions necessary to mitigate the adverse impacts of cyber attacks directed against licensees.

Separating the cyber security event notification requirements from the Power Reactor Security proposed rule narrowed the applicability to licensees subject to the requirements of § 73.54, which applies to operating nuclear power plants after the effective date of the final cyber security rule. Under the original proposed rule published on October 26, 2006 (71 FR 62664), cyber security event notifications were included with other event notifications (physical security, enhanced weapons, etc.) requiring a broader range of applicability (*e.g.,* Fuel Cycle Facilities).

The NRC considered other options for licensees to report cyber attacks to the NRC. The NRC considered taking no additional regulatory actions and relying upon the continuation of voluntary reporting initiatives currently in place through security advisories. These voluntary reporting initiatives have allowed the NRC to identify certain cyber security-related events that might have had a negative impact upon licensees (*e.g.,* vendor software updates containing malware) as well as provided licensees with threat information that assist them in protecting against cyber security-related threats. However, the security advisories are not mandatory requirements and do not provide timeliness requirements (one-hour, four-hour, eight-hour), which can be instrumental in the NRC's ability to respond to cyber security-related events, to evaluate cyber security-related activities for threat implications, and to accomplish the agency's strategic communications mission.

III. Opportunities for Public Participation

A. Public and Stakeholder Meetings

As part of its comprehensive assessment of the NRC's cyber security event notification regulations and guidance development for this rule, the NRC staff held two meetings with internal and external stakeholders.

On June 1, 2011, staff held a public meeting to discuss the proposed Enhanced Weapons, Firearms Background Checks, and Security Event Notifications rulemaking, which included the cyber security event notification requirements. The meeting was in workshop format, and was held at the NRC Headquarters in Rockville, Maryland; it was attended by more than 50 people. Additional individuals remotely participated in the meeting through audio teleconferencing and webinar. Presenters at the meeting included NRC staff, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Federal Bureau of Investigations (FBI). Since the NRC was not accepting public comments, the meeting was not transcribed; however, a meeting summary and the handouts from the meeting are available in ADAMS under Accession No. ML111720007.

The NRC staff also met with internal and external stakeholders on July 31, 2014. This public meeting was to discuss the draft final rule implementation date for the cyber security event notification requirements. The public meeting was held at the NRC Headquarters in Rockville, Maryland, and it was attended by six individuals in person and eight individuals remotely through audio teleconferencing and webinar. The NRC staff presented the current status of the draft final cyber security event notifications rule and the draft final implementation date. The NRC transcribed the meeting in order to capture public input on the draft final implementation date. The feedback from this meeting, as well as all the previous interactions, informed the NRC's schedule for the implementation of the new cyber security event notification requirements. The meeting summary, handouts, and a transcript of the meeting are available in ADAMS under Accession No. ML14240A404.

B. Opportunity for Public Comment

The proposed rule was published in the **Federal Register** on February 3, 2011 (76 FR 6199), and the public comment period closed on August 4, 2011. On the same day the NRC also published a separate notice requesting comment on DG–5019, Revision 1, ''Reporting and Recording Safeguards Events.'' The NRC received a total of 14 submittals on the proposed rule and draft guidance relating to enhanced weapons, firearms background checks and security event notifications (which included cyber security event notifications). The majority of comments came from the Nuclear Energy Institute (NEI) on behalf of the nuclear power reactor licensees.

IV. Public Comment Analysis

The proposed enhanced weapons rule was published February 03, 2011 (76 FR 6199), and the public comment period closed on August 04, 2011. On the same day the NRC also published a separate notice requesting comment on DG–5019, Revision 1, ''Reporting and Recording Safeguards Events.''

The NRC received 14 submittals on the proposed rule and draft guidance. The NRC also received one comment on the proposed implementation date during the July 31, 2014, public meeting. Comments specific to cyber security event notifications in the proposed enhanced weapons rule and DG–5019, Revision 1, were identified and are addressed in this final rule. The comments specific to the proposed rule on Enhanced Weapons, Firearms Background Checks, and Security Event Notifications (76 FR 6200) are not addressed in this final rule and will be addressed in a subsequent rulemaking. In addition, certain event notification comments in the proposed rule that were generic (*e.g.,* comments referring to four-hour notifications in general) are addressed for cyber security events in this final rule. The submittals containing comments specific to cyber security event notifications were consolidated into a single document (ADAMS Accession No. ML14226A596) that assigns the comment designators (*e.g.,* NEI–155) used in this final rule. In the proposed rule and draft guidance, the cyber security event notifications aligned with physical security event notifications with a focus on compensated and uncompensated events. However, based on public comments, the final rule and regulatory guidance now aligns more closely with § 73.54 with a focus on adverse impacts to SSEP functions.

A. Public Comments on Proposed Rule

Comment 1: One commenter stated that neither § 73.71 nor appendix G to 10 CFR part 73 contains an effective date for cyber security reporting requirements, and recommended that the reporting requirements align with the date the cyber security plan becomes effective. [NEI–155]

Response: The NRC disagrees with this comment. Notification of a cyber security event is necessary to assist the NRC in assessing and evaluating issues with potential cyber security-related implications in a timely manner, determining the significance and credibility of the identified issue(s), and providing recommendations and/or

courses of action to NRC management. Currently, licensees are reporting certain cyber security events voluntarily to the NRC. However, because this is done voluntarily there could be certain cyber security events that may not be reported to the NRC in a timely manner or reported at all. The cyber security event notifications final rule removes the voluntary aspects of reporting certain cyber security events, provides regulatory stability, and ensures the NRC is notified in a timely manner.

Prompt notification of a cyber attack could be vital to the NRC's ability to take immediate action in response to a cyber attack and, if necessary, to notify other NRC licensees, Government agencies, and critical infrastructure facilities, to defend against a multiple sector (*e.g.,* energy, financial, etc.) cyber attack. Like the attacks of September 2001, a cyber attack has the capability to be launched against multiple targets simultaneously or spread quickly throughout multiple sectors of critical infrastructure. In light of these potential consequences, the NRC does not want to delay the implementation of the cyber security event notification final rule to match the effective date of each licensee's cyber security plan (*i.e.,* Milestone 8) because those cyber security plans may not be fully effective for several years.

The final rule will become effective 30 days after publication in the **Federal Register**. The compliance date will be 180 days after publication (consistent with the implementation schedule described in the proposed rule) to allow licensees time to revise their event notification procedures and train personnel on event notifications specific to cyber security (*i.e.,* identification, reporting). The cyber security event notification final rule is consistent with existing notification processes (*i.e.,* §§ 50.72 and 73.71) and aligns closely with § 73.54 (*e.g.,* adverse impacts to SSEP functions) as well as current voluntary reporting activities associated with cyber security requiring less time for implementation. In addition, the cyber security event notification final rule complements the implementation of Milestones 1 through 7. For example, the identification of critical systems and critical digital assets (Milestone 2), the implementation of a deterministic one-way device (Milestone 3), and access controls for portable media devices (Milestone 4) are all programs that when properly implemented and maintained, should identify and mitigate adverse impacts to SSEP functions. The cyber security event notification final rule requires licenses to notify the NRC when a cyber attack caused or could have caused an adverse impact to SSEP functions. These factors, along with the importance of the NRC strategic communications mission of informing the DHS and Federal intelligence and law enforcement agencies of cyber security-related events that could: 1) Endanger public health and safety or the common defense and security, 2) provide information for threat-assessment processes, or 3) generate public or media inquiries, support the need for the 180-day implementation schedule.

Comment 2: One commenter indicated that critical digital assets (CDAs) that are not part of a target set should not have the same sensitivity as those CDAs that are contained within a target set. [NEI–156]

Response: The NRC disagrees with this comment. The NRC staff has recognized that a graded approach to controls required for CDAs is warranted based on the ability to detect and mitigate the consequences of a cyber attack. However, the cyber security event notification requirements focus on events that have or could have an adverse impact to SSEP functions, and thereby incorporates consideration of protections that prevent successful cyber attacks. Therefore, the notification requirements cover all CDAs and critical systems within the scope of § 73.54, which includes: Safety-related and important-to-safety functions; security functions; emergency preparedness functions, including offsite communications; and support systems and equipment which, if compromised, would adversely impact safety, security, or emergency preparedness functions.

Comment 3: Two commenters recommended that the four-hour notification events should be incorporated into the eight-hour notification events, therefore eliminating the four-hour notification events. One commenter specifically recommended that suspicious events be moved from four-hour to eight-hour notifications. [NEI–17, 161, Hardin-2]

Response: The NRC agrees in part, with this comment. The NRC agrees that suspicious cyber security events (*i.e.,* activities that may indicate intelligence gathering or pre-operational planning related to a cyber attack) should be moved from four-hour notifications to eight-hour notifications. However, notifications with a local, State, or other Federal agency is consistent with existing NRC regulations at § 50.72(b)(2)(xi). In addition, unsuccessful cyber attacks has been clarified to align more closely with § 73.54 and addresses cyber attacks that could have caused an adverse impact to SSEP functions and remains a four-hour notification so the NRC can conduct additional notifications as appropriate (*e.g.,* other NRC licensees, Federal law enforcement agencies, the intelligence community) to mitigate the effects of a widespread cyber attack, or use as part of the National threat assessment process. Furthermore, unauthorized operation and tampering events have been clarified to address suspected or actual cyber attacks initiated by personnel with physical or electronic access and were moved in the final rule to four-hour notifications due to the implications of an internal threat. Accordingly, the NRC has revised the rule language and associated guidance consistent with this approach to address the broader recommendation of aligning more closely with § 73.54.

Comment 4: One commenter suggested adding the word ''significant'' in front of cyber security events. [NEI–167]

Response: The NRC disagrees with this comment. Prefacing the phrase ''cyber security events'' with ''significant'' does not add clarity to the rule. The NRC is requiring only those cyber security events associated with actual or potential adverse impacts to be reported. The NRC has changed the rule text and associated guidance to align more closely with § 73.54 and distinguishes cyber security events by whether an adverse impact has occurred (or not) to SSEP functions as a result of a cyber attack.

Comment 5: One commenter suggested removing the requirement in appendix G of 10 CFR part 73 regarding the recording of events in a safeguards event log. The commenter suggested licensees use the corrective action program instead of using a separate log. [NEI–18, 194, 202]

Response: The NRC agrees with this comment. The cyber security plan for each licensee describes the use of the corrective action program to track, trend, correct, and prevent recurrence of cyber security failures and deficiencies. Therefore, the cyber security event notification rule text (§ 73.77) has been revised to require licensees to use their corrective action program to record vulnerabilities, weaknesses, failures and deficiencies in their cyber security program. Regulatory Guide 5.83 has also been revised to reflect this change.

Comment 6: The NRC received a comment regarding the use of the term ''compensatory'' in the context of cyber security, stating that the term is unclear, and is not defined in the two cyber security plan (CSP) templates, Appendix A of RG 5.71, and Appendix A of NEI 08–09. [NEI–153, 165]

Response: The NRC agrees with this comment. The term ''compensatory'' is not defined in either CSP template or in other NRC guidance related to cyber security. Based on public comments, the NRC has developed a different approach for determining cyber security event notifications, one that is based on whether the cyber attack caused an adverse impact (or not) to SSEP functions. The final rule and RG 5.83 have been revised to reflect this new approach.

Comment 7: The NRC received one comment pertaining to use of the term ''uncompensated'' in the context of cyber security, stating that the term is unclear, and is not defined within the CSP. In addition, one of the commenters also stated that the term ''failure'' in the context of cyber security required clarification. [NEI–164, 207]

Response: The NRC agrees with this comment. The terms ''uncompensated'' and ''failure'' have been removed from the final rule language. Based on public comments, the NRC has developed a different approach for determining cyber security event notifications, one that is based on whether the cyber attack or event caused an adverse impact (or not) to SSEP functions. Regulatory Guide 5.83 has been revised to reflect this new approach.

Comment 8: One commenter proposed changes to the rule language, paragraph I.(h)(1) in appendix G of 10 CFR part 73, adding the terms ''credible,'' ''malicious,'' and ''radiological sabotage'' to add clarity. The commenter recommended rewriting the event to add in part, ''a credible threat to commit or cause a malicious act to modify, destroy, or compromise any systems, networks, or equipment that falls within the scope of 10 CFR 73.54 of this part where a compromise of these systems has resulted or could result in radiological sabotage.'' [NEI–157, 206]

Response: The NRC disagrees with this comment. Based on public comments, the NRC developed a different approach for determining cyber security event notifications, one that is based on whether a cyber attack caused an adverse impact (or not) to SSEP functions. This approach aligns more closely with § 73.54 and the terms ''credible,'' ''malicious,'' and ''radiological sabotage'' are not needed to provide clarity under this approach. Regulatory Guide 5.83 has been revised to reflect this new approach.

Comment 9: One commenter proposed revising the proposed rule language in paragraph I.(h)(2) in appendix G of 10 CFR part 73 to include language regarding the defense-in-depth protective strategies required by § 73.54(c)(2). [NEI–158]

Response: The NRC agrees with this comment. The NRC evaluated the proposed rule language and determined that items to be reported under this section are duplicative. Based on public comments, the NRC developed a different approach for determining cyber security event notifications, one based on whether the cyber attack caused an adverse impact (or not) to SSEP functions. Regulatory Guide 5.83 has been revised to reflect this approach.

Comment 10: One commenter proposed language to paragraph I.(c)(1) in appendix G of 10 CFR part 73 to report only instances of suspicious or surveillance activity or attempts to access systems, networks, or equipment that is within the scope of § 73.54. Additionally, the commenter recommended deleting proposed language that would include reporting of additional types of events like potential tampering or potential destruction of networks, systems, or equipment. [NEI–159]

Response: The NRC disagrees with this comment. The commenter's reference to paragraph I.(c)(1) in appendix G of 10 CFR part 73 appears to be misquoted. The changes proposed by the commenter would amend paragraph II.(c)(1) in appendix G. The NRC believes that surveillance activities are captured within activities that indicate intelligence gathering or pre-operational planning and should be reported, and has made appropriate changes to this final rule. The NRC has clarified and relocated this requirement to the eight-hour notifications, now designated as § 73.77(a)(3). Additionally, the NRC moved the reporting of potential tampering, or potential destruction of networks, systems or equipment from this requirement and they are now captured under § 73.77(a)(1), (a)(2)(i), and (a)(2)(ii) of this final rule.

Comment 11: One commenter indicated that paragraph I.(c)(2) in appendix G of 10 CFR part 73 in the proposed rule text should be completely removed because it duplicates other proposed rule text. [NEI–160]

Response: The NRC agrees in part, with this comment. The commenter's reference to paragraph I.(c)(2) in appendix G of 10 CFR part 73 appears to be misquoted. The changes proposed by the commenter would amend paragraph II.(c)(2) in appendix G. The final rule text has been revised to remove all duplicative language and is aligned more closely with the requirements in § 73.54 (*i.e.,* adverse impacts to SSEP functions). This revised requirement is designated as § 73.77(a)(2)(i). Regulatory Guide 5.83 has been revised to reflect this change.

Comment 12: One commenter proposed changes to paragraph III in appendix G of 10 CFR part 73 to clarify the language under eight-hour reportable events to be consistent with § 73.54(c)(1), which implements security controls to protect CDAs and critical systems from cyber attacks. [NEI–162]

Response: The NRC agrees in part, with this comment. Based on public comments, the NRC developed an approach that aligns more closely with § 73.54. The implementation of security controls to protect CDAs from cyber attacks as described in § 73.54(c)(1) is designed to prevent adverse impacts to SSEP functions. Therefore, in the final rule, a cyber attack that adversely impacted SSEP functions requires notification within one hour after discovery, and cyber attacks that could have caused an adverse impact to SSEP functions requires notification within four hours after discovery due to the potential consequences of these events. Regulatory Guide 5.83 has been revised to reflect this new approach.

Comment 13: One commenter recommended adding ''that would'' to a proposed 24-hour recordable event provision in paragraph IV.(a)(2) in appendix G of 10 CFR part 73. Specifically, the commenter recommended that the proposed appendix G provision regarding compensated security events state in part as follows:

> (a) Any failure, degradation, or discovered vulnerability in a safeguards system, had compensatory measures not been established, that could . . . (2) Degrade the effectiveness of the licensee's or certificate holder's cyber security program that would allow unauthorized or undetected access to any systems, networks, or equipment that fall within the scope of § 73.54 of this part.

The commenter stated that this re-worded provision would better align with another proposed provision in paragraph I.(h)(2) in appendix G of 10 CFR part 73. [NEI–163]

Response: The NRC disagrees with this comment. Adding the words, ''that would'' to the rule text changes the context of the type of events that are required to be recorded. However, based on other public comments, the NRC re-evaluated the 24-hour recordable events for cyber security event notifications and developed an approach that aligns more closely with the CSP requirements. Under this approach, as reflected in the new § 73.77(b)(1) provision being added as part of this

final rule, licensees will be required to use their corrective action program to record vulnerabilities, weaknesses, failures, and deficiencies in their cyber security program within twenty-four hours of their discovery. Regulatory Guide 5.83 has been updated to reflect this change.

Comment 14: One commenter recommended revising the proposed rule language to align exactly with the rule language in § 73.54(a)(2), which discusses protecting digital assets from cyber attacks that would adversely impact the operations of SSEP functions. Specifically, the commenter notes that the reporting rule text uses the word ''could'' instead of ''would.'' [NEI–168]

Response: The NRC agrees in part, with this comment. The NRC agrees that the reporting rule text should align more closely with § 73.54. However, the NRC disagrees with changing the word ''could'' to ''would,'' because these words are correctly used in their respective rules. Section 73.54 addresses hypothetical future cyber attacks that must be protected against, while this rule describes notifications that licensees are required to issue after an event has already occurred. Further, there are different types of cyber attacks that licensees are required to report. One type of attack required to be reported is a cyber attack that adversely impacted SSEP functions. This type of attack is to be reported within one-hour after discovery. Another type required to be reported is a cyber attack that could have caused an adverse impact to SSEP functions; this type of attack is to be reported within four-hours after discovery. The NRC has revised RG 5.83 to reflect this new approach that aligns more closely with § 73.54 regarding adverse impacts to SSEP functions.

Comment 15: One commenter proposed deleting the requirement in paragraph II.(c)(2) in appendix G of 10 CFR part 73 because the commenter believes it is duplicated in paragraph I.(h)(2) in appendix G. [NEI–169]

Response: The NRC agrees that the proposed paragraph II.(c)(2) in appendix G of 10 CFR part 73 is similar to paragraph I.(h)(2) in appendix G; therefore, the NRC has revised the final rule to make it clear exactly what types of cyber attacks are reported to the NRC. Specifically, the final rule language reflects a different approach for determining cyber security event notifications, eliminates duplicative requirements, and provides clarity based on whether the attack caused an adverse impact (or not) to SSEP functions. Regulatory Guide 5.83 has been revised to reflect this new approach.

Comment 16: One commenter proposed rule language in paragraph I.(h)(2) in appendix G of 10 CFR part 73 that would change events that ''could'' allow unauthorized or undetected access into systems, networks, or equipment to events that ''would'' allow unauthorized or undetected access into systems, networks, or equipment. [NEI–170]

Response: The NRC disagrees with this comment, but has, for other reasons, revised the requirement in the final rule. The objective of this reporting requirement is not to have licensees confirm with the NRC that a cyber attack has occurred. Rather, the objective is to report conditions in which such an attack could have occurred. The NRC continues to believe that licensees should report events or circumstances that could have resulted in undetected or compromised conditions at the facility. However, the NRC staff evaluated the language in the proposed rule and determined that items reported under this section were duplicative and therefore removed this requirement from the final rule text. Regulatory Guide 5.83 was revised to reflect this change.

Comment 17: One commenter recommended four and eight-hour notifications be consolidated into ''within 24-hours'' to mitigate event reporting violations. [B&W–30]

Response: The NRC disagrees with this comment. The four and eight-hour notifications include cyber attacks and activities (*i.e.,* precursors to an attack) where the timeliness of information allows the NRC to conduct additional notifications (to DHS, other NRC licensees), assists the Federal Government and/or other NRC licensees to take mitigative measures to prevent a widespread cyber attack, and allows the NRC to respond to public and/or media inquiries. In addition, notifications to a local, State or other Federal agency is consistent with existing NRC regulations at § 50.72(b)(2)(xi).

Comment 18: One commenter recommended clarification on cyber security event notification requirements regarding exclusion of licensees not subject to § 73.54. [NFS–11, 12]

Response: The NRC agrees with this comment. The final rule text was revised and clarified to only apply to licensees subject to the provisions of § 73.54.

Comment 19: One commenter recommended that ''one-hour notifications'' should be related to a specific threat or attempted threat to the facility, and events that do not pose an actual threat should be ''eight-hour notifications.'' [NEI–22, 33]

Response: The NRC disagrees with this comment. Based on public comments, the NRC developed a different approach for determining cyber security event notifications, one that is based on whether a cyber attack caused an adverse impact (or not) to SSEP functions. Cyber attacks that adversely impacted SSEP functions are now one-hour notifications. Cyber attacks that could have caused an adverse impact to SSEP functions are now four-hour notifications, and activities that may indicate intelligence gathering or pre-operational planning related to a cyber attack are now eight-hour notifications.

Comment 20: One commenter recommended adding the word ''malevolent'' to proposed requirements describing an unauthorized operation or tampering event to rule out human error events. [NEI–31, 48]

Response: The NRC disagrees with this comment. The word ''malevolent'' is unnecessary because, under the new approach, notification of such events is not based on the intent of the act, but based on the potential consequences of the event (*i.e.,* adverse impact (or not) to SSEP functions). No change has been made to the final rule based on this comment.

Comment 21: One commenter recommended clarifying requirements regarding law enforcement interactions. The commenter recommended that notifications that could result in public or media inquiries should not duplicate notifications made under other NRC regulations such as § 50.72(b)(2)(xi). [NEI–35]

Response: The NRC agrees with this comment. The final rule has been revised to eliminate duplication of notifications made under other NRC regulations. Regulatory Guide 5.83 has been revised to reflect this change.

Comment 22: One commenter recommended clarification regarding retraction of reports determined later to be invalid. The commenter stated that the notification may not be invalid, but later be determined it does not meet the threshold of a one-, four-, or eight-hour notification (*i.e.,* recordable event). [NEI–40]

Response: The NRC agrees with this comment. The final rule and RG 5.83 have been revised to clarify that retraction of reports can include valid reports which later do not meet the threshold of a one-, four-, or eight-hour notification.

Comment 23: One commenter recommended adding the term ''malicious intent'' to each of the eight-

hour reportable events regarding unauthorized operation or tampering events. [NEI–53, 112]

Response: The NRC disagrees with this comment. The term ''malicious intent'' is unnecessary because, under the new approach, notification of such events is not based on the intent of the act, but based on the potential consequences of the event (*i.e.,* adverse impact (or not) to SSEP functions).

Comment 24: One commenter recommended that cyber attack reporting needs to be synchronized with NEI 08–09 and RG 5.71 to ensure reporting criteria are well-defined. [NEI–69]

Response: The NRC agrees with this comment. The final rule reflects an approach that aligns more closely with § 73.54 and RG 5.71 and provides additional clarity on cyber security event notification criteria (*i.e.,* adverse impact to SSEP functions). Regulatory Guide 5.83 has also been revised to reflect this new approach.

Comment 25: One commenter recommended deleting the requirements and guidance for written follow-up reports on several reporting events (four and eight-hour notifications). [NEI–117]

Response: The NRC disagrees with this comment. Submission of written follow-up reports is consistent with existing NRC regulations and provides the NRC with information that may not have been available at the time of the notification.

Comment 26: One commenter recommended that the final rule require licensees to notify their local FBI Joint Terrorism Task Force (JTTF) of suspicious events as contained in voluntary guidance documents and eliminate or reduce the timeliness of reporting such events to the NRC. [Hardin-3]

Response: The NRC disagrees with this comment. The reporting of events to the FBI JTTF is voluntary and as such, does not have a timeliness requirement. This final rule requires notification to the NRC within a stated time for activities that may indicate intelligence gathering or pre-operational planning related to a cyber attack. Notifications of activities that may indicate intelligence gathering or pre-operational planning related to a cyber attack will be evaluated and forwarded as appropriate by the NRC to federal law enforcement agencies and the intelligence community as part of the National threat assessment process.

B. Public Comments on Draft Guide-5019

Comment 1: One commenter proposed removing the terms such as ''could,'' ''likelihood,'' and ''likely to'' from DG–5019. [NEI–21, 166]

Response: The NRC disagrees with this comment. The use of the terms ''could,'' ''likelihood,'' and ''likely to'' within DG–5019 is consistent with existing NRC reporting guidelines (NUREG–1022, ''Event Report Guidelines for 10 CFR 50.72 and 50.73'' (ADAMS Accession No. ML13032A220)).

Comment 2: One commenter proposed revising section 2.3.2, item r, of DG–5019 to include, ''Confirmed cyber attacks on computer systems that adversely affected safety, security, and emergency preparedness systems are reportable'' instead of, ''may adversely affect'' and removing item aa of section 2.3.2 due to redundancy. [NEI–171]

Response: The NRC agrees with this comment. The staff evaluated both items in section 2.3.2 of DG–5019 and revised RG 5.83 to reflect the proposed changes.

Comment 3: One commenter proposed revising section 2.3.2, item bb.(2), of DG–5019 to include the word ''cyber'' before security program and security measures. [NEI–172]

Response: The NRC agrees with this comment, yet has, for other reasons removed this material from the final guidance. The final guidance reflects changes made to the final rule that aligns more closely with § 73.54 (*i.e.,* adverse impacts to SSEP functions), and in the process, the NRC staff determined that item bb.(4) was no longer required.

Comment 4: One commenter proposed revising section 2.3.2, item bb.(3), of DG–5019 to state that events caused inadvertently by an individual and not resulting in a threat to facility security, would be a recordable event, and events caused by a cyber attack resulting in an adverse impact to SSEP functions would be a one-hour reportable event. [NEI–173]

Response: The NRC agrees with this comment. The item was revised in RG 5.83 to distinguish recordable inadvertent non-threatening events from those cyber attacks causing adverse impacts, which are one-hour notifications.

Comment 5: One commenter recommended moving section 2.3.2, item bb.(4) from (one-hour notification examples) to section 2.6.2 (eight-hour notification examples) in DG–5019 regarding attempts by unauthorized persons. [NEI–174]

Response: The NRC disagrees with this comment, yet has, for other reasons, removed this material from the final guidance. The final guidance reflects changes made to the final rule that aligns more closely with § 73.54 (*i.e.,* adverse impacts to SSEP functions), and in the process, staff determined that item bb.(4) was no longer required.

Comment 6: One commenter recommended moving section 2.3.2, item bb.(5), (one-hour notification examples) to section 2.6.2 (eight-hour notification examples) in DG–5019 regarding cyber attacks thwarted by security controls. [NEI–175]

Response: The NRC disagrees with this comment, yet has, for other reasons, removed this material from the final guidance. The final guidance reflects changes made to the final rule that aligns more closely with § 73.54 (*i.e.,* adverse impacts to SSEP functions), and in the process, staff determined that item bb.(5) was no longer required.

Comment 7: One commenter proposed removing the terms ''unauthorized software'' and ''firmware'' from section 2.3.2, item cc, because of redundancy with the term malware. [NEI–176]

Response: The NRC disagrees with this comment, but for other reasons, the guidance has been revised. There is a difference between malware, and unauthorized software, or firmware, and therefore there is no redundancy. However, the staff re-evaluated the language and determined the example is not consistent with § 73.54 and RG 5.71. Therefore, the example was not included in RG 5.83.

Comment 8: One commenter proposed changes to section 2.3.2, item dd, of DG–5019 where the result was changed from compromising the CDA to an adverse impact to SSEP functions. [NEI–177]

Response: The NRC agrees with the proposed changes to the item; however, due to changes in the final rule language, this item was clarified and moved to a four-hour notification example within RG 5.83.

Comment 9: One commenter recommended removing section 2.3.2, item ee, of DG–5019, because there are no NRC regulations covering ''sensitive cyber security data.'' [NEI–178]

Response: The NRC agrees with this comment. The item has been removed from RG 5.83.

Comment 10: One commenter recommended clarifying section 2.3.2, item ff, of DG–5019, and proposed the term ''cyber intrusion detection capability'' instead of the term ''cyber intrusion detection system.'' [NEI–179]

Response: The NRC disagrees with this comment, yet has, for other reasons, removed this material from the final guidance. The item was not included in RG 5.83 because it was not consistent with § 73.54 and RG 5.71.

Comment 11: One commenter recommended section 2.3.2, item hh, of

DG–5019 be revised to be consistent with § 73.54(a)(2) by removing the term uncompensated. [NEI–181]

Response: The NRC disagrees with this comment, yet has, for other reasons, removed this material from the final guidance. The staff reviewed the item and determined it was not consistent with 10 CFR 73.54 and RG 5.71 and removed it from RG 5.83.

Comment 12: The NRC received several comments regarding redundant material within section 2.3.2., item hh, of DG–5019. [NEI–180, 182, 185]

Response: The NRC agrees with this comment. Staff removed items gg, ii and ll from section 2.3.2 in RG 5.83 because they were redundant with item hh regarding unauthorized access to CDAs.

Comment 13: One commenter recommended moving section 2.3.2, item jj, of DG–5019 from the one-hour notification examples to the four-hour notification examples in section 2.5.2 regarding discovery of falsified identification badges. [NEI–183]

Response: The NRC agrees in part with this comment, that the item should be moved. However, under the new approach, this item is consistent with eight-hour notifications (*i.e.,* activities that may indicate intelligence gathering or pre-operational planning related to a cyber attack) and was moved in final guidance to the eight-hour notification examples.

Comment 14: One commenter recommended revising section 2.3.2, item kk, of DG–5019 replacing the term ''could'' with ''would.'' [NEI–184]

Response: The NRC disagrees with this comment, yet has, for other reasons, removed this material from the final guidance. The NRC staff re-evaluated this item, determined it was not consistent with the final rule, and deleted it from RG 5.83.

Comment 15: One commenter recommended removing section 2.3.2, item mm, of DG–5019 because it duplicates 2.3.2, item y, regarding safeguards reporting requirements. [NEI–186]

Response: The NRC agrees with this comment. The item has been removed from RG 5.83.

Comment 16: One commenter recommended removing section 2.3.2, item nn, of DG–5019 because there are no NRC requirements for maintaining cyber security response personnel staffing levels. [NEI–187]

Response: The NRC agrees with this comment. The item has been removed from RG 5.83.

Comment 17: One commenter recommended revising section 2.3.2, item oo, of DG–5019 to change the phrase, ''could increase the likelihood of an attempted attack'' to the phrase, ''would result in an attack.'' [NEI–188]

Response: The NRC disagrees with this comment, yet has, for other reasons, revised this material in the final guidance. This item has been revised in RG 5.83 to include any event that allows unauthorized or undetected access to a CDA that could be exploited in an attack to be reported within four hours of discovery.

Comment 18: One commenter recommended adding new examples to sections 2.3.2 and 2.5.2 of DG–5019. One example, (section 2.3.2) involved discovery of unauthorized user IDs and unauthorized configurations to cyber controls (*e.g.,* firewall port opening, etc.). The other example (section 2.5.2) involved unauthorized attempts to probe CDAs including the use of social engineering techniques. [NEI–189, 190]

Response: The NRC agrees with the examples provided, and based on final rule text changes (cyber attacks initiated by personnel with physical or electronic access and activities that may indicate pre-operational planning), these items were included in RG 5.83.

Comment 19: One commenter recommended revising section 2.5.2, item kk, of DG–5019 to include the word cyber before the term security controls. [NEI–191]

Response: The NRC agrees with this comment. The item was revised in RG 5.83 to include the word cyber before security controls.

Comment 20: One commenter recommended removing section 2.5.2, item mm, of DG–5019 because it is redundant to section 2.5.2, item kk. [NEI–192]

Response: The NRC agrees with this comment. The item has been removed from RG 5.83.

Comment 21: One commenter recommended revising section 2.5.2, item oo, of DG–5019 to add Levels 3 and 4 to the description so the item is consistent with the definition provided in the glossary for a CDA. [NEI–193]

Response: The NRC disagrees with this comment, but for other reasons has revised the final guidance. The definition of a CDA in RG 5.83 was revised for consistency with the definition provided in RG 5.71.

Comment 22: One commenter recommended revising section 2.5.2, item qq, of DG–5019 or removing it altogether because reporting the high number of malware attempts on lower security level networks that do not have the degree of protection of CDAs would be burdensome on the NRC and the licensee. [NEI–195]

Response: The NRC agrees with this comment. Based on final rule text changes, this item was revised in RG 5.83 narrowing the scope to attacks discovered or manifested on a CDA, critical system or protected network reducing the number of potential notifications on the licensee and the NRC.

Comment 23: One commenter recommended revising section 2.5.2, item rr, of DG–5019 to clarify the term ''cyber systems.'' [NEI–196]

Response: The NRC agrees with this comment. In RG 5.83 this item was revised for consistency with RG 5.71 and uses the terms ''critical systems'' and ''CDAs.''

Comment 24: One commenter recommended removing the 15-minute reference in section 2.5.2, item ss, of DG–5019. [NEI–197]

Response: The NRC agrees with this comment. The final rule text does not contain any 15-minute notifications related to cyber security, and therefore, this item was revised in the final guidance to a four-hour notification example.

Comment 25: One commenter recommended revising or removing the paragraph before section 2.6.2, item h, in DG–5019 regarding cyber security events that interrupt or degrade the facility's SSEP functions. [NEI–198]

Response: The NRC agrees with this comment, yet has, for other reasons removed this material from the final guidance. The final guidance reflects changes made to the final rule that aligns more closely with § 73.54 (*i.e.,* adverse impacts to SSEP functions), and in the process, staff determined that this item was no longer required.

Comment 26: One commenter recommended revising section 2.6.2, item I, of DG–5019. The commenter recommended removing the term ''failed'' because a CDA could fail for non-malicious reasons and not be the result of a cyber attack or unauthorized activity. [NEI–199]

Response: The NRC agrees with this comment. There are many reasons a critical digital asset can fail that are not related to unauthorized activity or cyber attacks. Regulatory Guide 5.83 has been revised to reflect this change.

Comment 27: One commenter recommended revising section 5.3, item n, of DG–5019 because the term ''compensated'' is not defined. [NEI–200]

Response: The NRC agrees with this comment. This item was removed from RG 5.83.

Comment 28: One commenter recommended clarifying section 5.3, item o, of DG–5019 regarding individuals who are incorrectly authorized access to a CDA. [NEI–201]

Response: The NRC agrees with this comment. This item was removed from RG 5.83.

Comment 29: One commenter recommending adding items to section 5.3 of DG–5019 to include examples of cyber events that are compensated as proposed by paragraph IV.(a) in appendix G of 10 CFR part 73. [NEI–203]

Response: The NRC disagrees with this comment. The final rule language reflects a different approach, one based on whether the cyber attack or event caused an adverse impact (or not) to SSEP functions, instead of whether the cyber attack or event was compensated or uncompensated. Regulatory Guide 5.83 has been revised to reflect this new approach.

Comment 30: One commenter recommended changes to the definitions provided in the glossary of DG–5019. The commenter proposed changing ''cyber attack'' to be consistent with the definition provided in NEI 08–09 and changing ''CDA'' to only include digital computer, communication systems, and networks that fall within level 3 or 4 boundaries as well as a general comment that all definitions in the glossary be synchronized with code requirements and regulatory guides. [NEI–138, 204, 205]

Response: The NRC agrees in part with this comment. The definitions of cyber attack and CDA in RG 5.83 have been revised to synchronize with the definitions in RG 5.71, not NEI 08–09.

Comment 31: Two commenters proposed a definition of the term ''discovery time of'' in DG–5019. The commenters suggested discovery occurs after initial notifications are made and a determination made that the event meets applicable reporting requirements. [NEI–19, B&W–29]

Response: The NRC disagrees with this comment. Internal notifications and gathering information to make a determination as to whether it meets applicable reporting requirements could take several hours, or even days, depending on the amount of information needed to reach a conclusion. The time to report an event is upon recognition; the licensee can withdraw a report (based on subsequent analysis of the circumstances) without prejudice to its security performance indicators. No changes have been made to the guidance.

Comment 32: One commenter stated that the cyber security plan templates published by the NRC and NEI do not contain guidance for licensees to differentiate between events that are recordable versus reportable. [NEI–20, 154]

Response: The NRC agrees with this comment. Neither cyber security plan template issued by the NRC or NEI contains guidance for licensees on which events are recordable or reportable. However, DG–5019 provided guidance to licensees on events that are reportable and recordable related to cyber security event notifications. Consistent with Commission policy, the NRC is publishing with this final rule, final guidance, RG 5.83, ''Cyber Security Event Notifications,'' which provides guidance to licensees on an acceptable method for meeting regulatory requirements. The final guidance has been revised to provide examples that differentiate between events that are reportable and recordable.

Comment 33: One commenter recommended revisions to NRC Form 366. The commenter recommended the NRC specify the type of content licensees should include in the abstract section of the form. [NEI–44, 118]

Response: The NRC disagrees with this comment. The NRC's Form 366 will not be revised. Regulatory Guide 5.83 will provide the specific type of content that should be included in the abstract section of NRC's Form 366.

Comment 34: One commenter recommended clarifying the guidance regarding elicitation of information from facility personnel relating to security or safe operation of the facility. The commenter suggested adding the phrase ''non-routine'' regarding the elicitation of information to distinguish general public or media inquiries from elicitations that could be indicative of suspicious activity. [NEI–52, 95, 99]

Response: The NRC agrees with this comment. Regulatory Guide 5.83 has been revised to provide a distinction between common inquiries (*e.g.,* public and media inquiries) and uncommon inquiries (*e.g.,* activities that may indicate intelligence gathering or pre-operational planning related to a cyber attack).

Comment 35: One commenter recommended clarifying the examples of one-hour notifications and including ''real life'' examples. [NEI–71]

Response: The NRC agrees with this comment. The NRC staff reviewed previous ''real life'' examples and included them in final guidance. In addition, the new approach for one-hour notifications (*i.e.,* adverse impacts to SSEP functions) provides additional clarity.

Comment 36: One commenter recommended changes to the examples involving the compromise of CDAs. The commenter stated that section 2.3.2 of DG–5019, items (aa) and (bb) were duplicative, and that two supporting examples (4 and 5) were not within the scope of one-hour notifications (*i.e.,* adverse impact to SSEP functions). [NEI–94]

Response: The NRC agrees with this comment. Regulatory Guide 5.83 has been revised to delete one of the duplicate items and to remove the two supporting examples from the remaining item.

Comment 37: One commenter recommended moving an example related to unauthorized attempts to steal business secrets or sensitive information to the cyber security event notification examples. [NEI–100]

Response: The NRC disagrees with this comment. The final rule reflects an approach that aligns more closely with § 73.54 and RG 5.71, and provides clarity to cyber security event notification criteria. Unauthorized attempts to access business and trade sensitive information is outside the scope of § 73.54, and no changes to the rule or RG 5.83 were made based on this comment

Comment 38: One commenter recommended clarifying the example regarding unsubstantiated cyber threats related to harassment, including threats that could represent tests of response capabilities. The commenter stated the example was confusing and too broad in scope. [NEI–111]

Response: The NRC agrees with this comment. The NRC has revised the example to clarify the scope of the cyber attacks to be reported (*i.e.,* a cyber attack that could have caused an adverse impact to SSEP functions).

Comment 39: One commenter requested NRC clarify the guidance on unplanned missed cyber vulnerability assessments. [NEI–131]

Response: The NRC agrees with this comment. Regulatory Guide 5.83 was revised to clarify the treatment of missed cyber vulnerability assessments. The CSP states the periodicity that cyber vulnerability assessments are performed (quarterly). If a cyber vulnerability assessment exceeds the periodicity specified in the CSP, it would be considered a 24-hour recordable event.

C. Public Comments on Proposed Implementation Date From July 31, 2014, Public Meeting

Comment 1: One commenter raised a concern that by issuing the Cyber Security Event Notifications (CSEN) final rulemaking now it may delay full implementation of § 73.54 because of the impact on resources. The commenter stated that licensees may have to divert some resources from implementing the cyber security

program to implementing the CSEN requirements.

Response: The NRC agrees in part with this comment. The NRC staff recognizes that this rule will have an impact on licensee resources (similar skillsets required for CSEN and cyber security program implementation). The NRC staff acknowledges this and is conducting CER related activities in an effort to minimize the impact (*e.g.,* conducting a public meeting on the implementation date during final rulemaking, issuing final guidance with the final rule). In addition, the CSEN final rule is consistent with existing notification processes (*i.e.,* §§ 50.72 and 73.71) and aligns closely with § 73.54 and the current voluntary reporting initiatives thereby reducing the level of impact on implementation. However, the CSEN final rule removes the voluntary aspect of reporting certain cyber security events and provides regulatory stability and ensures the NRC is notified in a timely manner while maintaining its strategic communications mission outlined in the framework of the National Infrastructure Protection Plan developed by the DHS (*see http://www.dhs.gov/sites/default/files/publications/National-Infrastructure-Protection-Plan-2013-508.pdf*). Prompt notification of a cyber attack could be vital to the NRC's ability to take immediate action in response to a cyber attack and, if necessary, to notify other NRC licensees, Government agencies, and critical infrastructure facilities, to defend against a multiple sector cyber attack. A cyber attack has the capability to be launched against multiple targets simultaneously or spread quickly throughout multiple sectors of critical infrastructure; therefore, the NRC has not changed the 180-day implementation schedule.

V. Section-by-Section Analysis

The following section-by-section analysis discusses the final revisions to the NRC's regulations regarding cyber security, and explains how the final rule differs from the language in the proposed rule. This final rule adds a new section (§ 73.77) to 10 CFR part 73 and revises three existing sections (§§ 73.8, 73.22, and 73.54) to make conforming changes.

Section 73.8, Information Collection Requirements: OMB Approval

The NRC is amending § 73.8 to add § 73.77 to paragraph (b) that provides the approved information collection requirements contained in 10 CFR part 73 under control number 3150–0002. In addition, the NRC is amending § 73.8 to add § 73.77 to paragraph (c)(1) that provides that NRC Form 366 is approved under control number 3150–0104.

Section 73.22, Protection of Safeguards Information: Specific Requirements

The NRC is amending § 73.22(f)(3) to add the sentence, ''Cyber security event notifications required to be reported pursuant to § 73.77 are considered to be extraordinary conditions'' to the end of the paragraph.

Section 73.54, Protection of Digital Computer and Communication Systems and Networks

The NRC is amending § 73.54 to add a new paragraph (d)(4) that reads, ''Conduct cyber security event notifications in accordance with the provisions of § 73.77.'' This new requirement guides the licensee to the correct 10 CFR part 73 section for conducting cyber security event notifications.

Section 73.77, Cyber Security Event Notifications

The NRC has moved cyber security event notifications requirements that were proposed to be added to § 73.71 and appendix G to a newly created section (§ 73.77) within 10 CFR part 73.

Section 73.77(a)(1) requires licensees to notify the NRC within one-hour after discovery of a cyber attack that adversely impacted safety-related or important-to-safety functions, security functions, or emergency preparedness functions (including offsite communications); or that compromised support systems and equipment resulting in adverse impacts to safety, security, or emergency preparedness functions within the scope of § 73.54. This requirement differs from the proposed rule language, it has been revised to more closely align with § 73.54 and to remove the term ''uncompensated cyber security events'' because it was unclear and not defined within the CSP.

Section 73.77(a)(2) requires licensees to notify the NRC within four-hours.

Section 73.77(a)(2)(i) after discovery of a cyber attack that could have caused an adverse impact to safety-related or important-to-safety functions, security functions, or emergency preparedness functions (including offsite communications); or that could have compromised support systems and equipment, which if compromised, could have adversely impacted safety, security, or emergency preparedness functions within the scope of § 73.54. This requirement differs from the proposed rule; it has been revised to more closely align with § 73.54. In addition, the final rule distinguishes between four-hour and eight-hour notifications.

Section 73.77(a)(2)(ii) after discovery of a suspected or actual cyber attack initiated by personnel with physical or electronic access to digital computer and communication systems and networks within the scope of § 73.54. This requirement differs from the proposed rule; it has been revised to capture cyber attacks (*e.g.,* tampering) that may not have any impact on SSEP functions, but may indicate an internal threat.

Section 73.77(a)(2)(iii) after notification of a local, State, or other Federal agency (*e.g.,* local law enforcement, FBI, etc.) of an event related to implementation of their cyber security program. The final rule includes other types of agencies besides law enforcement (*e.g.,* DHS, etc.) to maintain consistency with existing NRC reporting requirements (*e.g.,* § 50.72).

Section 73.77(a)(3) requires licensees to notify the NRC within eight-hours after receipt or collection of information regarding observed behavior, activities, or statements that may indicate intelligence gathering or pre-operational planning related to a cyber attack against digital computer and communication systems and networks within the scope of § 73.54. Requirements for ''suspicious cyber events'' have been revised and moved from four-hour notifications in the proposed rule to eight-hour notifications in the final rule. This requirement now captures activities that are associated with precursors to a cyber attack (*e.g.,* activities related to intelligence gathering or pre-operational planning).

Section 73.77(b) requires licensees to record certain cyber security events in their site corrective action program (CAP) within 24-hours of their discovery. The proposed rule required licensees to use a Safeguards Event Log; to prevent duplication of effort, the final rule requires licensees to use their site CAP.

Section 73.77(b)(1) requires licensees to use their site CAP to record vulnerabilities, weaknesses, failures, and deficiencies in their § 73.54 cyber security program. This requirement has been revised to align with NRC physical protection program requirements in § 73.55(b)(10) regarding the use of the site CAP to track, trend, correct, and prevent recurrence of failures and deficiencies.

Section 73.77(b)(2) requires licensees to record notifications made under paragraph (a) of § 73.77.

Section 73.77(c) provides the process for conducting cyber security event notifications.

Section 73.77(c)(1) has been revised from the proposed rule to include the Emergency Notification System (ENS) as the primary means for conducting notifications, instead of any available telephone system. Using the ENS is consistent with existing NRC regulations for conducting notifications (*e.g.,* § 50.72).

Section 73.77(c)(3) in the final rule was revised to remove a reference to paragraph III in appendix A of 10 CFR part 73 that provided instructions on requesting a transfer to a secure phone. The current appendix A in 10 CFR part 73 does not contain a paragraph III and conforming changes to appendix A are not part of this final rule. Section 73.77(c)(3) was revised to reference appendix A and request transfer to a secure phone.

Sections 73.7(c)(6), ''Declaration of emergencies,'' and 73.77(c)(7), ''Elimination of duplication,'' were moved in the final rule from the ''Written Security Follow-up Reports'' section into the ''Notification Process'' section because they contain notification-specific information. In addition, due to the narrowed scope of this final rule, the proposed rule referenced several sections of the NRC's regulations (*e.g.,* § 70.50) that are not being revised by this final rule.

Section 73.77(d), ''Written security follow-up reports,'' establishes the necessary regulatory framework to facilitate consistent application of Commission requirements for written security follow-up reports for cyber security event notifications.

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VII. Regulatory Analysis

The NRC has prepared a final regulatory analysis for this final rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The regulatory analysis is available as indicated in Section XVII., ''Availability of Documents,'' of this document.

VIII. Backfitting and Issue Finality

The final rule imposing new cyber security event notifications affects information collection and reporting requirements and is not considered to be a backfit, as presented in the charter for NRC's Committee to Review Generic Requirements. Therefore, a backfit analysis has not been completed for any of the provisions of this final rule.

IX. Cumulative Effects of Regulation

While the proposed rule was issued prior to the formal CER requirements promulgated by SRM–SECY–0032, the intent of CER was still met. For example, the draft guidance was issued for comment concurrent with the proposed rule, a public meeting was conducted during the development of the proposed rule, a public meeting on implementation was conducted during the final rule stage, and the final guidance will be issued with the final rule.

The NRC staff engaged external stakeholders at public meetings and by soliciting public comments on the proposed rule and draft guidance documents. A public meeting was held at NRC Headquarters on June 1, 2011, to discuss the proposed rule, the draft implementation plan, and draft guidance.

In addition, on July 31, 2014, a public meeting was held at the NRC Headquarters on the draft final implementation plan for the final rule (a type of meeting specifically contemplated by the NRC's CER effort). Prompt notification of a cyber attack is vital to the NRC's ability to take immediate action in response to a cyber attack, which contributes to protecting the public health and safety or the common defense and security. The NRC's strategic communications mission and the feedback from the public meetings informed the staff's recommended schedule for the final implementation date in the CSEN final rule.

A fundamental CER process improvement is to publish the final guidance with the final rule so as to support effective implementation. This final rulemaking accomplishes this by ensuring that final guidance is complete and available concurrent with this final rule publication in the **Federal Register**.

X. Plain Writing

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

XI. Environmental Assessment and Final Finding of No Significant Environmental Impact

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

XII. Paperwork Reduction Act

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0230 and 3150–0104.

The burden to the public for these information collections is estimated to average 39.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Freedom of Information Act, Privacy, and Information Collections Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by email to *Infocollects.Resource@nrc.gov* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0230 and 3150–0104), Office of Management and Budget, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

Public Protection Notification

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

XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

XIV. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act of 1954, as amended

(AEA), the NRC is issuing this final rule that would amend §§ 73.8, 73.22, and 73.54, and add § 73.77 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement. Criminal penalties as they apply to regulations in 10 CFR part 73 are discussed in § 73.81(a).

XV. Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of 10 CFR, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with a particular State's administrative procedure laws, but does not confer regulatory authority on the State.

XVI. Availability of Guidance

The NRC is issuing implementation guidance for this rule, RG 5.83, ''Cyber Security Event Notifications'' (Docket ID NRC–2014–0036). The guidance is available in ADAMS under Accession No. ML14269A388. Regulatory Guide 5.83 is intended to describe a proposed method that the NRC staff considers acceptable for use in complying with the NRC's regulations on cyber security event notifications. Because the regulatory analysis for the final rule provides sufficient explanation for the rule and the implementing guidance, a separate regulatory analysis was not prepared for the regulatory guide.

XVII. Availability of Documents

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

Document	ADAMS Accession No./ **Federal Register** (FR) citation
SECY–10–0085—Proposed Rule: ''Enhanced Weapons, Firearms Background Checks and Security Event Notifications'' (RIN: 3150–AI49) (June 27, 2010).	ML101110121
Staff Requirements—SECY–10–0085—Proposed Rule: Enhanced Weapons, Firearms Background Checks and Security Event Notifications (RIN: 3150–AI49) (October 19, 2010).	ML102920342
Proposed Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule (February 3, 2011)	76 FR 6199
DG–5019, ''Reporting and Recording Safeguards Events'' (February 3, 2011)	76 FR 6085
Summary of the June 1, 2011, Public Meeting to Discuss the Proposed Enhanced Weapons, Firearms Background Checks and Security Event Notifications Rulemaking (June 24, 2011).	ML111720007
Bifurcation of the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Rule (December 20, 2013).	ML13280A366
Staff Requirements—COMSECY–13–0031—Bifurcation of the Enhanced Weapons, Firearms Background Checks, and Security Event Notification Rule (January 22, 2014).	ML14023A860
Regulatory Analysis for Final Rule on Cyber Security Event Notifications (10 CFR Part 73)	ML14170B076
Summary of the July 31, 2014, Public Meeting to Discuss the Proposed Implementation Date of the Draft Cyber Security Event Notification Final Rule (August 29, 2014).	ML14240A404
Regulatory Guide 5.83, ''Cyber Security Event Notifications'' (March 2015)	ML14269A388
CSEN Public Comments Associated with Final Rule	ML14226A596
Final Rule: Cyber Security Event Notification OMB Supporting Statement	ML15203A233

List of Subjects for 10 CFR Part 73

Criminal penalties, Exports, Hazardous materials transportation, Incorporation by reference, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 1. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 2. In § 73.8, revise paragraphs (b) and (c)(1) to read as follows:

§ 73.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.20, 73.21, 73.24, 73.25, 73.26, 73.27, 73.37, 73.38, 73.40, 73.45, 73.46, 73.50, 73.54, 73.55, 73.56, 73.57, 73.58, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, 73.77 and appendices B, C, and G to this part.

(c) * * *

(1) In §§ 73.71 and 73.77, NRC Form 366 is approved under control number 3150–0104.

* * * * *

■ 3. In § 73.22, add a sentence to the end of paragraph (f)(3) to read as follows:

§ 73.22 Protection of Safeguards Information: Specific requirements.

* * * * *

(f) * * *

(3) * * * Cyber security event notifications required to be reported pursuant to § 73.77 are considered to be extraordinary conditions.

* * * * *

■ 4. In § 73.54, add paragraph (d)(4) to read as follows:

§ 73.54 Protection of digital computer and communication systems and networks.

* * * * *

(d) * * *

(4) Conduct cyber security event notifications in accordance with the provisions of § 73.77.

* * * * *

■ 5. Add § 73.77 to read as follows:

§ 73.77 Cyber security event notifications.

(a) Each licensee subject to the provisions of § 73.54 shall notify the NRC Headquarters Operations Center via the Emergency Notification System (ENS), in accordance with paragraph (c) of this section:

(1) Within one hour after discovery of a cyber attack that adversely impacted safety-related or important-to-safety functions, security functions, or emergency preparedness functions (including offsite communications); or that compromised support systems and equipment resulting in adverse impacts to safety, security, or emergency preparedness functions within the scope of § 73.54.

(2) Within four hours:

(i) After discovery of a cyber attack that could have caused an adverse impact to safety-related or important-to-safety functions, security functions, or emergency preparedness functions (including offsite communications); or that could have compromised support systems and equipment, which if compromised, could have adversely impacted safety, security, or emergency preparedness functions within the scope of § 73.54.

(ii) After discovery of a suspected or actual cyber attack initiated by personnel with physical or electronic access to digital computer and communication systems and networks within the scope of § 73.54.

(iii) After notification of a local, State, or other Federal agency (*e.g.,* law enforcement, FBI, etc.) of an event related to the licensee's implementation of their cyber security program for digital computer and communication systems and networks within the scope of § 73.54 that does not otherwise require a notification under paragraph (a) of this section.

(3) Within eight hours after receipt or collection of information regarding observed behavior, activities, or statements that may indicate intelligence gathering or pre-operational planning related to a cyber attack against digital computer and communication systems and networks within the scope of § 73.54.

(b) *Twenty-four hour recordable events.* (1) The licensee shall use the site corrective action program to record vulnerabilities, weaknesses, failures and deficiencies in their § 73.54 cyber security program within twenty-four hours of their discovery.

(2) The licensee shall use the site corrective action program to record notifications made under paragraph (a) of this section within twenty-four hours of their discovery.

(c) *Notification process.* (1) Each licensee shall make telephonic notifications required by paragraph (a) of this section to the NRC Headquarters Operations Center via the ENS. If the ENS is inoperative or unavailable, the licensee shall make the notification via a commercial telephone service or other dedicated telephonic system or any other methods that will ensure a report is received by the NRC Headquarters Operations Center within the timeframe. Commercial telephone numbers for the NRC Headquarters Operations Center are specified in appendix A to this part.

(2) Notifications required by this section that contain Safeguards Information may be made to the NRC Headquarters Operations Center without using secure communications systems under the exception in § 73.22(f)(3) for emergency or extraordinary conditions.

(3) Notifications required by this section that contain Safeguards Information and/or classified national security information and/or restricted data must be made to the NRC Headquarters Operations Center using secure communications systems appropriate to the sensitivity/classification level of the message. Licensees making these types of telephonic notifications must contact the NRC Headquarters Operations Center at the commercial numbers specified in appendix A to this part and request a transfer to a secure telephone.

(i) If the licensee's secure communications capability is unavailable (*e.g.,* due to the nature of the security event), the licensee must provide as much information to the NRC as is required by this section, without revealing or discussing any Safeguards Information and/or Classified Information, in order to meet the timeliness requirements of this section. The licensee must also indicate to the NRC that its secure communications capability is unavailable.

(ii) Licensees using a non-secure communications capability may be directed by the NRC Emergency Response management to provide classified information to the NRC over the non-secure system, due to the significance of the ongoing security event. In such circumstances, the licensee must document this direction and any information provided to the NRC over a non-secure communications capability in the written security follow-up report required in accordance with paragraph (d) of this section.

(4) For events reported under paragraph (a)(1) of this section, the NRC may request that the licensee maintain an open and continuous communication channel with the NRC Headquarters Operations Center.

(5) Licensees desiring to retract a previous security event report that has been determined to not meet the threshold of a reportable event must telephonically notify the NRC Headquarters Operations Center and indicate the report being retracted and basis for the retraction.

(6) *Declaration of emergencies.* Notifications made to the NRC for the declaration of an emergency class shall be performed in accordance with § 50.72 of this chapter, as applicable.

(7) *Elimination of duplication.* Separate notifications and reports are not required for events that are also reportable in accordance with §§ 50.72 and 50.73 of this chapter. However, these notifications should also indicate the applicable § 73.77 reporting criteria.

(d) *Written security follow-up reports.* Each licensee making an initial telephonic notification of security events to the NRC according to the provisions of paragraphs (a)(1), (a)(2)(i), and (a)(2)(ii) of this section must also submit a written security follow-up report to the NRC within 60 days of the telephonic notification in accordance with § 73.4.

(1) Licensees are not required to submit a written security follow-up report following a telephonic notification made under § 73.77(a)(2)(iii) or (a)(3).

(2) Each licensee shall submit to the NRC written security follow-up reports that are of a quality that will permit legible reproduction and processing.

(3) Licensees shall prepare the written security follow-up report on NRC Form 366.

(4) In addition to the addressees specified in § 73.4, the licensee shall also provide one copy of the written security follow-up report addressed to the Director, Office of Nuclear Security and Incident Response, or the Director's designee. Any written security follow-up reports containing classified information shall be transmitted to the NRC Headquarters' classified mailing address as specified in appendix A to this part.

(5) The written security follow-up report must include sufficient information for NRC analysis and evaluation.

(6) Significant supplemental information which becomes available after the initial telephonic notification to the NRC Headquarters Operations Center or after the submission of the written security follow-up report must be telephonically reported to the NRC Headquarters Operations Center under paragraph (c) of this section and also

submitted in a revised written security follow-up report (with the revisions indicated) as required under this section.

(7) Errors discovered in a written security follow-up report must be corrected in a revised written security follow-up report with the revision(s) indicated.

(8) The revised written security follow-up report must replace the previous written security follow-up report; the update must be complete and not be limited to only supplementary or revised information.

(9) If the licensee subsequently retracts a telephonic notification made under this section as not meeting the threshold of a reportable event, and has not yet submitted a written security follow-up report then submission of a written security follow-up report is not required.

(10) If the licensee subsequently retracts a telephonic notification made under this section as not meeting the threshold of a reportable event after it has submitted a written security follow-up report required by this paragraph, then the licensee shall submit a revised written security follow-up report in accordance with this paragraph.

(11) Each written security follow-up report submitted containing Safeguards Information or Classified Information must be created, stored, marked, labeled, handled, and transmitted to the NRC according to the requirements of §§ 73.21 and 73.22 or with part 95 of this chapter, as applicable.

(12) Each licensee shall maintain a copy of the written security follow-up report of an event submitted under this section as a record for a period of three years from the date of the report or until the Commission terminates the license for which the records were developed, whichever comes first.

Dated at Rockville, Maryland, this 23rd day of October, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2015–27855 Filed 10–30–15; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AC72

Organization; Mergers, Consolidations, and Charter Amendments of Banks or Associations

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA or our) amended our regulations related to mergers and consolidations of Farm Credit System banks and associations to clarify the merger review and approval process and incorporate existing practices in the regulations. In accordance with the law, the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

DATES: *Effective Date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR part 611 published on August 24, 2015 (80 FR 51113) is effective November 2, 2015.

FOR FURTHER INFORMATION CONTACT:

Shirley Hixson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4318, TTY (703) 883–4056,

or

Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4071, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration (FCA or our) amended our regulations related to mergers and consolidations of Farm Credit System banks and associations to clarify the merger review and approval process and incorporate existing practices in the regulations. In accordance with 12 U.S.C. 2252, the effective date of the final rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is November 2, 2015.

(12 U.S.C. 2252(a)(9) and (10))

Date: October 27, 2015.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2015–27895 Filed 10–30–15; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

Farm Credit Administration Board Policy Statements

AGENCY: Farm Credit Administration.

ACTION: Notice of policy statements and index.

SUMMARY: The Farm Credit Administration (FCA), as part of its annual public notification process, is publishing for notice an index of the 18 Board policy statements currently in existence. Most of the policy statements remain unchanged since our last **Federal Register** notice on October 22, 2014 (79 FR 63033), except for three as discussed below on Equal Employment Opportunity and Diversity, Travel, and Rules for the Transaction of Business of the FCA Board.

DATES: November 2, 2015.

FOR FURTHER INFORMATION CONTACT:

Dale L. Aultman, Secretary to Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean Virginia 22102–5090, (703) 883–4009, TTY (703) 883–4056;

or

Mary Alice Donner, Senior Counsel, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: A list of the 18 FCA Board policy statements is set forth below. FCA Board policy statements may be viewed online at *www.fca.gov/handbook.nsf.*

On August 18, 2015, the FCA Board updated FCA–PS–62 on, ''Equal Employment Opportunity and Diversity.'' The policy was published in the **Federal Register** on August 26, 2015 (80 FR 51806).

On August 31, 2015, the FCA Board updated FCA–PS–44 on, ''Travel'' and FCA–PS–64 on, ''Rules for the Transaction of Business of the Farm Credit Administration Board.'' Those were not previously published in the **Federal Register** and are set forth below in their entirety.

FCA Board Policy Statements

FCA–PS–34 Disclosure of the Issuance and Termination of Enforcement Documents
FCA–PS–37 Communications During Rulemaking
FCA–PS–41 Alternative Means of Dispute Resolution
FCA–PS–44 Travel
FCA–PS–53 Examination Philosophy
FCA–PS–59 Regulatory Philosophy
FCA–PS–62 Equal Employment Opportunity and Diversity
FCA–PS–64 Rules for the Transaction of Business of the Farm Credit Administration Board
FCA–PS–65 Release of Consolidated Reporting System Information
FCA–PS–67 Nondiscrimination on the Basis of Disability in Agency Programs and Activities
FCA–PS–68 FCS Building Association Management Operations Policies and Practices

FCA–PS–71 Disaster Relief Efforts by Farm Credit Institutions
FCA–PS–72 Financial Institution Rating System (FIRS)
FCA–PS–77 Borrower Privacy
FCA–PS–78 Official Names of Farm Credit Institutions
FCA–PS–79 Consideration and Referral of Supervisory Strategies and Enforcement Actions
FCA–PS–80 Cooperative Operating Philosophy—Serving the Members of Farm Credit System Institutions
FCA–PS–81 Ethics, Independence, Arm's-Length Role, Ex Parte Communications and Open Government

Travel

FCA–PS–44

EFFECTIVE DATE: August 31, 2015

EFFECT ON PREVIOUS ACTIONS: Originally adopted 13–JUN–91; amended 12–NOV–92; amended 08–JUL–11; amended 31–AUG–15.

SOURCE OF AUTHORITY: 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 12 U.S.C. 2242 (Section 5.8 of the Farm Credit Act of 1971, as amended), 41 CFR Part 301.

THE FCA BOARD HEREBY ADOPTS THE FOLLOWING POLICY STATEMENT:

Members of the Farm Credit Administration (FCA or Agency) Board are not subject to the same requirements regarding allowances for travel and subsistence that generally apply to officers and employees of the United States (§ 5.8 of the Farm Credit Act of 1971, as amended). Nevertheless, it is the general policy of the FCA Board (Board) that Board members will travel on official business in the most economical fashion reasonable under the circumstances.

FCA Board members are subject to Federal laws, rules, and Executive Orders relating to conflicts of interest that may result from accepting gifts, including travel related expenses, from outside sources. Generally, Board members may not accept anything of value from:

- A person seeking official action from, doing business with, or conducting activities regulated by the FCA, or
- A person whose interests may be substantially affected by the performance or nonperformance of our official duties.

Such persons are *prohibited sources.* (*See* Executive Order 12674, as amended; 5 U.S.C. 7353; and 5 CFR Part 2635, the Executive Branch-wide standards of ethical conduct issued by the Office of Government Ethics.) An organization is also a *prohibited source* if more than half of its members are *prohibited sources.*

The gift rule under the standards of ethical conduct and the Agency's gift acceptance authority at 31 U.S.C. § 1353 outline the limited circumstances in which government officials may accept gifts and the payment of travel expenses from outside sources. Unless an exception applies, ethics rules prevent Board members from accepting gifts offered because of their official positions. Under no circumstances may Board members accept anything of value in return for being influenced in the performance of an official act. The aim of these rules is to prevent an actual conflict of interest or the appearance of a conflict and to uphold public confidence in the integrity of the Government and the Agency.

Except as noted above, third parties may not pay for official Agency expenditures. Because the Agency is responsible for the cost of conducting official business, Board members will ensure that the Agency is billed directly for travel expenses whenever possible (for example, by using a Government issued credit card for travel expenses). On those occasions when direct Agency payment is impossible or impractical (for example, a large group business dinner arranged and paid for in advance by the organizer), Board members will promptly notify the Agency of the obligation and ensure that the payer is promptly reimbursed. Board Members recognize that it is important not to create the impression that a third party, particularly a prohibited source, is paying for their expenses.

TRAVEL

Transportation

Board members will use less than first-class accommodations for all modes of transportation except in circumstances where:

1. A Board member must use first-class accommodations because no other space accommodations are reasonably available or where other practical considerations exist (such as to accommodate a disability or other special need);
2. Exceptional security circumstances require it;
3. The conduct of Agency business requires it; or
4. A Board member receives first-class travel benefits on an unsolicited basis from a carrier (such as free first-class coupons) and the benefit cannot be used by the Agency either in the present or the future, cannot be redeemed for cash value, and does not require the redemption of official miles. Under these circumstances, Board members can use the first-class benefit for either official or personal travel.

Board members will use a commercial charter flight at Agency expense only when no commercially scheduled flights are available in time to meet the requirements of the travel or when the charter flight would be more economical than a commercial flight. Board members will avoid the use of private aircraft whenever possible and use them only where commercial or charter flights are not reasonably available or would impose undue hardships. When reporting travel expenses, Board members must adequately justify the use of a commercial charter flight, private aircraft, or first-class accommodations.

Lodging

When available and practical, Board members will book lodging at the Government rate or another available reduced rate at hotels and motels. When attending a convention, meeting, or other official activity, Board members will ordinarily obtain lodging at the hotel or motel holding the activity even if reduced rates are available elsewhere. Board members may also book more than one room when necessary for the conduct of official business on the premises.

The Agency will not ordinarily reimburse Board members for lodging in the metropolitan Washington, DC, area unless they have relocated in a holdover status. However, lodging may be necessary to take full advantage of a conference.

Other Expenses for Official Activities

The FCA will reimburse Board members for the usual and reasonable expenses incurred as a consequence of official activities in the Washington, DC, metropolitan area and in other locations. The Agency will allow the repayment of expenses for:

1. Transportation costs;
2. Meal costs;
3. Registration fees or other fees assessed for attendance or participation;
4. The cost of miscellaneous supplies needed to participate in a particular function or activity; and
5. Other costs we incur by participating in official activities.

The Agency will *not* allow reimbursement of expenses for official activity incurred on behalf of other persons, including relatives, except as

provided in the Board policy on Official Function (Representation and Reception) Expenses.

Form of Payment

Board members will arrange for official travel using the Agency's travel management system whenever possible. Although Board members may use cash to pay for official travel expenses and seek repayment from the Agency afterwards, whenever possible, the preferred method of payment will be the use of the Government-issued credit card for all official travel expenses.

Receipts

When filing claims for reimbursement of travel expenses, Board members will provide receipts for expenses as normally required of other FCA employees under the Federal Travel Regulation, which currently requires receipts for all lodging and travel expenses over $75. However, failure to provide a receipt as normally required is not grounds for denial of a claim. If a receipt is not available, Board members will provide a statement explaining the nature and amount of the expense and the reason for not having a receipt.

COMBINING OFFICIAL BUSINESS TRAVEL WITH PERSONAL ACTIVITIES

Although it is permissible to engage in personal activities while on official travel, the purpose of the trip must always be the need to conduct official business. The Agency pays for travel and related expenses incurred in performing official business. However, the Agency may *not* pay for personal expenses incurred while on official travel. Therefore, it is important to record and allocate expenses carefully to ensure that official expenses are clearly differentiated from personal expenses. Proper handling of Agency expenses is always important, but particularly so when engaging in personal activities while on official Agency business.

The Board is aware that, in certain circumstances, engaging in personal activities while on official travel could create an appearance that personal activities, not official business, prompted the trip. When Board members take a trip to conduct official business, it is usually clear from the nature of the business that the trip is proper and necessary. If there are concerns that personal activities during the trip might suggest otherwise, Board members will consult the DAEO to avoid a possible appearance of impropriety. The Board understands that engaging in official travel that involves a given destination (for example, our home state) on a disproportionate basis may raise questions about whether the travel truly is necessary. Again, Board members will consult with the DAEO about such concerns.

DATED THIS 31st DAY OF AUGUST, 2015

BY ORDER OF THE BOARD

Dale L. Aultman
Secretary to the Board

Rules for the Transaction of Business of the Farm Credit Administration Board

FCA–PS–64

EFFECTIVE DATE: August 31, 2015

EFFECT ON PREVIOUS ACTION: Originally adopted by NV–94–05 (07–FEB–94)[FCA–PS–58]; corrected by memo 09–FEB–94; amended by NV–95–03 (13–JAN–95)[FCA–PS–64]; amended by NV–95–18 (20–MAR–95); amended by NV–95–46 (9–AUG–95); amended by BM–24–OCT–95–02; amended by NV–95–69 (02–JAN–96). *See also* 58 FR 6633, Feb. 1, 1993 and 59 FR 17537, Apr. 13, 1994; reaffirmed by NV–96–22 (30–MAY–96); amended by NV–96–36 (26–AUG–96); amended by NV–98–16 (8–MAY–98); amended by NV–99–09 (16–MAR–99); amended by NV–99–25 (24–SEP–99); amended by NV–11–15 (8–JUL–11); amended by NV–15–13 (31–AUG–15).

SOURCE OF AUTHORITY: Sections 5.8, 5.9, 5.10, 5.11 and 5.17 of the Farm Credit Act of 1971, as amended.

THE FARM CREDIT ADMINISTRATION (FCA) BOARD HEREBY ADOPTS THE FOLLOWING POLICY STATEMENT:

RULES FOR THE TRANSACTION OF BUSINESS OF THE FARM CREDIT ADMINISTRATION BOARD

PURPOSE, SCOPE, AND DEFINITIONS

Section 1. Purpose and Scope. These Rules adopted under § 5.8(c) of the Farm Credit Act of 1971, as amended (Act), concerning the transaction of business of the Farm Credit Administration (FCA) Board (Board) supplement the statutes and regulations that govern the procedures and practice of the Board (including, without limitation, the Act, the Sunshine Act, and FCA regulations, 12 CFR part 600 *et seq.*). Unless otherwise provided in these Rules, or relevant statutes or regulations, this Board will transact its business in accordance with Robert's Rules of Order (Newly Revised) (most recent edition).

Section 2. Definitions, Reporting Relationships, and Performance Appraisals.

''*Act*'' means the Farm Credit Act of 1971, as amended.

''*Board Member*'' means each of the three individuals appointed by the President, by and with the advice and consent of the Senate, to serve as Members of the Board, including the Chairman, unless the context requires otherwise. Each Board Member appraises the performance of his or her staff.

''*Board Member Staff*'' means those employees reporting directly to a Board member such as executive or special assistants, and who are organizationally located within the Office of the Board.

''*Chairman*'' means the Board Member designated by the President to serve as Chairman of the Board. The Chairman also serves as the Agency's Head and *Chief Executive Officer* (CEO). After consultation with the other Board Members, the Chairman appraises the performance of the Secretary, Equal Employment Opportunity Director, Designated Agency Ethics Official, Chief Operating Officer, and all Office Directors reporting directly to him or her.

''*Designated Agency Ethics Official*'' (DAEO) means an employee of the FCA designated by the Head of the Agency to administer the provisions of Title I of the Ethics in Government Act of 1978, to coordinate and manage the Agency's ethics program, and to provide liaison with the Office of Government Ethics on all aspects of FCA's ethics program. The DAEO reports directly to the Chairman on the Agency's ethics program.

''*Equal Employment Opportunity (EEO) Director*'' means an employee of the FCA designated by the Head of the Agency to administer the provisions of the Agency's EEO program as set forth in 29 CFR part 1614.

''*General Counsel*'' (GC) means an employee of the FCA who serves as the chief legal officer of the Board. The GC reports to the Chairman concerning administrative matters and to the FCA Board on matters of Agency policy. By the nature of the position the GC, as appropriate and necessary, maintains special advisory relationships in confidence with the individual Board Members. The GC must also keep the FCA Board fully informed of all litigation in which the Agency is involved.

''*Inspector General*'' (IG) means an appointed head of the Office of Inspector General (OIG), an independent component of the FCA, established by and responsible for adhering to the IG Act of 1978, as amended. The purpose of the IG is to promote economy, efficiency and effectiveness, and to prevent and detect fraud and abuse in the programs and operations of FCA.

''*Office Director*'' means an employee of the FCA serving as head of an FCA Office, excluding the Inspector General unless specified.

''*Secretary*'' means an employee of the FCA who serves as Secretary to the Board as appointed by the Chairman. The Secretary, or another FCA employee designated by the Chairman, serves as the parliamentarian for the Board. The Secretary keeps permanent and complete records and minutes of the acts and proceedings of the Board.

''*Sunshine Act*'' means the Government in the Sunshine Act, 5 U.S.C. 552b.

AMENDMENTS

Section 1. The business of the Board will be transacted in accordance with these Rules, which may be amended from time to time: Provided, however, that upon agreement of at least two Board Members convened in a duly called meeting, the Rules may be waived in any particular instance, except that action may be taken on items at a Special Meeting only in accordance with Part I, Article I, § 3(b) of this policy.

Section 2. These Rules may be changed or amended by the concurring vote of at least two Board Members upon notice of the proposed change or amendments having been given at least thirty days before such vote.

Section 3. These Rules will be reviewed by the Board at least every five years or as needed.

Section 4. The Secretary to the Board is hereby delegated authority to make technical, syntactical, and grammatical changes to any Board Policy, provided a redlined complete copy of the policy(ies) is given to each Board member that clearly details each change made at least 30 days prior to the effective date of the change. Any Board member may, within the 30 day period, stop the proposed changes(s) and, if a Board member so desires, put forth the matter for Board consideration.

PART I—RULES FOR THE FCA BOARD MEETINGS

Article I. Board Meetings.
Article II. Board Action.
Article III. Board and Chairman Delegations.

ARTICLE I

BOARD MEETINGS

Section 1. Sunshine Act. All FCA Board meetings will be announced and conducted in conformance with the Government in Sunshine Act.

Section 2. Presiding Officer. The Chairman will preside at each meeting. In the event the Chairman is unavailable, the other Board Member from the Chairman's political party will preside. If there is no other Board Member from the Chairman's political party, the Board Member serving the longest on the Board will preside.

Section 3. Calls and Agenda.

(a) *Regular Meeting.* The Secretary, at the direction of the Chairman, issues a call for items for the agenda to the other Board Members and the Office Directors of FCA. The Secretary provides to the Chairman a list of all the items submitted, including a list of outstanding notational votes and matters voted ''not appropriate for notational vote.'' The Chairman then establishes the agenda to be posted on the Agency's public notice board or on its public Web site at least 1 week before the meeting. The agenda will also be published in the **Federal Register** at least 3 calendar days before the meeting date. At each meeting, the Board votes to approve or amend the agenda established by the Chairman. The Board may amend the agenda to add items that the Board Members believe need to be considered at that meeting.

(b) *Special Meeting.* Special meetings of the Board may be called:

(1) By the Chairman; or

(2) By the other two Board Members; or

(3) If there is at the time a vacancy on the Board, by a single Board Member.

Any call for a Special Meeting will specify the business to be transacted and state the place and time of such meeting. No business will be brought before a Special Meeting that has not been specified in the notice of call of such meeting without the unanimous consent of all Board Members.

(c) *Notice.* The Secretary will give appropriate notice of any and all meetings and make the call for Special meetings. Reasonable efforts to provide such notice to Board Members will be made for all meetings of the Board, but failure of notice will in no case invalidate a meeting or any action taken during that meeting.

Section 4. Board Materials. The Secretary will distribute complete Board Meeting Books to each Board Member and their staff at least three full business days before any Regular Meeting. There may be instances when the proposed Board meeting agenda approved by the Chairman may need to be amended prior to a Board meeting to include items that require Board action. In such instances the Secretary will update the Board meeting books with the newly approved item(s) and make the required Sunshine Act disclosures and notices as soon as possible. However, unless agreed to by all Board Members, no vote may be taken on an issue unless the necessary material has been provided to the Board Members not less than twenty-four hours before the meeting to consider such issue.

Section 5. Supporting Documentation. The Secretary will maintain one copy of all Board Meeting Book material. All copies of the Board Meeting Book material for Closed Sessions provided to anyone other than the Secretary will be returned to the Secretary for disposal or maintained in a secure location approved by the Secretary. One copy of each Executive Summary provided to a Board Member will be provided to and maintained by the Secretary. Board Meeting Books and Executive Summaries are not part of the minutes of the Board unless expressly incorporated therein.

Section 6. Telephone Conference. Any Board Member, including the Chairman, may participate in a meeting of the Board through the use of conference call telephone or similar equipment, provided that all persons participating in the meeting can simultaneously speak to and hear each other. Any Board Member so participating will be deemed present at the meeting for all purposes.

Section 7. Public Attendance.

(a) *Attendance.* Members of the public may attend all meetings of the Board except those meetings or portions of meetings that are closed as directed by the Board, consistent with the Sunshine Act.

(b) *Public Appearances before the Board.* While members of the public are invited and encouraged to attend Board meetings, no member of the public has a right to speak in a Board meeting. However, the Board may, in its sole discretion, permit a member of the public to address the Board if he or she provides a written request and statement covering the intended subject matter at least fifteen days before the meeting.

Section 8. Minutes.

(a) *Format.* The format of minutes of the Board meetings, unless otherwise stated in these rules or relevant statutes or regulations, will comply with the most recent edition of Robert's Rules of Order and the Sunshine Act. The minutes will clearly identify the date, time, and place of the meeting, the type of meeting held, whether the meeting was open or closed, the identity of Board Members present and, where applicable, that they participated by telephone, and the identity of the Secretary and the GC in attendance, or, in their absence, the names of the persons who substituted for them. The minutes will contain a separate

paragraph for each subject matter and will note all main motions or motions to bring a main motion before the Board, except any that were withdrawn. The minutes will not contain any reference to statements made unless a request is specifically made that a statement be made a part of the minutes, or if required by the Sunshine Act. The minutes of meetings will indicate the substance and disposition of any notational votes completed since the last meeting. Except in the case of a voice vote, the Secretary will record the vote of each Board Member on a question or will note a unanimous consent. The Chairman and the Secretary will sign the minutes of the Board meeting, indicating the date of approval by the Board.

(b) *Circulation.* The Chairman and GC will review draft minutes. The Secretary will circulate draft minutes to all Board Members at least one week before their consideration at a Board Meeting. The Secretary will place in all Board Meeting Books copies of the minutes of the meetings of the Board to be voted on at a Board Meeting.

ARTICLE II

BOARD ACTION

Section 1. Affirmative Vote Required. Action on any matter requires the affirmative vote of at least two Board Members, except as provided in Article III, § 1 of this Part.

Section 2. Records of Board Action.

(a) *Meetings.* The vote of each Board Member, including the Chairman, on a question voted on at a meeting will be recorded in the minutes. The Chairman may, if there is no objection, call for a voice vote on adjournment or other actions. If a voice vote is taken, its result will be recorded in the minutes.

(b) *Notational Votes.* The Secretary will provide a summary of any action taken by notational vote to the Board Members and Chairman and the action taken will be reflected in the minutes of the next meeting of the Board.

Section 3. Notational Voting.

(a) Nothing in these Rules precludes the transaction of business by the circulation of written items (notational votes) to the Board Members.

(b) The Board may use notational voting procedures to decide any matter that may come before it. Any Board Member may submit a motion to the Secretary for distribution as a notational vote. However, in view of the public policy of openness reflected in the Sunshine Act and the desire to allow any Board Member to present viewpoints to the other Board Members, any Board Member can veto the use of the notational voting procedure for the consideration of any particular matter by voting ''not appropriate for notational vote.''

(c) Upon submission of an item for notational vote, the Secretary will provide each Board Member a complete package of all relevant information and a notational vote ballot specifying the Board Member making the motion, the motion itself, and the deadline for return of the ballot. Within ten business days of receipt, or earlier if the motion requires, each Board Member will act on the matter by returning the ballot to the Secretary. Each Board Member is to indicate his/her position in writing on the ballot in the following manner: (1) Approve, (2) disapprove, (3) abstain, or (4) not appropriate for notational vote.

(d) No partial concurrences or amendments are permitted; however, a Board Member may suggest a revision to the proponent of the motion, subject to compliance with the Sunshine Act, and the proponent may withdraw his or her motion at any time before receipt by the Secretary of all the ballots of all Board Members or the end of the time period provided for on the ballot.

(e) A Board Member who is absent from the office may authorize a staff member to initial the ballot for him/her, provided that the Board Member has a designation memorandum on file with the Secretary.

Section 4. Board Records. The Secretary will maintain the records of the Board including, without limitation, the minutes of the Board meetings and notational votes.

ARTICLE III

BOARD AND CHAIRMAN DELEGATIONS

Section 1. Two Vacancies/Authority to Act. In the event two Board Members are not available by reason of recusal, resignation, temporary or permanent incapacitation, or death, to perform the duties of their offices, the Board hereby delegates to the remaining Board Member the authority to exercise, in his/her discretion, the authorities of the FCA granted to the Agency or the Board by statute, regulation or otherwise, except those authorities which are non-delegable. This delegation of authority does not include authority to establish general policy and promulgate rules and regulations, or any delegation expressly prohibited by statute. This delegation will include but is not limited to the exercise of the following powers:

(a) The approval of actions of the Farm Credit System (System) institutions that are required by statute, regulations or otherwise to be approved by the FCA or its Board;

(b) The exercise of all powers of enforcement granted to the FCA by statute, including but not limited to, the authorities contained in 12 U.S.C. 2154, 2154a, 2183, 2202a, and 2261–2274; and

(c) Any actions or approvals required in connection with the conduct of a receivership or conservatorship of a System institution.

Authorities delegated by this Section may be re-delegated, in writing, at the discretion of the remaining Board Member, to other FCA officers or employees.

Section 2. National Security Emergencies. Pursuant to Executive Order 12656, as amended, in the event of a national security emergency, if the Chairman is unable to perform his or her duties for any reason, the Chairman, at his or her sole discretion, delegates to the following individuals, in the order mentioned and subject to being available, the authority to exercise and perform all the functions, powers, authority and duties of the Chairman in an acting capacity until such time as either the Chairman can resume his/her position or, if no longer able to serve as Chairman, the President of the United States designates a new Chairman:

(a) Member of the Board of the Chairman's political party;

(b) If there is no other Board Member from the Chairman's political party, the Board Member serving the longest on the Board;

(c) General Counsel.

The Chairman or Acting Chairman will ensure that FCA has an alternative location for its headquarters functions in the event a national security emergency renders FCA's headquarters inoperative. The Chairman or Acting Chairman may establish such branch office or offices of the FCA as are necessary to coordinate its operations with those of other government agencies.

Section 3. Individual Assignments. To the extent consistent with law, the Board or the Chairman may offer another Member of the Board a special assignment and define the duties incident thereto, and the Chairman may delegate to another Board Member certain duties and responsibilities of the Chairman.

Section 4. Other Delegations. The FCA Board may delegate such authorities as it deems necessary and appropriate. Such delegations are included in Attachments A and B to this policy.

PART II—BOARD AND STAFF GOVERNANCE

Article I. Board Governance.
Article II. Staff Governance.

ARTICLE I

BOARD GOVERNANCE

Section 1. General. The purpose of this Part is to ensure the efficient operation of the FCA in light of the various authorities and operational responsibilities of Board and the FCA Chairman and CEO.

The Board recognizes that for the Agency to run efficiently, the Chairman/CEO must have sufficient latitude and discretion to direct the implementation of Board policies and run the Agency's day-to-day affairs. Notwithstanding such latitude, the other Board Members must have access to staff and must be able to request information from staff that they find necessary to fulfill their policy- and rulemaking responsibilities under the Act.

The Chairman/CEO is always free to bring to the Board issues that do not require Board action. Conversely, the Board may involve itself in operational matters ordinarily reserved for the Chairman/CEO if it concludes that they rise to the level of policy due to their sensitivity, seriousness, or controversial nature.

Section 2. Board Authorities. The Board, acting as a unit, must manage, administer, and establish policies for the FCA. The Board specifically approves the rules and regulations implementing the Act; provides for the examination, enforcement, and regulation of System institutions; provides for the performance of all the powers, functions, and duties vested in the FCA; and requires any reports deemed necessary from System institutions. The Board also adopts the FCA seal. Each Board Member has the authority to appoint and direct regular, full-time staff in his or her immediate office.

Section 3. Chairman Authorities. The Chairman, in carrying out his or her responsibilities, is governed by the general policies adopted by the Board and by such regulatory decisions, findings, and policy determinations as the Board may by law be authorized to make.

The Chairman, in carrying out policies as directed by the Board, acts as spokesperson for the Board and represents the Board and the FCA in official relations within the Federal Government. Under policies adopted by the Board, the Chairman must consult on a regular basis with the Secretary of the Treasury concerning the exercise of the System's powers under § 4.2 of the Act; the Board of Governors of the Federal Reserve System concerning the effect of System lending activities on national monetary policy; and the Secretary of Agriculture concerning the effect of System policies on farmer, ranchers, and the agricultural economy. As to third persons, all acts of the Chairman will be conclusively presumed to be in compliance with general policies and regulatory decisions, findings, and determinations of the Board.

The Chairman enforces the rules, regulations, and orders of the Board. The Chairman designates attorneys to represent the Agency in any civil proceeding or civil action brought in connection with the administration of conservatorships and receiverships and in civil proceedings or civil actions when so authorized by the Attorney General under provisions of title 28 of the United States Code. The Chairman, subject to the approval of the Board, may establish one or more advisory committees in accordance with the Federal Advisory Committee Act.

The Chairman may not delegate any of the foregoing powers without prior Board approval.

The Chairman also exercises those powers conferred on the Head of the Agency, including the power to make certain designations.

Section 4. CEO Authorities. The Chairman of the FCA Board is also the Agency's CEO. The CEO, in carrying out his or her responsibilities, directs the implementation of policies and regulations adopted by the Board and, after consultation with the Board, executes the administrative functions and duties of the FCA.

''Consultation with the Board'' is achieved when the Chairman/CEO makes a good faith attempt to seek advice, guidance, and input from the Board before taking significant action on matters related to the execution of administrative functions or duties.

The Chairman as CEO runs the day-to-day operations of the Agency. This includes the power to implement the policies and regulations adopted by the Board, appoint personnel as necessary to carry out Agency functions, set staff pay and benefits and direct staff. As provided in § 5.11(b) of the Act, the Chairman/CEO appoints heads of major administrative divisions subject to the approval of the Board. In accordance with the IG Act, the IG is appointed by the FCA Board.

The Chairman as CEO may designate to other FCA officers and employees the authority to exercise and perform those powers necessary for the day-to-day management of the Agency.

ARTICLE II

STAFF GOVERNANCE

Section 1. Authority over Staff. The Chairman/CEO has authority to hire the personnel necessary to carry out the mission of the Agency and to direct staff, except that each Board Member is entitled to appoint and direct his or her regular, full-time staff within the constraints of the adopted budget for the Office of the Board.

Subject to the approval of the Board, the Chairman/CEO appoints and removes the ''heads of major administrative divisions.'' The Board defines the ''heads of major administrative divisions'' as all Office Directors who are career appointees. The Board must approve the conversion of an existing career position to a non-career (political) position. In accordance with the IG Act, a removal of the IG may only be made upon the written concurrence of a 2/3 majority of the FCA Board.

Section 2. Organization Chart. Consistent with its mandate to approve regulations and appointments outlined above, the Board approves the FCA organizational chart down through the Office level along with relevant functional statements for each Office. Authority to make organizational changes within any division rests with the Chairman/CEO, and may be delegated to the Chief Operating Officer or Office Directors. In accordance with the IG Act, the IG has personnel authority for the Office of the Inspector General.

PART III—BOARD OPERATIONS

Article I. Committee and Financial Operations, and Other Activities.
Article II. Board Member Travel and Related Expenses.

ARTICLE I

COMMITTEE AND FINANCIAL OPERATIONS, AND OTHER ACTIVITIES

Section 1. Committee Operations. To assist the Board in exercising its authority for oversight and approval of the Strategic Plan, the formulation of regulations and policy, and the monitoring and assessment of risk, the Board directs the formation of three committees.

Each Committee Chair will be designated by the Chairman. Each committee will be comprised of the Board Members' Executive Assistants and such Agency staff as determined by the Committee Chair. The Committee

Chair will designate a Coordinator with expertise in, or significant accountability for, the activities of the committee. Committees will meet as often as determined by the Committee Chair to achieve committee objectives. The Chairman may also approve the use of external consultants to assist the committees on an as-needed basis.

(a) *Strategic Planning Committee.* The objective of this committee is to provide a forum for Board input on (1) the development of, and periodic updates to, the Strategic Plan, and (2) changes in processes and procedures that will improve the quality of this key Agency document.

(b) *Regulation and Policy Development Committee.* The objective of this committee is to provide a forum to (1) obtain Board input throughout the entire process of developing, modifying, or eliminating individual regulations, (2) discuss changes in processes and procedures that will improve the Agency's regulation and policy development process, and (3) foster open discussion during the development and periodic update of the Agency's regulatory agenda.

(c) *Risk Committee.* The objective of this committee is to provide a forum to (1) facilitate Board awareness of risks to the ongoing mission fulfillment and safety and soundness of the System and Farmer Mac, (2) ensure an integrated and coordinated Agency risk analysis process that effectively uses information from a wide variety of internal and external sources, and (3) foster open discussion about risks to the System and Farmer Mac and the implications of such risks for future Agency operations.

Section 2. Financial Operations.

Budget Approval. The Chairman, consistent with the provisions of the Act, other law and regulations, and applicable policy, oversees the development of budget proposals and causes the expenditure of funds within approved budgets to meet the Agency's mission and objectives. The Board approves an object class budget for the Agency as a whole and a budget for each office. Any reallocation of funds in excess of $100,000 requires FCA Board approval. Reallocation of funds of $100,000 or less requires the Chairman's approval (or that of the Chairman's designee). The Chief Financial Officer (CFO) will provide a monthly report to the Board on all budgetary reallocations that occur after the FCA Board approves a fiscal year budget. The CFO will also provide a quarterly budget report to the Board that discusses actual performance of the budgeted items. The quarterly report may be presented during regular Board meetings or during a Board briefing.

The IG, in accordance with the IG Act, transmits a budget estimate specifying an aggregate amount for OIG operations, OIG training needs, and amounts for support of the Council of the Inspectors General on Integrity and Efficiency.

Section 3. Other Board Operations.

(a) *Audit Resolution Process.* The Chairman is responsible for overseeing the audit resolution process and, through a designee, for audit resolution implementation and follow-up. However, the Chairman must obtain Board approval of audit resolutions where the issue would normally require Board action. The Inspector General and Audit Follow-up Official will report to the Board the status of any unresolved audit recommendations, unimplemented management decisions, and other issues on a semiannual basis following the Inspector General's Semi-Annual Report to Congress.

(b) *Litigation.* The Chairman has authority to undertake litigation to defend the Agency, consistent with established Board policy. The Board will approve litigation where the Agency is plaintiff, will approve recommendations to the Justice Department to pursue an appeal, and will approve positions advanced in litigation that conflict with existing Board policy or establish a significant new policy. The Chairman's authority to settle certain claims against the Agency have been delegated to the GC provided the GC consults with the Chairman.

(c) *Documents and Communications.*

(1) *Approval, Review, and Consultation.* The FCA Board is responsible for determining the Agency's position on policy. Board Policy Statements should be reviewed at least every five years.

The Board must approve all documents published in the **Federal Register**, including proposed and final FCA regulations, except for notices of effective dates or technical corrections of regulations. Board approval is not necessary prior to **Federal Register** publication of Privacy Act systems notices or notices of other routine or administrative matters unless they raise policy issues requiring Board approval. Bookletters, informational memoranda, and other mass mailings to Farm Credit institutions (except documents listed in Attachment A) must be approved by the Board prior to distribution. Documents may be added to or deleted from Attachment A by Board approval.

The issuance of a ''no action'' letter is a policy matter requiring Board approval. For the purposes of this statement, a ''no action'' letter is a statement to a Farm Credit institution that, notwithstanding any other provision of law or regulation, the Board will take no action against a System institution solely because it engaged in conduct specified in the letter.

Authority to promulgate internal administrative issuances, including FCA Policies and Procedures Manual (PPM) issuances, rests with the Chairman and may be delegated to the Chief Operating Officer. The Chairman will provide the Board with final drafts of PPM issuances and other administrative issuances for an appropriate consultative period if those issuances relate to examination and supervision, audits, internal controls, the budget, the strategic planning process, regulation development, or personnel matters relating strictly to promotion or pay.

(2) *Signature Authority.* Authority to sign official Board documents, including, but not limited to, proposed and final regulations, **Federal Register** notices, no-action letters, minutes, and other Board actions is delegated to the Secretary. After any action by the Board required under paragraph (c)(1) of this section, the Chairman has the authority to sign bookletters, informational memoranda, and other mass mailings to Farm Credit institutions. This signature authority may be delegated to senior staff members.

(3) *Correspondence.* The Chairman approves and signs routine correspondence (that is, correspondence in the ordinary course of business), to members of Congress, correspondence responding to White House referrals, or other correspondence on behalf of the Board or the Agency. The Chairman may delegate approval and signature authority for such correspondence to the Chief Operating Officer or FCA Office Director when the subject matter involves congressional or White House case work. When the subject matter involves the presentation of an Agency position or policy relative to regulations, legislation, or any other significant matter, the Chairman may not delegate authority, and the correspondence must be approved by the Board, except that the Board need not approve a previously approved response or a restatement of previously adopted Board policy. Board approval does not apply when the Chairman is speaking only for him- or herself and includes the appropriate disclaimer. Likewise, on similar matters, Board Members should include appropriate disclaimers. The Chairman or the Chairman's designee has authority to sign acknowledgments or interim responses without Board approval, provided such responses contain no

policy statements or only previously approved statements.

(4) *Authentication and Certification of Records and Documents.* The Chairman designates the person authorized and empowered to execute, issue and certify under the seal of the FCA:

- Statements authenticating copies of, or excerpts from official records and files of the FCA;
- Effective periods of regulations, orders, instructions, and regulatory announcements on the basis of the records of the FCA;
- Appointment, qualification, and continuance in office of any officer or employee of the FCA, or any conservator or receiver acting in accordance with the FCA receivership regulations at 12 CFR part 627 on the basis of the records of the FCA.

The Chairman may further empower the designated official(s) to sign official documents and to affix the seal of the FCA thereon for the purpose of attesting the signature of officials of the FCA.

ARTICLE II

BOARD MEMBER TRAVEL AND RELATED EXPENSES

Section 1. Pre-confirmation Travel. Travel expenses incurred by an FCA Board nominee that are solely for the purpose of attending his or her Senate confirmation hearings will be considered the personal expense of the nominee and will not be reimbursed by FCA. However, consistent with existing Government Accountability Office interpretations, the FCA will pay for a nominee's travel expenses to the Washington, DC metropolitan area (including lodging and subsistence), if payment is approved, in advance whenever practicable, by the Chairman based on a determination that the nominee's travel is related to official business that will result in a substantial benefit to the FCA. That determination will be made on a case-by-case basis and is within the sole discretion of the Chairman. The same standards and policies that apply to the reimbursement of Board Members' travel expenses will apply to the reimbursement of nominee's expenses. As part of the documentation for the approval process, the Chairman must execute a written finding that a nominee's travel would substantially benefit the FCA.

Travel that may result in substantial benefit to the FCA could include meetings, briefings, conferences, or other similar encounters between the nominee and FCA Board Members, office directors, the Chief Operating Officer, or other senior congressional and executive branch officials, for the purpose of developing substantive knowledge about the FCA, its role, its interaction with other Government entities, or the institutions that it regulates. Meetings or briefings of this nature may enable a nominee to more quickly and effectively assume leadership at the Agency after confirmation by the Senate and could thus substantially benefit the Agency.

Section 2. Board Member Relocation

Relocation to the Agency

Board Members will be reimbursed by FCA for travel and transportation expenses incurred in connection with relocation to their first official duty station. Reasonable expenses for which reimbursement, as approved by the Chairman/CEO, will be allowed generally include, but are not limited to the following:

(a) Travel and per diem for the Board Member.

(b) Travel, but not per diem, for immediate family of the Board Member.

(c) Mileage if privately owned vehicle is used in travel; and

(d) Transportation and temporary storage of household goods.

Each relocation will be considered separately and all rates and allowances will be determined at the time of authorization, notwithstanding the limitations of 5 U.S.C., Chapter 57 and the Federal Travel Regulations, as provided in § 5.8(d) of the Act. Reimbursement of additional expenses may be authorized if warranted by specific circumstances. Board Members will be issued a specific prior written authorization by the Chief Operating Officer detailing the expenses that may be reimbursed.

Relocation in Holdover Status

It is in the Agency's best interest to maintain a full complement of Board Members. The Agency is sensitive to the uncertainty and extra expenses often incurred by Board Members that serve past the expiration of their official appointment and prior to their successor's appointment. In accordance with § 5.8(b) of the Act, a Board Member ''shall continue to serve as such after the expiration of the member's term until a successor has been appointed and qualified.'' To that end, a Board Member, not serving as FCA Chairman, in a holdover status may prefer to perform their official duties from another U.S. location outside of the Washington, DC area, recognizing that they still have an obligation to devote their full time and attention to the business of the Board as required by § 5.8(d) of the Act. In such a case, the Board Member's duty station may be changed from FCA headquarters to a new location. Such a Board Member will be reimbursed for regularly scheduled official travel to headquarters upon authorization by the Chief Operating Officer. For other official travel, Board Members that serve in continuation will be reimbursed subject to the Board travel policy outlined in PS–44.

In addition, Board Members serving as a holdover who change their duty station will be reimbursed by FCA for travel and transportation expenses incurred in connection with relocation to their new location. Reimbursement for reasonable expenses, as approved by the Chief Operating Officer, will be limited to:

(a) Travel and per diem for the Board Member.

(b) Travel, but not per diem, for immediate family of the Board Member.

(c) Mileage if privately owned vehicle is used in travel; and

(d) Transportation and temporary storage of household goods.

Board Members will be issued a specific prior written authorization by the Chief Operating Officer detailing the expenses that may be reimbursed.

Section 3. Representation and Reception Fund. Section 5.15(a) of the Act allows the payment of FCA funds for official representation and reception expenses. Expenses incurred from official functions may be paid for with funds from the Representation and Reception (R&R) Fund only under this policy statement and decisions from the Department of Justice or guidance from the Comptroller General of the United States (Comptroller General).

''Official functions'' include meetings and other contacts with the public to explain or further the Agency's mission and typically are activities of the FCA Board, individual Board Members, or other FCA officials acting for the Board. For example, while extending official courtesies to the public on occasions associated with the mission of the Agency, FCA staff may use the R&R Fund to cover catering services, rental of facilities, receptions, coffee, snacks, refreshments, supplies, services and tips. Consistent with opinions of the Comptroller General, the FCA Board has determined, as a matter of policy, that it will not permit the R&R Fund to be used for events or functions in which attendance is restricted to Agency employees.

Similarly, the R&R Fund may not be used for activities relating solely to ''personal entertainment'' (interpreted by the Comptroller General to include attendance at a sporting event or

concert, for example) or for personal favors, even if the entertainment is enjoyed with, or is a favor given to, members of the public, such as Farm Credit System representatives.

The FCA Board has determined, as a matter of policy, that the R&R Fund shall be a fund of last resort and shall not be used for expenses that can properly be classified as another type of Agency expense.

The FCA Board will decide how much to budget for the R&R Fund. The FCA Board will approve any amount available for R&R expenses for the Chairman and each Board Member, and an amount available for general R&R expenses. The amount approved for use by the Chairman and each Board Member will be maintained in their budget code. The amount approved for general R&R will be maintained in a separate budget class code by the Secretary.

DATED THIS 31st DAY OF AUGUST, 2015

BY ORDER OF THE BOARD

Dale L. Aultman
Secretary to the Board

Attachment A

FCA Communications

Part 1—*Mass Communications that* do not *require review by the FCA Board prior to distribution to Farm Credit System Institutions:*

1. Issuances or revisions to:
- The FCA Examination Manual, examination criteria, and examination procedures;
- The FCA Uniform Call Report instructions;
- Examination plans and general guidance provided to examiners, except those relating to Agency positions not previously approved by the Board.

2. Requests for information on:
- Call Reports, LARS, or similar data requests;
- Young, beginning, and small farmers and ranchers reports;
- Other reports as required by statute or determined necessary by the Board (consistent with Board instruction).

3. Information that is being provided on:
- Fraudulent activities;
- Removals/suspensions/prohibitions;
- Other related activities.

4. Documents that have been issued by other Federal agencies including regulations, official staff commentary on regulations, and forms;
5. FCA Handbook updates;
6. Annual Report of Assessments and Expenses under 12 CFR 607.11;
7. Office of Inspector General mailings for official purposes;
8. Vacancy Announcements;
9. PPM mailings.

Part 2—Mass Communications that contain the following matters require review by the FCA Board prior to distribution to Farm Credit System Institutions:

1. Agency policy;
2. Agency legal interpretations;
3. Substantive Agency positions on examination, corporate or accounting;
4. No-action positions;
5. Any communication listed in Part 1 containing any of the matters listed in Part 2 would also require review by the FCA Board prior to distribution.

Attachment B

Delegations

1. The FCA Board delegates to the Chairman the authority to:

a. Sign letters notifying the Chairman of the Boards of Farm Credit System institutions of final approval for *any* approved corporate application, after all conditions for final approval have been met and in accordance with applicable procedures;

b. Execute and issue under the FCA seal the new charter or charter amendment document for such institutions; and

c. Sign certificates of charter after new charters and charter amendments are executed.

The Chairman may re-delegate the authority in item ''a'' to other FCA officers or employees as needed.

2. The FCA Board delegates to the Chairman the authority to approve (preliminary and final) corporate applications from associations requesting to merge or consolidate provided the applications are deemed noncomplex, noncontroversial, and low risk.

Applications for mergers or consolidations approved under authority of § 7.8 of the Act will be considered noncomplex, noncontroversial, and low risk if they meet all of the following criteria:

a. The applicant association(s) has a current FIRS rating of 1, 2, or 3 (with no 3-rated association having a formal enforcement action);

b. The continuing or resulting association(s) has a gross loan volume of $500 million or less;

c. The application(s) is consistent with the Act and regulations governing its approval, and

d. There are no policy or precedent-setting decisions embedded in the request.

3. The FCA Board delegates to the Chairman the authority to approve, execute, and issue under the seal of the FCA, amendments to charters requested by Farm Credit associations, limited to name changes and/or headquarters relocations. The Chairman may redelegate this authority to other FCA officers or employees. However, all official charters or charter amendments must be signed by the Chairman and the Secretary and may not be delegated to other staff.

Dated: October 27, 2015.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2015–27893 Filed 10–30–15; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB15

Energy Labeling Rule

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

ACTION: Final rule.

SUMMARY: The Commission issues final amendments to expand coverage of the Lighting Facts label, require room air conditioner labels on packaging instead of the units themselves, enhance the durability of appliance labels, and improve plumbing disclosure requirements. This Notice completes the Commission's recent regulatory review of the Energy Labeling Rule.

DATES: The amendments published in this document are effective on December 2, 2015, except for the amendments to § 305.11, which become effective November 2, 2016, and §§ 305.3(z), 305.8, 305.15, 305.20, and Appendix L, which become effective November 2, 2017.

ADDRESSES: Relevant portions of this proceeding, including this document, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Energy Labeling Rule (''Rule'') in 1979,[1] pursuant to the Energy Policy and Conservation Act of 1975 (EPCA).[2] The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare competing models. When first published, the Rule applied to eight product categories: Refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. The Commission subsequently expanded the Rule's coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.[3]

[1] 44 FR 66466 (Nov. 19, 1979) (Rule's initial promulgation).

[2] 42 U.S.C. 6294. EPCA also requires the DOE to develop test procedures that measure how much energy appliances use and to determine the representative average cost a consumer pays for different types of energy.

[3] *See* 52 FR 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 FR 28031 (July

Continued

The Rule requires manufacturers to attach yellow EnergyGuide labels for many of the covered products and prohibits retailers from removing the labels or rendering them illegible. In addition, the Rule directs sellers, including retailers, to post label information on Web sites and in paper catalogs from which consumers can order products. EnergyGuide labels for covered products contain three key disclosures: Estimated annual energy cost (for most products); a product's energy consumption or energy efficiency rating as determined from Department of Energy (DOE) test procedures; and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. For energy cost calculations, the Rule specifies national average costs for applicable energy sources (*e.g.,* electricity, natural gas, oil) as calculated by DOE. The Rule sets a five-year schedule for updating comparability range and annual energy cost information.[4] The Commission updates the range information based on manufacturer data submitted pursuant to the Rule's reporting requirements.

II. Regulatory Review

In a March 15, 2012 **Federal Register** Notice (77 FR 15298) (''Notice of Proposed Rulemaking'' or ''NPRM''), the Commission initiated a review of the Energy Labeling Rule seeking comment on several proposed improvements to the FTC's labeling requirements. The Commission completed the first stage of the regulatory review on January 10, 2013, by issuing final amendments to streamline data reporting and improve online disclosures as proposed in the March 2012 NPRM. On July 23, 2013 (78 FR 43974), the Commission followed those improvements with new labels to help consumers comparison shop for refrigerators and clothes washers after the implementation of upcoming changes to the Department of Energy (DOE) test procedures, as well as updates to the Rule's comparability ranges.

III. Final Regulatory Review Issues

On June 18, 2014 (79 FR 34642), the Commission published a Supplemental Notice of Proposed Rulemaking (SNPRM) seeking comments on a broad array of issues raised over the course of the review proceeding and proposing related amendments.[5] These issues include expanded light bulb label coverage, an online label database, more durable labels for appliances, room and portable air conditioner box labels, ceiling fan labels, consolidated refrigerator ranges, updates to furnace labels, QR (''Quick Response'') Codes, television label updates, a range revision schedule, retailer responsibility, marketplace Web sites, set-top box labeling, clothes dryer labels, and plumbing products. Following the 2014 Notice, the Commission issued a final rule on December 29, 2014, related to heating and cooling equipment labels and a separate December 31, 2014 Notice seeking comment on labels for miscellaneous refrigerator products in response to recent test procedures proposed by DOE.[6] The Commission also published updated comparability ranges for television labels on March 27, 2015 (80 FR 16259).

In the present Notice, the Commission concludes the regulatory review by issuing final amendments for expanded light bulb labeling, improvements to appliance and room air conditioner labels, and updates to plumbing requirements. In a separate Notice, the Commission proposes several amendments on issues that have arisen recently or require additional consideration, including a new online database, revised central air conditioner labels, refrigerator ranges, new ceiling fan labels, and revised labels for heating and cooling equipment in response to recent DOE efforts.

A. Expanded Light Bulb Labeling

Background: In the 2014 SNPRM (79 FR at 34643), the Commission proposed to expand the Lighting Facts label coverage to decorative and other specialty bulbs that have energy use and light output similar to general service bulbs already labeled under the Rule. For general service light bulbs,[7] the Commission issued a new Lighting Facts labels in 2010 (75 FR 41696 (July 19, 2010)) that disclose information about the bulb's brightness, estimated annual energy cost, life, color appearance, and energy use.[8] The requirements for these new labels cover most general service medium screw base incandescent, compact fluorescent, and LED (light-emitting diode) bulbs.[9] The current Rule excludes several other consumer bulbs, such as decorative bulbs (*e.g.,* globe and bent-tip decorative bulbs rated 40 watts or fewer), non-medium screw base bulbs, shatter resistant bulbs, and vibration service bulbs.[10]

The 2014 SNPRM sought comment on labeling for specialty bulb types with energy use or light output similar to the general service bulbs already covered by the Lighting Facts label. The proposal set specific wattage and light output thresholds and excluded bulbs with shapes or uses not generally sought by typical consumers (*e.g.,* mine service bulbs). It included special marking provisions for some bulbs and an abbreviated, single-label option for smaller packages often used for specialty bulbs. The proposal allowed manufacturers to use the Lighting Facts label for consumer light bulbs not covered by the proposed requirements, if they follow the Rule's content and format requirements. Finally, to avoid confusion, the Commission proposed implementing the expanded coverage by adding the term ''specialty consumer lamp'' to the Rule instead of amending the Rule's definition of ''general service lamp.''

Comments: The comments generally supported the SNPRM proposal.

5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); 59 FR 25176 (May 13, 1994) (lighting products); 59 FR 49556 (Sep. 28, 1994) (pool heaters); 71 FR 78057 (Dec. 26, 2006) (ceiling fans); 76 FR 1038 (Jan. 6, 2011) (televisions).

[4] 16 CFR 305.10.

[5] The comments received in response to the SNPRM are here: *https://www.ftc.gov/policy/public-comments/initiative-569.* The comments included: Air-Conditioning, Heating, and Refrigeration Institute (#00016); Alliance Laundry Systems LLC (#00010); Amazon (#00005); American Lighting Association (#00009); American Gas Association (#00013); American Public Gas Association (#00012); Association of Home Appliance Manufacturers (#00014); Direct Marketing Association (#00007); Earthjustice (''Joint Commenters'') (#00017); Energy Solutions (#00018); Glickman (#00002); Goodman Global, Inc. (#00008); Laclede Gas (#00011); National Electrical Manufacturers Association (#00006); Nicholas (#00003); Plumbing Manufacturers International (#00004); Republic of Korea (#00019); and Whirlpool Corporation (#00015).

[6] 79 FR 77868 (Dec. 29, 2014); 79 FR 78736 (Dec. 31, 2014).

[7] This document uses the terms lamp, light bulb, and bulb interchangeably. The Rule's definition of ''general service lamp'' in section 305.3(l) is consistent with EPCA's definition (42 U.S.C. 6291), except for the addition of two lamp categories (reflector lamps and three-way bulbs) excluded by the statute. *See* 75 FR 41696, 41698, n. 13 (Jul. 19, 2010) (explaining the Commission's decision to include these categories under the labeling requirements).

[8] 16 CFR 305.15(b). The Energy Independence and Security Act of 2007 (EISA) directed the Commission to examine existing light bulb labeling requirements. Pub. L. 110–140; *see* 42 U.S.C. 6294(a)(2)(D)(iii). EISA amended the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291 *et seq.*).

[9] 16 CFR 305.3(l).

[10] 16 CFR 305.3(l)(2), (n)(3)(ii). In 2011, the Commission proposed to expand the labeling coverage by including a broad array of additional bulb shapes generally available to consumers. 76 FR 45715 (Aug. 1, 2011). In response to comments received on that earlier Notice, the Commission revised its proposal in the 2014 Notice to focus coverage on specialty bulb types with energy use or light output similar to general service bulbs already covered by the Lighting Facts label. 79 FR at 34644.

However, as discussed below, the comments offered suggestions about the scope of the proposal's coverage, test requirements, the label's location and size for smaller packages, and the compliance period. Commenters also raised issues about existing requirements.

Benefits: The comments described several benefits the new label coverage provides to consumers. The Joint Commenters (several energy efficiency groups commenting together) and the California Utilities explained that the presence of uniform disclosures for brightness, operating cost, and lifetime information on additional products will enable consumers to quickly compare the growing number of specialty consumer lamps to competing general service lamps in the marketplace.[11] They also noted the proposed lower wattage limit (30 watts) will ensure consumers receive accurate information about many lamps outside the scope of existing federal efficiency standards.

Coverage: Although the comments generally supported the proposal, they provided different views on the scope of the proposed coverage. The Joint Commenters repeated their earlier recommendation that the FTC require labels for all screw-based lamp products, not just the most common bulb shapes or socket fittings. In their view, consumers will benefit significantly from access to the Lighting Facts labels, even where the market for a particular lamp is small because high efficiency lighting technology is widely available.

The National Electrical Manufacturers Association (NEMA) supported the proposed labeling for most lamps under the proposed coverage,[12] but urged the Commission to exclude two proposed categories: intermediate screw base lamps and plant light lamps. NEMA argued that intermediate screw base lamp labeling would yield little consumer benefit because these products have very low sales volume, are often colored (*e.g.,* red, green, etc.), and typically use only incandescent technology. Thus, in NEMA's view, labeling these lamps would not serve EPCA's directive to consider labeling changes ''to help consumers understand lamp alternatives'' because there are ''no meaningful lamp alternatives.'' [13] In addition, because wattage information routinely appears on these packages, consumers already receive adequate energy information to make informed choices.[14] NEMA also urged the Commission to exclude plant light lamps, explaining that consumers do not generally use these bulbs for standard lighting applications due to their unique color spectrum. Also, in NEMA's view, given their low lumen output, these bulbs are not suitable for general illumination.

Label Size: NEMA also raised concerns about whether the proposed special label for small packages would fit on certain small packages for specialty bulbs, particularly blister packs, which often comprise a single piece of cardboard covered largely by the bulbs themselves. It recommended a provision allowing the required label on the back of these packages, with a brief reference to the label on the front. Alternatively, NEMA suggested that the Rule allow an 80% reduction in the label's size, similar to food labeling requirements. It also noted that, given the small size of candelabra bases, the 8-point FTC mercury disclosure (''Mercury disposal: *epa.gov/cfl''*) may not fit, and therefore urged alternatives such as a 5-point disclosure, a shortened disclosure, or the use of the mercury symbol only (encircled Hg) on the bulb's base.

Testing: The comments also provided suggestions about testing. Because DOE generally does not require test procedures for the bulbs covered by these amendments, the Rule's basic substantiation provision would apply.[15] The California Utilities noted the need to test newly-covered lamps will not pose significant burden because manufacturers already test these bulbs under industry-developed procedures and often display the relevant metrics on packages. However, the Joint Commenters argued that the absence of specific testing and reporting requirements raises concerns about the accuracy of label content. To address this concern, they recommended two measures to help ensure consumers have access to accurate information. First, they urged the Commission to consider applying current DOE test procedures for general service lamps to the new specialty category. Second, they recommended that the Commission require manufacturers to submit their labels through DOE's Compliance Certification and Management System (''CCMS'') Web site.

Compliance Period: The comments also addressed the timing of the new label requirements. The Joint Commenters recommended an effective date of one year. They argued that, because the label information is routinely included in catalogs for specialty consumer lamps, significant testing will not likely be necessary for the new labels. Likewise, package redesign should not consume significant time because many manufacturers have already applied the Lighting Facts label to these lamps. These commenters also explained that an extended lead time would be inconsistent with EPCA deadlines for similar products in the past (*e.g.,* one year for general service lamps) and past FTC deadlines (*e.g.,* 18 months for Lighting Facts labels in announced in 2011). To the extent FTC determines that manufacturers need additional time, the Joint Commenters urged the Commission to consider a phased approach that gives priority to labeling specialty consumer lamp types with the highest sales volume and the greatest aggregate energy consumption.[16]

Color Appearance: The Joint Commenters urged the Commission to require color ink on the label's ''light appearance'' bar, which depicts whether the bulb has a warm or cool appearance. They pointed to a recent Consumer Reports poll indicating that only 23% of respondents found the warm to cool scale helpful and argued that a color scale would be more meaningful. The Joint Commenters also noted that a dozen light bulbs recently tested by Consumer Reports all featured color ink somewhere on the package. In addition, a few manufacturers already provide a color graphic to communicate color

[11] According to DOE information cited by the Joint Commenters, the combined shipments of incandescent lamp types covered under the proposal have increased from 16.6 million units in 2010 to more than 18 million units in 2013.

[12] NEMA noted that labels for vibration service, rough service, appliance and shatter resistant lamps ''may inform a residential user of the lumen and life differences of vibration service, rough service, appliance and shatter resistant lamps, and this information may have some value for the consumer.''

[13] *Citing* 42 U.S.C. 6294(a)(2)(D)(iii)(II).

[14] NEMA also noted that EPCA prohibits screw base adapters that would make these usable in medium screw base applications (*see* 42 U.S.C. 6302(a)(6)), so there is no potential loophole for these lamps to substitute for general service lamps.

[15] *See* 16 CFR 305.5(b) (''For any representations required by this part but not subject to Department of Energy requirements and not otherwise specified in this section, manufacturers and private labelers of any covered product must possess and rely upon a reasonable basis consisting of competent and reliable scientific tests and procedures substantiating the representation.'').

[16] The Joint Commenters also urged the Commission to clarify that the Rule's catalogue requirements (section 305.20) apply to specialty consumer lamps the same as general service lamps and repeated their earlier request for guidance on claims related to the ''watt equivalency'' of a bulb's light output (*e.g.,* ''60-watt equivalent). The Joint Commenters also identified a misnumbered paragraph in the Rule language in section 305.15. This has been corrected in the final language. The amendments also contain conforming changes to provisions for bulk packaging and cost representations in section 305.15(f)(5)&(6).

temperature in addition to the black and white Lighting Facts label.

Discussion: Consistent with the proposal in the SNPRM, the final rule requires Lighting Facts labels for specialty consumer bulbs with energy use or light output similar to the general service bulbs already covered by the Lighting Facts label. As discussed below, the final requirements differ from the proposal because they do not cover intermediate screw base lamps and plant light lamps and allow the label on the back of small blister packs for specialty bulbs.[17] Manufacturers will have two years to phase in the new requirements. Online retailers and paper catalog sellers will have six months to post the new labels after these requirements become effective.[18]

The final rule sets specific thresholds for wattage and light output for covered bulbs and excludes certain bulbs for which labeling is not likely to provide substantial consumer benefit. The new rule includes special marking provisions for some bulbs and provides a smaller, single-label option for smaller packages. For consumer bulbs not covered by the requirements, manufacturers may use the Lighting Facts label if they follow the Rule's content and format requirements.

The new requirements are consistent with EPCA's directive to develop labels that help consumers with their purchasing decisions.[19] Under EPCA, the Commission can require labeling for any consumer product if such labeling is ''likely to assist consumers in making purchasing decisions.'' [20] Therefore, the Commission may look beyond EPCA's specific lamp definitions, which generally cover products subject to DOE's efficiency standards.[21] Indeed, EPCA directed FTC to issue labeling requirements that ''enable consumers to select the most energy efficient lamps which meet their needs.'' [22] In addition, without specifying bulb coverage, the 2007 EPCA amendments encouraged the Commission to revise labels to help consumers ''understand new high-efficiency lamp products'' and allow them to choose products that meet their needs for light output, light quality, and lamp lifetime.[23]

The Commission addresses the following specific issues raised during the proceeding: Product coverage, exclusions, package size, product markings, testing, voluntary labeling, compliance period, watt-equivalence claims, and color appearance.

Coverage: The final rule covers lamp types with wattages and light output similar to currently covered general service bulbs. Specifically, the final rule defines ''specialty consumer lamp'' to cover bulbs that: (1) Are rated at 30 watts or higher or produce 310 lumens or more; (2) have a medium, candelabra, GU–10, or GU–24 base; and (3) do not meet the ''general service lamp'' definition.[24] The 30-watt and 310-lumen thresholds are consistent with Congressionally-established benchmarks set by EPCA's definition of ''general service lamps.'' [25] Finally, the Rule covers specialty bulbs that look and operate like traditional incandescent bulbs, but are currently excluded from coverage, such as vibration-service lamps, rough service lamps, appliance lamps, and shatter resistant lamps (including a shatter proof lamp and a shatter protected lamp).

The final rule meets the statute's directive to provide labels that will assist consumers in purchasing the most efficient bulbs among common bulb types on store shelves. Specifically, the new labels will provide a means for consumers to compare the energy use, brightness, and other attributes of commonly available bulb types and technologies that are likely to appear side-by-side on store shelves with general service bulbs. The record suggests that the newly-covered bulbs have a significant market presence, are available in models that have light output or energy use ratings similar to general service bulbs, and often come in different technologies (with their different energy costs).[26] By tailoring the new coverage to bulbs that have light output and energy use similar to general service lamps, the balance of consumer benefits and industry burdens created by the new labels should be the same or similar to that provided by existing labels. Though some commenters suggested a much broader coverage, it does not appear that there would be a significant benefit to consumers from labeling these products given their limited availability for typical consumers, their specialized applications, or their relatively low light output and energy use.

Exclusions: The final rule excludes bulbs for which labeling is not likely to provide substantial consumer benefit. These final exclusions include: Intermediate screw-based lamps, plant light lamps, black light lamps, bug lamps, colored lamps, infrared lamps, left-hand thread lamps, marine lamps, marine signal service lamps, mine service lamps, sign service lamps, silver bowl lamps, showcase lamps, traffic signal lamps, G-shape lamps with diameter of 5 inches or more, and C7, M–14, P, RP, S, and T-shape lamps.[27] These bulbs do not share the basic attributes of general service lamps currently covered by the label (*i.e.,* they generally use fewer than 30 watts, produce low light output, have little market presence, or mostly appear in commercial applications). The final rule also excludes intermediate screw base bulbs and plant light bulbs because they have little market presence according to the comments. Thus, labeling is unlikely to assist consumers in purchasing decisions. Should new

[17] Consistent with SNPRM, the final rule does not alter the Rule's current definition of ''general service lamp.'' However, the Commission has changed to the definition of ''fluorescent lamp ballast'' to conform with an updated DOE definition for those products. *See* 76 FR 70548 (Nov. 14, 2011).

[18] The final rule language also clarifies that the catalog provisions of the Rule in section 305.20 apply to specialty consumer lamp labels. The 2014 SNPRM discussed such requirements but did not contain amendatory language. *See* 79 FR at 34661.

[19] 42 U.S.C. 6294(a)(2)(D), (a)(6).

[20] 42 U.S.C. 6294(a)(6).

[21] 42 U.S.C. 6291(30), 6292(a)(14). Recognizing that labeling may be appropriate for some products even in the absence of an efficiency standard, the Commission has already used this general authority to cover three-way incandescent bulbs and high-efficiency LED bulbs. *See* 75 FR at 41698.

[22] 42 U.S.C. 6294(a)(2)(D)(i).

[23] 42 U.S.C. 6294(a)(2)(D)(iii). The statute also directs the Commission to consider additional labeling changes to help consumers understand light bulb alternatives. *Id.*

[24] On December 9, 2013 (78 FR 73737), DOE initiated a proceeding to consider whether to expand the current definition of ''general service lamp.'' The Commission will seek to ensure future labeling amendments harmonize with amended DOE definitions.

[25] *See* 42 U.S.C. 6291(30)(C)–(D). Consistent with the statute, the coverage includes upper limits of 199 watts and 2,600 lumens.

[26] As discussed in the SNPRM (79 FR at 34645, n. 31), the principal bulb types newly covered by these amendments have the following attributes:

A-shape:—Often available in medium bases; used in residential applications, including ceiling fans; used for incandescent rough service and shatter proof bulbs at high wattages;

B-shape:—Decorative ''torpedo'' shaped bulbs used in residential applications; available in CFL and LED versions; previous NEMA comments suggest that 40-watt or fewer B-shape lamps account for about 7% of the incandescent market;

BA and CA shape:—Bent tip decorative lamps used in residential settings; available with medium and candelabra bases; wattages as a high as 60; available in incandescent and LED versions; represents between 6–7% of the incandescent market according to NEMA comments;

F-Shape:—Decorative flame-shaped bulb; use as much as 40 watts; available in CFL and LED versions;

G-Shape:—Often used in residential bathrooms; available in CFL and LED versions; according to comments, G16 ½ lamps represent 2.5% of the incandescent market, G25 lamps represent 5%, and G30 lamps represent about 0.5%; and

Spiral shape:—Commonly used for CFLs with intermediate screw bases and GU–24 pin-based bulbs; increasingly used in new construction.

[27] *See* section 305.3(z)(3) (final amendments).

information in the future suggest that these exclusions are no longer appropriate, the Commission may reconsider the coverage.

Package Size: Consistent with the proposal, the new requirements allow manufacturers to use a smaller, single label option on the front of small packages for certain specialty bulbs.[28] Because packaging for some specialty bulbs consists of a blister pack on a small, single-sided card, the double-panel labeling under the current rules may not be feasible. The smaller label discloses lumens, energy cost, and bulb life, but not watts and light appearance.[29] In addition, this smaller label does not apply to certain large bulbs in the specialty category, such as vibration-service lamps, that resemble traditional general service lamps in size and function and thus are likely to have packaging similar to general service bulbs.

In response to comments about small specialty bulb packages, the final rule also contains a special provision for very small blister packs that cannot accommodate the required label on the front. The final rule states that, if the required disclosures (*i.e.,* either the abbreviated specialty bulb disclosure or the standard general service lamp label) would not be legible on the front of a single-card blister package due to its size, the manufacturer may use a smaller label that says ''See Back for Lighting Facts'' and include the full Lighting Facts label on the package rear. This exception should accommodate manufacturers' practical needs, while still providing information important information to consumers.

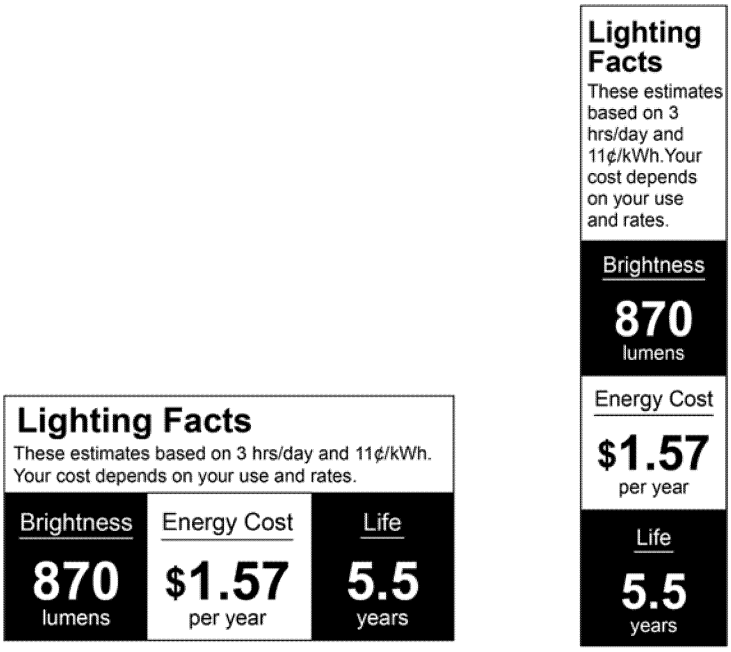


Figure 1 – Single-Panel Label Option for Specialty Consumer Bulbs

Figure 2 – Front Label Option for Specialty Consumer Bulbs Contained in Small Two-Sided Packages

Product Marking: In addition to the labeling requirements, the amendments require marking on certain bulb shapes (*i.e.,* the lumen and mercury marking currently required for general service lamps).[30] For vibration-service, rough service, and shatter resistant lamps, the final rule requires the same markings (*i.e.,* lumens and mercury) that currently apply to general service lamps because the size and shape of these bulbs is similar. Consistent with this proposal, the amendments do not require lumen markings on the lamps themselves for decorative size bulbs, such as B, BA, F, and G-shapes, to avoid detracting from those products' appearance. However, the Rule does require mercury disclosures on the lamps to ensure

[28] This option does not apply to vibration-service lamps, rough service lamps, appliance lamps, and shatter resistant lamps. 305.15(c)(2) (final amendments).

[29] Consistent with the proposal, the new, smaller labels do not require wattage and light appearance because specialty bulbs are less likely to have high wattage ratings and because color appearance is not essential to understanding the bulbs' energy efficiency. Nothing in the amendments, however, prohibits manufacturers from using the full Lighting Facts label or from otherwise providing such information elsewhere on the package.

[30] 16 CFR 305.15(c)(2)(iii) (final amendments).

consumers have access to such information for cleanup and disposal.[31]

Testing and Reporting: The final rule does not alter the Rule's existing test procedure and reporting requirements. Under the current requirements, manufacturers (or private labelers) must use applicable DOE test procedures.[32] If there is no such procedure for a particular lamp, the Rule requires manufacturers to possess and rely upon a reasonable basis consisting of competent and reliable scientific tests and procedures substantiating the representation.[33] As indicated in the comments, manufacturers already use industry-developed standards published by the Illuminating Engineering Society (IES) as part of their Lighting Measurement (LM) series for testing these products. In the past, the Commission has identified IES procedures as competent and reliable tests for covered light bulbs.[34] The Commission expects that manufacturers will continue to use the IES tests for bulbs covered in these new labeling amendments. Accordingly, the Commission sees no need to require the IES tests in the Rule, particularly if DOE expands its test procedures to cover more of these products.[35] Manufacturers that fail to use competent and reliable tests generally accepted by experts in this field may be subject to enforcement action for deceptive claims.[36]

Voluntary Labeling For Non-Covered Products: For bulbs not covered by the proposal (*e.g.,* consumer bulbs rated below 30 watts and below 310 lumens), the amendments allow, but do not require, manufacturers to use the Lighting Facts label.[37] However, all voluntary Lighting Facts labels must follow the Rule's content and formatting requirements to ensure the label's consistency across products.[38] Whether manufacturers use the Lighting Facts label or not, the FTC Act's general prohibition against deceptive claims requires manufacturers to substantiate any light bulb claims they make with competent and reliable scientific evidence.[39]

Watt-Equivalency Claims: The Commission addressed the issue of equivalency claims in an earlier Notice (75 FR 41696, 41701 (July 19, 2010)) and has not altered that guidance. In essence, to avoid deception, manufacturers must ensure they can substantiate their watt-equivalence claims. Such substantiation must take into account brightness, as well as other material factors, such as color. In doing so, the ENERGY STAR watt-equivalence standards provide an important benchmark. Indeed, manufacturers making watt-equivalence claims that stray from the ENERGY STAR standard must possess another competent and reliable basis to substantiate their claims. Moreover, manufacturers that make watt-equivalence claims for bulbs with lower lumen ratings than those prescribed in the ENERGY STAR standards should consider whether they need to qualify their claims to avoid deception.[40]

Color Appearance Disclosure: The Commission does not propose to change the color appearance disclosure from its current monochromatic scale. As suggested in the comments, there may be some benefit to a color version of the scale, and many manufacturers use color packaging. However, it is not clear that all manufacturers use full color printing for all packages, nor is it certain that a color scale would provide significant benefit compared to the existing scale. Accordingly, the Commission is reluctant to impose this additional burden for what may be a marginal benefit. However, nothing prohibits manufacturers from providing a color scale on their packages off the label, as long as such information is truthful and substantiated.

Compliance Period: The final rule provides manufacturers with two years to implement changes for the newly-covered bulbs. Though the Commission earlier sought comments on a two-and-a-half year compliance period (76 FR at 45721), manufacturers now have had notice of these impending changes for more than a year and the two year period should provide ample time to make these changes. A two year compliance period is appropriate because package changes are generally more complicated and burdensome than simple label changes and there is no impending market or regulatory change (*e.g.,* new DOE standards) to warrant an earlier date. However, manufacturers may begin using the new labeling requirements prior to the deadline. As with other labeling requirements, online retailers must post the new Lighting Facts labels. To provide online retailers with time to comply with the requirements, the final rule requires compliance six months after the packaging deadline (*i.e.,* a total of two and half years).[41]

B. More Durable Labels for Clothes Washers, Dishwashers, and Refrigerators

Background: In its March 15, 2012 NPRM, the Commission discussed the need to improve the availability of EnergyGuide labels in retailer showrooms. Information gathered by the FTC and the Government Accountability Office (GAO) demonstrates that many covered products displayed in retailer showrooms were missing the required EnergyGuide labels.[42]

The Rule currently permits manufacturers of refrigerators, dishwashers, and clothes washers to

[31] Because mercury disclosures generally apply only to compact fluorescent bulbs, which include a ballast, manufacturers should be able to place such information on the ballast in most cases, where other information is commonly printed. Industry comments raised concerns about fitting the mercury disclosure on some specialty lamps. Manufacturers that cannot physically fit the required mercury disclosure on their bulbs can petition the Commission for an alternative approach.

[32] *See* 16 CFR 305.5.

[33] 16 CFR 305.5(b). FTC case law generally defines ''competent and reliable scientific'' evidence to include ''tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.'' *See, e.g., In the Matter of Schering Corp.,* 118 F.T.C. 1030, 1127 (1994).

[34] *See* 59 FR 25176, 25208 (May 13, 1994).

[35] *See, e.g.,* ''Preliminary Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: General Service Lamps'' (Chapter 3), DOE, Dec. 1, 2014 at *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0051-0022* (discussing DOE plans for lighting program).

[36] Because DOE has no comprehensive testing requirements at this time for ''specialty'' bulbs covered by the new labeling proposal, the amendments, consistent with EPCA, contain no new reporting. 42 U.S.C. 6296(b)(4). If DOE develops and requires new test procedures for these newly-labeled products, EPCA requires manufacturers to begin using such tests for labeling and any other energy representations 180 days after DOE issuance. 42 U.S.C. 6293(c). In a separate Notice, the Commission will consider whether to require manufacturers to submit links to their online labels as part of the Rule's reporting requirements.

[37] *See* 16 CFR 305.15(d). The catalog disclosure requirements in section 305.20 apply only to products required to bear a Lighting Facts label (or other required disclosure).

[38] The FTC staff has observed that the Lighting Facts label already appears widely on products that fall beyond the Rule's current coverage for general service lamps.

[39] 15 U.S.C. 45(a). The amendments do not require online retailers to post the label for such voluntarily-labeled products due to the burdens associated with determining, on a model-by-model basis, whether manufacturers have chosen to use the Lighting Facts format.

[40] *See Federal Trade Commission* v. *Lights of America, Inc., et al.,* SACV10–1333 JVS (MLGx) (C.D. Cal. 2014).

[41] The Rule does not require catalog sellers (*e.g.,* online retailers) to post the labels for products not covered by these new amendments but labeled voluntarily by manufacturers.

[42] For example, in 2008, the FTC found labels either detached or missing on approximately 38% of the 8,500 appliances it examined across 89 retail locations in nine metropolitan areas. 77 FR at 15300.

post the required EnergyGuide labels either using adhesive labels or hang tags.[43] In examining floor models, FTC staff found that products labeled with hang tags appear more likely to have detached or missing labels than those labeled with adhesives.[44] Additionally, comments received during the television label rulemaking indicated that hang tags often become twisted or dislodged in stores, supporting the FTC staff's past findings.[45]

Concerned that hang tags may be less secure and more prone to detachment than adhesive labels, the Commission, in its March 15, 2012 NPRM, proposed prohibiting hang tags for clothes washers, dishwashers, and refrigerators.[46] In response, comments argued that adhesive labels applied directly to products might leave marks, especially on stainless steel finishes which appear on nearly a third of major home appliances. They also noted that affixing an adhesive to the protective film that covers products would be counterproductive because retailers likely would remove the film from display models, and may not reattach the label before displaying the product. They further explained that temperature and humidity might cause adhesive labels on products in storage or transit to become too sticky or lose their adhesive qualities. The commenters, therefore, recommended that the Commission consider other options.[47]

In the 2014 SNPRM, the Commission, recognizing the legitimate concerns raised in the comments, did not propose eliminating hang tags altogether. Instead, it proposed requiring that hang tags be affixed to products using cable ties (*i.e.,* ''zip ties''), double strings connected through reinforced punch holes, or material with equivalent or greater strength. The Commission reasoned that these methods should improve label resilience, which in turn should reduce the incidence of missing labels, without posing undue burden for manufacturers. The Commission invited comments on this proposal.

Comments: The comments were split. The Joint Commenters and the California Utilities supported the proposal but provided some additional suggestions detailed below. Conversely, several industry comments opposed the change arguing it would do little to address the problem of missing labels.

The Joint Commenters agreed that hang tags should be more durable but recommended the Rule require reinforced punch holes on all hang tag labels, independent of the attachment method. They also argued that this would improve the uniformity of labels' appearance. Though the California Utilities supported the proposal, they noted that adhesive labels on the inside panels of products would address manufacturer concerns about damage to stainless steel products.[48]

In contrast, appliance industry members opposed the proposal because, in their view, it would increase manufacturers' costs without accomplishing the goal of decreasing the incidence of missing labels. The Association of Home Appliance Manufacturers (AHAM) asserted that the SNPRM did not provide adequate evidence that the proposal will increase label durability or, more importantly, that increased label durability will reduce the incidence of missing labels. It stated that, because the attaching material (cable tie, double string, etc.) is stronger than the reinforced paper used for the label, a determined consumer (or retailer) can easily remove the tag. In addition, some refrigerators, particularly those lacking a wire shelf or door handle, have no location to affix a cable or string hang tag without taping the string or cable tie to the shelf. Instead of new labeling requirements, AHAM urged the Commission to find ways for retailers to display labels in such a way that consumers do not try to detach them (or that retailers themselves do not feel compelled to remove them to effectively display the product). According to AHAM, retailers are in the best position to display labels in a way that prevents removal.

Both Alliance Laundry Systems and AHAM also repeated earlier requests to limit the Rule's label requirements to display models. They explained that most labels never appear on the showroom floor because retailers only use a handful of units as display models. For most units, consumers view the labels only upon delivery in their home. At that point, consumers generally want to remove the label from the products. Alliance therefore recommended that the Commission consider options that remove the burden associated with affixing physical labels on every unit.

Similarly, AHAM urged the Commission to consider eliminating physical labels on every unit sold and, instead, rely on electronic labels on Web sites. The Joint Commenters disagreed, arguing that, even though consumers may conduct online research prior to purchase, labels in showrooms are still necessary to allow consumers to examine multiple competing products.

Discussion: The final rule contains provisions to improve the durability of labels for refrigerators, clothes washers, and dishwashers, while providing manufacturers flexibility in doing so. Under the final rule, manufacturers have the option of using traditional adhesive labels and flap tags, labels affixed with strips of tape along the label's entire top and bottom, and hang tags using cable ties (*i.e.,* ''zip ties'') or double strings connected through reinforced punch holes, or with attachment and label material of equivalent or greater strength and durability. Manufacturers will have one year to come into compliance.

As discussed in earlier notices, more durable hang tag labels should increase the likelihood that labels remain affixed to products in showrooms. The Commission understands that determined consumers can remove labels from showroom products. However, the new requirements are not intended to prevent such deliberate actions. Rather, by their nature, the stronger labels should increase the likelihood that labels will remain on products during shipping and handling through the retail chain and during normal examination and inspection by consumers.

While the final rule increases the durability of labels, it provides manufacturers flexibility to use label methods most suited to their products. In recent informal visits to retail stores, the FTC staff has observed that manufacturers currently use a variety of means to attach labels on refrigerators, dishwashers, and clothes washers including conventional adhesive labels affixed to an interior or exterior surface, labels attached with wide pieces of reinforced tape on the top and bottom, hang tags attached with cable ties, hang tags attached with string, and hang tags made of laminated paper or plastic. Labels taped onto models across the entire top and bottom edge of the label appear to provide durability similar to a traditional adhesive label. Likewise, hang tags made of laminated paper or plastic provide durability similar to a

[43] 16 CFR 305.11(d)–(e). Because the Rule does not allow hang tags on the exterior of appliances, manufacturers must use adhesive labels for products with no accessible interior (*e.g.* water heaters).

[44] *See* 77 FR at 15300 & n. 24.

[45] *See* 76 FR 1038, 1042 (Jan. 6, 2011).

[46] 77 FR at 15299–15300. EPCA permits the Commission to prescribe the manner in which EnergyGuide labels are displayed 42 U.S.C. 6294(c)(3), (c)(9).

[47] 79 FR at 34648.

[48] Goodman, a heating and cooling equipment manufacturer, recommended that the Commission extend the hang tag option to the products they sell. However, as discussed in the SNPRM, the Rule does not allow hang tags for products that have no interior given the likelihood that hang tags will not remain in place if affixed on product exteriors. 79 FR at 34648, n. 53.

paper hang tag with a reinforced punch hole. Accordingly, the final rule, in addition to specifying acceptable means of affixing hang tags through the use of zip ties and reinforced punch holes, also provides manufacturers the flexibility to use any method that provides the same or greater durability as those methods specified in the Rule.

Finally, as explained above, the Commission does not propose abandoning physical labels. Notwithstanding the growing availability of Internet access, physical labels, especially those displayed at the point-of-sale, likely help a substantial number of consumers. Not all consumers have convenient online access, and not all of those who do conduct online research before making purchase decisions in stores. Moreover, even consumers who research products online are likely to benefit from viewing the physical labels in the store as they make final decisions and compare products at the point-of-purchase.[49] Nevertheless, the Commission will continue to consider evolving buying patterns and potential changes to the Rule. The Commission will consider any research that provides information on these issues or any specific proposals parties may have to change the Rule to decrease the burden on industry, while ensuring consumers have access to EnergyGuide information.[50]

C. Labels on Room Air Conditioner Boxes

Background: In the SNPRM, the Commission proposed to require labels on room air conditioner boxes. The Commission based its proposal, in part, on staff observations during visits to major retail chains across the country, that room air conditioner models are usually displayed in boxes.[51] Under the proposal, the labels would appear on the package's primary display panel. The Commission invited comments.

The Commission also proposed two changes related to recent DOE regulatory actions. First, it proposed to amend the room air conditioner label to replace Energy Efficiency Ratio (EER) ratings with Combined Energy Efficiency Ratio (CEER) ratings consistent with recent DOE changes for these products. The Commission indicated that the differences between EER and CEER should be minor. The Commission also proposed conforming changes to the label's capacity description for room air conditioners in section 305.7 and ratings on Sample Label 4. Second, the Commission proposed requiring EnergyGuide labels for portable air conditioners, in light of a recent DOE proposal to designate portable air conditioners as covered products under EPCA.[52] The Commission is addressing the portable air conditioner issue in more detail in a separate notice.

Comments: The comments generally supported the proposal to place labels on room air conditioner boxes. Specifically, the comments identified the benefits of having labels on the box, recommended the Commission consider alternative disclosures for retailers who do not display boxes, urged coordination with Canadian labeling requirements, and supported the replacement of EER disclosures with CEER.

The Joint Commenters repeated their earlier recommendation to require labels on both room air conditioner boxes and on the units themselves because a substantial portion (21%) of the models observed by FTC staff were displayed only outside of their boxes. The commenters explained that their own observations indicate the practice is even more common, though they did not provide specifics. They also argued the operating cost information on the room air conditioner label is particularly important because most households that rely on one or more room air conditioners have an annual household income below $40,000. Additionally, they noted that room air conditioner labels can provide important information to renters who pay for equipment operation but do not purchase the units themselves.[53]

Finally, the Joint Commenters urged the Commission to consider creating an affirmative labeling requirement for retailers who chose to display their room air conditioner without boxes. The commenters explained that, even if FTC does not require manufacturers to label both the room air conditioner and its packaging, EPCA grants the Commission authority to ''require disclosure, in any printed matter displayed or distributed at the point-of-sale of such product.'' 42 U.S.C. 6294(c)(4).

AHAM indicated it did not object to requiring EnergyGuide labels on room air conditioner boxes as long as Natural Resources Canada (NRCAN) harmonizes its EnerGuide requirements with the Commission's. Absent such harmonization, AHAM strongly opposes the proposal because it would impose substantial burdens by forcing manufacturers to create labels for both the product (to meet Canadian requirements) and the box (to meet U.S. requirements). Accordingly, AHAM recommended that FTC work on such harmonization, consistent with the President's directive regarding international regulatory cooperation. AHAM also recommended a two year period to implement the changes.

The comments also supported the proposal to replace the EER reference on the room air conditioner label with CEER. AHAM, which proposed this change in earlier comments, explained that the switch would make the label consistent with the efficiency metric manufacturers currently report to DOE. The California Utilities also supported the proposal but further recommended disclosures for all efficiency metrics specified in the DOE energy conservation standards. Specifically, they reiterated their recommendation to require reporting of energy factor for water heaters, in addition to the cost and energy use. They stressed the importance of efficiency performance information to consumers and other market actors, particularly in the implementation of various national, regional, state, and utility programs. The commenters further recommended that the labels disclose any performance metric required for compliance with energy efficiency standards, including regulated performance metrics for room ACs, central ACs, and water heaters.

[49] 42 U.S.C. 6294(c)(3) (the Commission may require the label to be displayed in a manner that the Commission determines is likely to assist consumers in purchasing decisions). As the Commission explained in the 2014 SNPRM (79 FR at 34649), it does not propose to limit labels to display models because retailers may not receive specific products designated for display and the appearance of labels on non-display models provides consumers useful energy consumption information after the purchase to help them understand the estimated energy use of their product.

[50] The amendments also eliminate obsolete sample labels (1 and 2) for refrigerators and clothes washers in Appendix L.

[51] *See* 79 FR at 34649. The visit results showed that room air conditioners were either in the box only (50% of models observed) or in the box with a few display units located on or near the boxes (29% of models observed). Only 21% were displayed solely out of boxes. These results are based on FTC staff's review of more than 160 models (not individual units) offered for sale at a variety of stores in eight different metropolitan areas. The results are not necessarily nationally representative.

[52] 78 FR 40403 (July 5, 2013). Portable air conditioners are movable units, unlike room air conditioners, which are permanently installed on the wall or in a window.

[53] The Joint Commenters noted that approximately 32 percent of households in rental housing rely on one or more room air conditioners for space cooling; for owner-occupied housing, the figure is less than 19 percent. In their view, if the air conditioner itself is labeled, even if the label is removed from the unit upon installation, that label is less likely to be thrown away (and more likely to be provided to the tenant) than a label found only on the unit's packaging.

Discussion: The Commission plans to issue final amendments to require labels on room air conditioner boxes and replace the EER disclosure with CEER. The Commission will publish the final amendments and announce a compliance date in the future to provide ample time to comply with both FTC and possible NRCAN requirements. Finally, the Commission does not plan to include additional efficiency rating information on various labels.

The final rule provides manufacturers with flexibility. Specifically, manufacturers have the flexibility to choose a background color for the label, thus avoiding full redesign of some boxes. In addition, manufacturers may use stickers on the box itself, allowing easy label updates in response to test procedure or range changes. With the notice provided by this proceeding, manufacturers should be able to incorporate the label on packaging without additional burden. The labels must appear on the package's principal display panel, that part of a label most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.[54]

In the SNPRM, the Commission explained that it is not proposing to require labels on both the product and the box. Over the years, retailers have shifted away from displaying most room air conditioner models outside of packaging. Given this trend, the Commission expects that retailers will continue to display the vast majority of these products in boxes. While some retailers may display some models outside the packaging, the label's absence is mitigated in those limited situations by recent provisions increasing the labels' availability to consumers online.[55] Accordingly, the benefits of requiring the label on both the package and the product are likely to be small, while the burden of such a requirement would be substantial. However, the Commission may consider further requirements in the future if retail practices change.

Finally, given concerns raised by commenters about coordinating with Canadian labeling, the Commission will not announce a final compliance date for these new requirements until NRCAN implements conforming regulatory changes. Such coordination will prevent the burden of labeling units in two places (*i.e.,* box and unit). After NRCAN has addressed the issue, the Commission will issue a separate notice containing the final amendments and set an effective date and a compliance date of one year.

In addition, the California Utilities recommended that the Commission require disclosures such as water heater energy factor (EF) information to help consumers and aid in compliance with state building code standards. The Commission declines to change the Rule at this time. The labels for heating and cooling equipment already display metrics applicable to federal standards, including SEER, EER, and AFUE where appropriate. For central air conditioners, the Commission recently required EnergyGuide labels on product packaging for many models and these labels include SEER information as the primary disclosure. 78 FR 8362 (Feb. 6, 2013). For water heaters, the current label includes yearly energy cost as the primary disclosure. It is unclear whether the inclusion of EF information would be helpful because we have no evidence that most consumers are familiar with the term. In addition, state code enforcers can obtain such EF information from DOE's Compliance Certification Management System (CCMS) database.[56] Therefore, the Commission is not proposing to include EF information on the labels at this time.

D. Additional Information on EnergyGuide Labels

Background: In the 2012 NPRM, the FTC sought comment on whether to require Quick Response (QR) codes on EnergyGuide labels. 77 FR at 15302. QR codes are black and white matrix barcodes that provide access to a Web site through a mobile phone equipped with scanning software. A QR code could connect consumers to energy use information, including the broad energy impacts and greenhouse gas emissions associated with a product's use, through government Web sites or other source information. In the 2014 SNPRM (79 FR at 34654), the Commission did not propose requiring QR codes on labels. Until the development of Web site content to supplement information already on the EnergyGuide label, the Commission explained that it was premature to propose any specific vehicle for linking consumers to that content.

The Notice also indicated that the FTC staff would continue to consider providing full-fuel cycle and greenhouse gas information to consumers, on labels or elsewhere, and keep track of DOE's efforts to incorporate full-fuel-cycle analysis into their decision-making.[57] To aid that process, the Commission invited comments on these issues, including the overall usefulness of such information in consumer purchasing decisions.

Comments: In response to the SNPRM, the Commission received several comments from members of the natural gas industry—American Gas Association (AGA), American Public Gas Association (APGA), and Laclede Gas—urging the FTC and DOE to move forward with the development of consumer disclosures related to the full-fuel-cycle impacts of energy use.[58] Specifically, two of these commenters argued that the current EnergyGuide label should provide more than the current ''site-based'' energy information, which does not disclose production costs associated with the energy consumers ultimately use. Laclede also asserted that the labels lack useful information for comparing gas to electric operating costs and questioned the utility of existing information, such as information at *productinfo.energy.gov,* because it only allows for comparisons between the same fuel sources using site-based performance indicators.

The comments explained that ''site'' energy disclosures only provide information about the energy an appliance consumes in the home. According to AGA, such ''site'' energy information is not only inadequate, but can be misleading to consumers who may assume that a higher ''site'' efficiency rating means that an appliance uses less energy and emits fewer greenhouse gases overall. ''Full-fuel-cycle'' energy information addresses this shortfall by including not only energy consumption in the consumer's home, but also the losses that occur in the transportation and distribution of the fuel or its generation, as well as the energy consumed in its production or extraction. In AGA's view, full-fuel-cycle disclosures enable a more accurate analysis of the total energy usage and environmental impacts.[59]

[54] *See, e.g.,* 15 U.S.C. 1459(f) (definition of ''principal display panel'' under the Fair Packaging & Labeling Act).

[55] Such measures include new requirements to ensure the label's presence on retailer and manufacturer Web sites (78 FR 2200 (Jan. 10, 2013)) and, as proposed in a separate Notice, the inclusion of EnergyGuide labels on DOE's Web site.

[56] *See https://www.regulations.doe.gov/ccms.* As proposed in the SNPRM (79 FR at 34663), the final rule amends section 305.7 to clarify that the capacity for instantaneous water heaters should be expressed in gallons-per-minute.

[57] *See, e.g.,* 77 FR 49701 (Aug. 17, 2012).

[58] The comments did not revisit the specific issue of QR codes on labels.

[59] For appliances that use natural gas, nearly all of the energy losses and emissions occur at the point-of-use according to these comments. In addition, the comments indicated the overall

Continued

These commenters also argued that source-based energy information would allow utilities, state regulators, and consumers to understand the environmental benefits or costs, including the greenhouse gas emissions associated with appliance use.

APGA also noted that DOE, the National Academy of Sciences, and the ENERGY STAR program have recognized the shortcomings of site-based analysis. It explained that labels derived using a source based approach will fully identify the emissions reduction through the entire energy cycle. AGA agreed, arguing that the label or other required disclosures should include information reflecting the energy use, life-cycle cost, and associated emissions on a full-fuel-cycle basis. AGA recommended consideration of full-fuel-cycle energy use and emissions information on a regional basis.

The commenters urged the Commission to expedite interaction with DOE on this issue. According to AGA, DOE already has all the information available through the existing residential furnace efficiency test procedure on full-fuel-cycle and emissions data. DOE agreed to work with the Commission to improve existing online databases, to increase consumer access to energy use and emissions data through web-based information tools, and to collaboratively determine if changes to the Energy Guide labeling requirements would be beneficial to consumers. 76 FR 51281 (Aug. 18, 2011).

Discussion: The FTC staff is discussing options with DOE staff for providing consumers with information related to full-fuel-cycle impacts and greenhouse gases. The staff will focus on considering possible changes to existing online resources, either at DOE or FTC, to provide consumers with relevant information as it relates to certain products. The Commission does not plan to consider content changes to the Energy Guide label itself until such online content is fully developed.

The comments raise concerns about the failure of ''site'' efficiency rating disclosures (*e.g.,* energy factor for water heaters or annual fuel utilization efficiency for furnaces) to reveal relevant differences in energy costs and other environmental aspects of product operation. Although the FTC will continue to consider ways to communicate full-fuel-cycle impacts as discussed above, the Commission notes that the primary disclosures on EnergyGuide labels for water heaters, clothes washers, and dishwashers are the estimated annual energy costs the consumer will pay, not the product's efficiency rating. In the past, the Commission has identified estimated operating cost as the best comparative descriptor for consumers on energy labels.[60] Such cost information is featured prominently on most EnergyGuide labels. Although the label cost disclosures do not provide details about the full-fuel-cycle impacts or associated greenhouse gas emissions, they do demonstrate significant differences among the energy costs associated with different fuels used to operate these products that may not be provided by efficiency ratings. In addition, for furnaces and central air conditioners, FTC and DOE have developed an online cost calculator to provide similar onsite cost estimates for those products through DOE's Web site.

E. Schedule for Range Revisions

Background: In the 2012 NPRM, the Commission sought comment on whether to update range and cost information more frequently than the five years required by 16 CFR 305.10(a). In earlier comments, several energy efficiency organizations suggested that the FTC adopt a three-year schedule for most products.[61] In the 2014 SNPRM (79 FR at 34657), the Commission did not propose to change the five-year schedule, explaining that it strikes a reasonable balance by providing appropriate updates without imposing unnecessary costs or creating inconsistencies between showroom labels.

Comments: The Joint Commenters argued that a comprehensive label database on the existing DOE Web site, *https://www.regulations.doe.gov/ccms,* would make more frequent updates easier to implement because retailers could print new labels and replace older ones or simply provide links to this information.[62] They also urged the Commission to avoid delays in updating range information by considering DOE's rulemaking schedule and coordinating updates to the EnergyGuide labels so that information does not become stale. Finally, the Joint Commenters recommended that the Commission update the label ranges for heat pump electric storage water heaters because a new model has appeared on the market that has an estimated annual energy cost nearly $60 less than the lowest cost displayed on the current label.

In contrast, several comments supported the five-year update schedule. Alliance Laundry Systems argued the current approach maintains certainty, allowing manufacturers to plan for label changes, lowers scrap costs of the printed labels, and reduces disruption to the manufacturing process. It also reduces consumer confusion in the marketplace because more frequent fuel energy rate and range changes would yield energy labels with differing descriptors on the same model manufactured on different dates. AHAM argued that frequent updates could also impact label information during the transition periods and make it difficult for consumers to compare old and new labels. AHAM, therefore, argued that the existing five-year schedule strikes the proper balance between maintaining consistent labels and providing updates to the cost and range information.[63]

Discussion: The Commission does not plan to change the five-year schedule for updating ranges. However, as suggested by the Joint Commenters, the Commission, in a separate notice, will seek comment on updating water heater range information given recent changes to the DOE test procedure. 79 FR 40541 (July 11, 2014).

In establishing the current five-year schedule, the Commission sought to strike a balance between maintaining consistent labels and providing updates to cost and range information.[64] Though there are benefits to more frequent updates, the transition periods between such updates create inconsistent labels in the market, which can cause confusion, hamper comparison shopping, and reduce confidence in the label.[65] Moreover, the current five-year interval range is consistent with past trends in market data.[66] For example, before 2007, the Commission reviewed model data every year and revised the ranges if they deviated 15% or more from the previous year. Using this approach, the Commission generally updated product ranges at about five-year intervals.[67] If parties identify ranges or fuel rate information that should be updated before the five-year period ends, they should alert the

natural gas delivery system on a full-fuel-cycle basis is highly efficient because approximately 92 percent of the energy produced reaches the consumer as usable energy.

[60] *See, e.g.,* 72 FR 49948, 49953 (Aug. 29, 2007).

[61] Joint Comments from Energy-Efficiency and Consumer Organizations (May 16, 2012) (#560957–00015).

[62] 79 FR at 34656–57.

[63] NEMA also agreed with the Commission's approach.

[64] *See also* 78 FR 1779, 1781 (Jan. 9, 2013).

[65] *See* 72 FR 49948, 49959 (Aug. 29, 2007) (discussing potential problems associated with frequent updates).

[66] *See* 79 FR at 34657 (further discussion of such trends).

[67] 72 FR at 49952.

Commission. Finally, the FTC staff will continue to work with DOE staff to coordinate range updates with ongoing DOE changes to test procedures and standards.

F. Retailer Responsibility

Background: Currently, the Rule prohibits retailers from removing labels or rendering them illegible,[68] but does not otherwise require retailers to display labels at the points-of-sale. In 2011, when the Commission issued additional label requirements for televisions, it declined to impose new retailer obligations, noting that the amendments for labels (both in stores and online) contain measures calculated to keep labels attached and visible on display models.[69]

In the 2014 SNPRM, the Commission explained its plans to pursue improvements in label design to increase label presence on display models before imposing new responsibilities for retail stores. The Commission reasoned that it was premature to impose costs on retailers when better label requirements and greater availability of online labels may alleviate the problem.

Comments: The comments provided different views on the retailer liability issue. The Joint Commenters urged the Commission to reconsider its position, arguing that the SNPRM overstated the burdens imposed by expanded retailer liability. According to these comments, retailers already monitor product displays on a near-constant basis when they clean display models and ensure pricing and other product information is present. In addition, some retailers appear to replace missing or damaged EnergyGuide labels. Given the Commission's plans to require the submission of labels to DOE's Web site, *https://www.regulations.doe.gov/ccms,* retailers are less likely to become confused when replacing missing labels. In addition, AHAM expressed a general concern ''that retailer responsibility needs to be addressed.'' However, it did not recommend changes to the current requirements, which already prohibit retailers from removing labels or rendering them illegible. AHAM did request a clarification stating that manufacturers have no responsibility for labels once a unit leaves the manufacturer's control.

In contrast, the Direct Marketing Association (DMA), which represents retailers, encouraged the Commission to refrain from imposing affirmative duties on retailers. In DMA's view, the Commission can best ensure increased information to consumers by pursuing label attachment improvements without imposing new burdens at the point-of-sale. DMA also argued that an affirmative retailer requirement, in its opinion, could increase mislabeling inadvertently because retailers are not well-positioned to identify the correct labels and do not have readily available access to a library of substitute or replacement labels. A new retailer requirement would force sales personnel to halt customer service and verify correct product labels, attempt to locate proper labels, and attach a substitute label whenever a missing label was noticed. DMA also argued that a new requirement would penalize retailers for situations beyond their control (*e.g.,* when labels become damaged while the product is in transit, or when consumers damage the labels on display products).

Discussion: Consistent with the discussion in the SNPRM, the Commission does not plan to expand the general retailer requirements at this time.[70] It is premature to impose these costs when better labeling, required by the amendments, and greater availability of online labels may solve the problem. If these new solutions fail, the Commission can reconsider whether additional requirements are necessary.[71]

G. Marketplace Web Sites

Background: In January 2013, the Commission published final amendments to the Rule's catalog provision, requiring Internet sellers to display the label—either in full or as a logo icon with a hyperlink—for most covered products.[72] This requirement applies to ''[a]ny manufacturer, distributor, retailer, or private labeler who advertises a covered product on an Internet Web site in a manner that qualifies its site as a catalog under this Part.'' [73] The Rule defines ''catalog'' as ''printed material, including material disseminated over the Internet, which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.''[74]

Those amendments do not cover Web sites that serve solely as platforms for sellers by performing functions such as hosting sellers' advertising, matching buyers' searches to sellers' products, and processing payment and shipment directions.[75] The Rule does not require such entities to either display, or ensure the display of, labels for covered products sold by third parties. However, the Rule continues to apply to those third parties (retailers, manufacturers, distributors, and private labelers) that sell their products on such Web sites. The Rule also applies to these marketplace Web sites if they act as retailers on their own Web sites.[76]

Comments: In response to the SNPRM, the Joint Commenters continued to urge the Commission to create a specific requirement for marketplace Web sites. The commenters argued that marketplace Web site liability is the only practicable way to police the thousands of listings from diverse sellers who often have little control over the final content that appears online. The Joint Commenters also provided more information regarding non-compliance of retailers participating on marketplace Web sites.

The Direct Marketing Association disagreed and supported the Commission's proposal. DMA argued that the Rule's current requirements appropriately place responsibility for

[68] 16 CFR 305.4(a)(2).

[69] 76 FR 1038, 1047 (Jan. 6, 2011).

[70] 79 FR at 34658.

[71] In response to AHAM's concerns about manufacturer responsibility for showroom products, the Commission notes that the current Rule does not direct manufacturers to replace missing labels in a retailer showroom. However, the Rule prohibits manufacturers, in addition to retailers, distributors, and private labelers, from removing or rendering illegible any label required by the Rule. 16 CFR 305.4(a)(2).

[72] *See* 78 FR at 2209 (amending 16 CFR 305.20; effective January 15, 2014). For a limited set of covered products—showerheads, faucets, water closes, urinals, general service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures—the Rule requires the disclosure of specific information instead of displaying the EnergyGuide or Lighting Facts label. *See id.* (amending 16 CFR 305.20(a)(ii)).

[73] 16 CFR 305.20(a).

[74] 16 CFR 305.2(h).

[75] EPCA states that if a ''manufacturer or any distributor, retailer, or private labeler of such product advertises such product in a catalog from which it may be purchased, such catalog shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission.'' 42 U.S.C. 6296(a). EPCA defines a ''retailer'' as ''a person to whom a consumer product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale,'' and a ''distributor'' as ''a person (other than a manufacturer or retailer) to whom a consumer product is delivered or sold for purposes of distribution in commerce.'' It defines ''manufacturer'' as ''any person who manufactures a consumer product,'' and ''private labeler'' as ''an owner of a brand or trademark on the label of a consumer product, which bears a private label.'' 42 U.S.C. 6291(12)–(15). The Rule's definitions of ''manufacturer,'' ''distributor,'' ''retailer,'' and ''private labeler'' are consistent with EPCA's definitions. *See* 16 CFR 305.2.

[76] Taking physical possession of the product would likely render the marketplace Web site a ''retailer'' or ''distributor'' under EPCA and the Rule. *See* fn. 74, *supra.* Therefore, a product's delivery to a marketplace Web site's warehouse for temporary storage before proceeding in shipment to the consumer may trigger the marketplace Web site's responsibility for displaying the product's label online under the current Rule.

labeling on the parties with the greatest ability to verify the accuracy of the information. According to DMA, imposing these requirements on marketplace Web sites would be costly and unintentionally increase the risk of inadvertent mislabeling.

DMA argued that additional requirements on marketplace Web sites would create ''secondary'' or duplicate coverage, as this information is already provided to consumers elsewhere. At present, in its view, the burdens of imposing the requirement far outweigh any benefit to consumers from providing information that would be, at best, redundant.

Discussion: The Commission is not proposing additional requirements. As explained in the 2012 SNPRM (79 FR at 34658), the Rule requires retailers participating on marketplace sites to display labels for the products they are offering for sale pursuant to section 305.20 of the Rule. The Rule already requires retailers, manufacturers, distributors, and private labelers selling covered products on marketplace Web sites to display labels for those products. Therefore, an additional requirement aimed at marketplace Web sites would create a secondary layer of coverage. Although added coverage may improve the availability of information to consumers, it is not clear whether that potential benefit outweighs the added burdens on such Web sites. However, the FTC staff will continue to monitor this issue as online retail practices evolve.

H. Clothes Dryer Labels

Background: When the Commission initially issued the energy labeling requirements in 1979, it declined to label dryers, citing their limited annual energy cost range.[77] At that time, the maximum annual energy cost difference between dryers was only five dollars and the Commission concluded the costs of testing and labeling would ''far outweigh the potential benefits'' of labeling.[78] In the SNPRM, the Commission explained that recent DOE dryer information suggests that dryer efficiency continues to vary little across available models.[79] Although electric dryers using heat-pump technology are more efficient than current models, few such models are currently available in the U.S. Absent meaningful variation in energy usage, the Commission doubted that labeling would significantly aid consumer choices. However, the Commission explained that changes to the DOE test procedure may reveal greater differences among models.

Comments: In response to the SNPRM, commenters offered different views on the Commission's decision to forego proposing clothes dryer labels. For example, Alliance Laundry Systems supported the position because DOE testing indicates only small differences between the operating costs of the most efficient and least efficient electric models currently available.

However, the Joint Commenters urged the Commission to revisit the issue. They asserted that the SNPRM did not provide adequate evidence to demonstrate that the benefits of clothes dryer labels would be minimal. First, they argued that high-efficiency dryers are likely to populate the market soon. According to the comments, one manufacturer has unveiled plans to introduce a heat pump dryer and another has introduced new efficient models. In addition, according to the Joint Commenters, dryers already exist that meet the new ENERGY STAR specifications, which require, on average, approximately 20% less energy use than allowed under DOE's 2015 minimum efficiency standards. This is a larger energy use spread than the new ENERGY STAR specifications for refrigerators. The Joint Commenters also stated that, according to DOE energy data, dryer labels may help some consumers choose between gas and electric dryers because a substantial number of consumers currently use gas for cooking but electricity for clothes drying.

The Joint Commenters also took issue with the Commission's interpretation of EPCA's test for requiring clothes dryer labels. They explained that EPCA requires clothes dryer labels as long as labeling is ''technologically and economically feasible.'' In their view, EPCA does not allow the Commission to consider whether the costs of labeling outweigh the benefit.[80] Instead, the Commission can forego labeling only if it determines that manufacturers are not ''economically capable'' of labeling these products. In the Joint Commenters' view, the FTC has not made such a finding.

Finally, the Joint Commenters noted that DOE currently allows manufacturers to use two alternative test procedures.[81] They recommended that the Commission require manufacturers to use the procedure codified at Appendix D2 to 10 CFR part 430 Subpart B. The Commenters reasoned that this version of the test will better assist consumers in making purchasing decisions because ENERGY STAR already requires it, and the procedure is more accurate.

Discussion: The Commission will continue to follow developments with clothes dryers. The commenters make several compelling arguments for label requirements. As more models appear, the Commission will consider establishing a labeling requirement for these products.

However, in the meantime, the existence of two separate DOE test procedures raises serious complications for creating labeling requirements. Given the existence of two DOE tests, the Commission does not plan to require one DOE version over another because, by doing so, the Commission would, in essence, circumvent DOE's efforts to resolve the conflicts in its own testing requirements. The resolution of this technical issue is best left to DOE. The Commission will consider revisiting this after DOE resolves the testing issue.[82]

I. Plumbing Products

Consistent with the proposal in the SNPRM, the final amendments include two minor changes related to plumbing products.[83] First, the amendments clarify that retail Web sites may use a hyperlink (labeled, ''water usage'') to guide consumers to flow rate information for the covered plumbing

[77] Under EPCA, the Commission must prescribe labels for dryers unless it finds labeling would not be technologically or economically feasible. 42 U.S.C. 6294(a)(1).

[78] 44 FR 66466, 66469 (Nov. 19, 1979).

[79] *See* U.S. DOE, *Technical Support Document (TSD) for Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners;* Direct Final Rule TSD, Table 8.2.26, available at *http://www.regulations.gov/#!documentDetail;D=EERE-2007-BT-STD-0010-0053.* The table indicates that the difference in annual energy use between the baseline model and the most efficient non-heat-pump dryer is 89 kWh. At energy prices of $0.12 per kWh, this is approximately $11 per year. Considering inflation, this spread is even smaller than the cost range identified by the Commission in 1979. In addition, DOE's data suggests that annual operating costs for these dryers is generally lower than $80.

[80] *Citing Am. Textile Mfrs. Inst., Inc.* v. *Donovan,* 452 U.S. 490, 508–09 (1981) (interpretation of the term ''feasible'' in the context of the Occupational Safety and Health Act of 1970).

[81] *See* 78 FR 49608, 49641 (Aug. 14, 2013).

[82] The Commission disagrees with the commenters' interpretation of EPCA's requirement that labeling be technologically and economically feasible. In initially promulgating the Rule in 1979, the Commission, after examining the statute and statutory history, concluded ''the Commission believes that Congress['s] intent was to permit the exclusion of any product category, if the Commission found that the costs of the labeling program would substantially outweigh any potential benefits to consumers.'' 44 FR at 66467–68. In the Commission's view, labeling in such circumstances would not be ''economically feasible.'' 42 U.S.C. 6294(a)(1).

[83] In a separate notice, the Commission plans to propose an update to the reference to American Society of Mechanical Engineers (ASME) standards in section 305.16 of the Rule.

products they sell. Recent amendments to section 305.20 allow online retailers to use a hyperlink to connect consumers to EnergyGuide and Lighting Facts labels for specific products, but do not specifically allow online sellers to link to required plumbing disclosures.[84] The Plumbing Manufacturers Institute supported this change, but suggested the Commission allow other descriptors in the hyperlink such as ''flow rate'' and ''water consumption'' to provide flexibility to sellers. The Commission agrees. Unlike EnergyGuide and Lighting Facts labels, the Rule requires no uniform format for plumbing disclosures. Accordingly, a uniform hyperlink to connect consumers to such information is not necessary. Second, the amendments effect a conforming change to the definition of ''showerhead'' in Part 305 to the reflect recent DOE amendments.[85]

IV. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through May 31, 2017 (OMB Control No. 3084 0069). The amendments make changes in the Rule's labeling requirements that will increase the PRA burden as detailed below.[86] Accordingly, the Commission is seeking OMB clearance specific to the Rule amendments.

Package and Product Labeling (expanded lamp coverage): The final amendments require manufacturers to label several new bulb types. Accordingly, manufacturers will have to amend their package and product labeling to include new disclosures. The new requirements impose a one-time adjustment for manufacturers. Commission staff estimates that there are 50 manufacturers making approximately 3,000 of these newly covered products. This adjustment will require an estimated 600 hours per manufacturer on average. Annualized for a single year reflective of a prospective 3-year PRA clearance, this averages to 200 hours per year. Thus, the label design change will result in cumulative annualized burden of 10,000 hours (50 manufacturers × 200 hours). In estimating the associated labor cost, FTC staff assumes that the label design change will be implemented by graphic designers at an hourly wage rate of $24.36 per hour based on Bureau of Labor Statistics information.[87] Thus, staff estimates annual labor cost for this adjustment will total $243,600 (10,000 hours × $24.36 per hour).

Testing (expanded lamp coverage): Commission staff assumes that manufacturers will have to test 3,000 basic light bulb models out of an estimated 6,000 covered products. The Commission also assumes that testing will require 14 hours for each model for a total of 42,000 hours. In calculating the associated labor cost estimate, staff assumes that this work will be implemented by electrical engineers at an hourly wage rate of $46.05 per hour. Thus, Commission staff estimates that the label design change will result in associated labor costs of approximately $1,934,100 (42,000 hours × $46.05 per hour).

Recordkeeping (expanded lamp coverage): Pursuant to section 305.21 of the amended Rule, manufacturers of the newly covered specialty bulbs must keep test data on file for a period of two years after the production of a covered product model has been terminated. Assuming one minute per model and 3,000 basic models, the recordkeeping burden would total 50 hours. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of $15.48 per hour, the associated labor cost for recordkeeping would be approximately $774 per year.

Catalog Disclosures (expanded lamp coverage): The amendments would require sellers offering covered products through catalogs (both online and print) to disclose energy use for each light bulb for sale. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation. FTC staff estimates that there are 200 online and paper catalogs for these products that would be subject to the Rule's catalog disclosure requirements. Staff additionally estimates that the average catalog contains approximately 250 such products and that entry of the required information takes one minute per covered product.[88] The cumulative disclosure burden for catalog sellers is thus 833 hours (200 retailer catalogs × 250 products per catalog × 1 minute each per product shown). Assuming that the additional disclosure requirement will be implemented by data entry workers at an hourly wage rate of $15.48, associated labor cost would be approximately $12,894 per year.

Estimated annual non-labor cost burden (expanded lamp coverage): Commission staff estimates that the annualized capital cost of expanding the light bulb label coverage is $1,535,000. This estimate is based on the assumptions that manufacturers will have to change 3,000 model packages over an approximate three-year period to meet the new requirements[89] and that package label changes for each product will cost $1,335.[90] Manufacturers place information on products in the normal course of business. Annualized in the context of a 3-year PRA clearance, these non-labor costs would average $1,335,000 (3,000 model packages × $1,335 each over 3 years). As for product labeling, the Commission assumes that the one-time labeling change will cost $200 per model for an annualized estimated total of $200,000 (3,000 models × $200 over 3 years). Annualized in the context of a 3-year PRA clearance, the total non-labor costs would thus average $1,535,000.

Total Estimate: Accordingly, the revised estimated total hour burden of the amendments is 52,883 with associated labor costs of $2,191,368 and annualized capital or other non-labor costs totaling $1,535,000.

[84] 78 FR 2200 (Jan. 10, 2013).

[85] 78 FR 62970 (Oct. 23, 2013).

[86] As indicated in the SNPRM, 79 FR at 34660, n. 139, several labeling changes, including changes to label attachment methods and refrigerator ranges, should impose no or *de minimis* additional burden beyond existing estimates, or manufacturers should be able to incorporate the proposed changes into their normally scheduled package or label revisions. The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions have previously been accounted for in past FTC analyses under the Rule and are covered by the current PRA clearance from OMB.

[87] The mean hourly wage cited above and those that follow are drawn from Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages—May 2014, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2014), available at: *http://www.bls.gov/news.release/ocwage.t01.htm.*

[88] This estimate has been increased from the 2014 SNPRM to reflect the likelihood that retail Web sites offer a larger number of specialty consumer lamp models than first estimated.

[89] This assumes that manufacturers will change packages for one-third of their products in the normal course of business each year. The multi-year compliance period (two and a half years) and the notice provided by this proceeding should minimize the likelihood that manufacturers will have to discard package inventory. In addition, manufacturers may use stickers in lieu of discarding inventory.

[90] *See* 75 FR at 41712 n. 149 and accompanying text.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[91]

The Commission does not anticipate that the final amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many affected entities may qualify as small businesses under the relevant thresholds. The Commission does not expect, however, that the economic impact of implementing the amendments will be significant because the Commission plans to provide businesses with ample time to implement the requirements, and the amendments involve simple information disclosures that do not impose substantial burdens.

The Commission estimates that the amendments will apply to about 75 light bulb manufacturers and an additional 150 online and paper catalog sellers of covered products. The Commission expects that approximately 150 of these entities qualify as small businesses.

Although the Commission certified under the RFA that the amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission initiated this rulemaking to increase the availability of energy labels to consumers while minimizing burdens on industry, and generally improve existing requirements.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule amendments. Comments that involve impacts on all entities are discussed above.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, appliance manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Catalog sellers qualify as small businesses if their sales are less than $8.0 million annually. The Commission estimates that there are approximately 150 entities subject to the proposed rule's requirements that qualify as small businesses.[92]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As discussed above, the changes would slightly increase reporting or recordkeeping requirements associated with the Commission's labeling rules. The amendments likely will increase compliance burdens by extending the labeling requirements to new types of light bulbs. The Commission assumes that the label design change will be implemented by graphic designers.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule.

F. Description of Steps Taken To Minimize Significant Economic Impact, If Any, on Small Entities, Including Alternatives

The Commission sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. In particular, the Commission sought comments on whether it should time the Rule's effective date to provide additional time for small business compliance and whether to reduce the amount of information catalog sellers must provide. As discussed in this Notice, the Commission received no comments suggesting shorter compliance periods for requirements. However, to minimize the impacts on manufacturers and retailers in posting the required labels, the Commission has set effective dates for the new requirements to minimize burden on manufacturers as they implement them.

[91] 5 U.S.C. 603–605.

[92] *See* 75 FR at 41712.

Final Rule

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons discussed above, the Commission amends part 305 of title 16, Code of Federal Regulations, as follows:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (''ENERGY LABELING RULE'')

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.3, revise paragraphs (j) and (r) and add paragraph (z) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(j) *Fluorescent lamp ballast* means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.

* * * * *

(r) *Showerhead* means a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.

* * * * *

(z) *Specialty consumer lamp* means

(1) Any lamp that:

(i) Is not included under the definition of general service lamp in this part;

(ii) Has a lumen range between 310 lumens and no more than 2,600 lumens or a rated wattage between 30 and 199;

(iii) Has one of the following bases:

(A) A medium screw base;

(B) A candelabra screw base;

(C) A GU–10 base; or

(D) A GU–24 base; and

(iv) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(2) *Inclusions.* The term *specialty consumer lamp* includes, but is not limited to, the following lamps if such lamps meet the conditions listed in paragraph (1):

(i) vibration-service lamps as defined at 42 U.S.C. 6291(30)(AA);

(ii) rough service lamps as defined at 42 U.S.C. 6291(30)(X);

(iii) appliance lamps as defined at 42 U.S.C. 6291(30)(T); and

(iv) shatter resistant lamps (including a shatter proof lamp and a shatter protected lamp) as defined in 42 U.S.C. 6291(30)(Z).

(3) *Exclusions.* The term *specialty consumer lamp* does not include:

(i) A black light lamp;

(ii) A bug lamp;

(iii) A colored lamp;

(iv) An infrared lamp;

(v) A left-hand thread lamp;

(vi) A marine lamp;

(vii) A marine signal service lamp;

(viii) A mine service lamp;

(ix) A sign service lamp;

(x) A silver bowl lamp;

(xi) A showcase lamp;

(xii) A traffic signal lamp;

(xiii) A G-shape lamp with diameter of 5 inches or more;

(xiv) A C7, M–14, P, RP, S, or T shape lamp;

(xv) A intermediate screw-base lamp; and

(xvi) A plant light lamp.

* * * * *

■ 3. In § 305.7, revise paragraph (d) to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(d) *Water heaters.* The capacity shall be the first hour rating (for storage-type models) and gallons per minute (for instantaneous-type models), as determined according to appendix E to 10 CFR part 430, subpart B.

* * * * *

■ 4. In § 305.8, paragraph (a)(4) is revised to read as follows:

§ 305.8 Submission of data.

(a) * * *

(4) This section does not require reports for general service light-emitting diode (LED or OLED) lamps or specialty consumer lamps.

* * * * *

■ 5. In § 305.11, paragraph (d) is revised to read as follows:

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.

* * * * *

(d) Label types. The labels must be affixed to the product in the form of an adhesive label or a hang tag as follows:

(1) *Adhesive labels.* All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25″ x 38″) or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard. In lieu of a label with adhesive backing, manufacturers may adhere the label with adhesive tape, provided the tape is affixed along the entire top and bottom of the label.

(2) *Hang tags.* Labels may be affixed to the product in the form of a hang tag using cable ties or double strings connected through reinforced punch holes, or with attachment and label material of equivalent or greater strength and durability. If paper stock is used for hang tags, it shall have a basic weight of not less than 110 pounds per 500 sheets (25½″ x 30½″ index). When materials are used to attach the hang tags to appliance products, the materials shall be of sufficient strength to insure that if gradual pressure is applied to the hang tag by pulling it away from where it is affixed to the product, the hang tag will tear before the material used to affix the hang tag to the product breaks.

* * * * *

■ 6. In § 305.15, revise paragraph (b); redesignate paragraphs (c), (d), (e), and (f) as paragraphs (e), (f), (g), and (h); add new paragraphs (c) and (d); and revise newly redesignated paragraphs (f)(1) and (f)(4) through (6) to read as follows:

§ 305.15 Labeling for lighting products.

* * * * *

(b) *General service lamps.* Except as provided in paragraph (f) of this section, any covered product that is a general service lamp shall be labeled as follows:

* * * * *

(c) *Specialty consumer lamps.* (1) Any specialty consumer lamp that is a vibration-service lamp as defined at 42 U.S.C. 6291, rough service lamp as defined at 42 U.S.C. 6291(30), appliance lamp as defined at 42 U.S.C. 6291(30); or shatter resistant lamp (including a shatter proof lamp and a shatter protected lamp) must be labeled pursuant to the requirements in paragraphs (b)(1) through (7) of this section.

(2) *Specialty consumer lamp Lighting Facts label content.* All specialty consumer lamps not covered by paragraph (c)(1) of this section shall be labeled pursuant to the requirements of paragraphs (b)(1) through (7) of this section or as follows:

(i) The principal display panel of the product package shall be labeled clearly and conspicuously with the following information consistent with the Prototype Labels in Appendix L:

(A) The light output of each lamp included in the package, expressed as ''Brightness'' in average initial lumens rounded to the nearest five;

(B) The estimated annual energy cost of each lamp included in the package, expressed as ''Estimated Energy Cost'' in dollars and based on usage of 3 hours per day and 11 cents ($0.11) per kWh; and

(C) The life, as defined in § 305.2(w), of each lamp included in the package, expressed in years rounded to the nearest tenth (based on 3 hours operation per day).

(ii)(A) If the lamp contains mercury, the principal display panel shall contain the following statement in minimum 10 point font:

''Contains Mercury For more on clean up and safe disposal, visit epa.gov/cfl.''

(B) The manufacturer may also print an ''Hg[Encircled]'' symbol on package after the term ''Contains Mercury.''

(iii) If the lamp contains mercury, the lamp shall be labeled legibly on the product with the following statement: ''Mercury disposal: epa.gov/cfl'' in minimum 8 point font.

(iv) If the required disclosures for a lamp covered by paragraph (c)(2) of this section will not be legible on the front panel of a single-card, blister package due to the small size of the panel, the manufacturer or private labeler may print the statement ''Lighting Facts see back'' on the principal display panel consistent with the sample label in Appendix L as long as the Lighting Facts label required by paragraph (b)(3) of this section appears on the rear panel.

(v) No marks or information other than that specified in this part shall appear on the Lighting Facts label.

(3) *Specialty Lighting Facts label format.* Information specified in paragraph (c)(2) of this section shall be presented on covered lamp packages in the format, terms, explanatory text, specifications, and minimum sizes as shown in the Prototype Labels of appendix L and consistent in format and orientation with Sample Labels in Appendix L of this part. The text and lines shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(i) The Lighting Facts information shall be set off in a box by use of hairlines and shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(ii) All information within the Lighting Facts label shall utilize:

(A) Arial or an equivalent type style;

(B) Upper and lower case letters;

(C) Leading as indicated in the Prototype Labels in Appendix L of this part;

(D) Letters that never touch;

(E) The box and hairlines separating information as illustrated in the Prototype Labels in appendix L of this part; and

(F) The minimum font sizes and line thicknesses as illustrated in Prototype Labels in Appendix L of this part.

(iii) For small package labels covered by (c)(2)(iv) of this section, the words ''Lighting Facts see back'' shall appear on the primary display panel in a size and format specified in appendix L of this part.

(4) *Bilingual labels.* The information required by paragraph (c) of this section may be presented in a second language either by using separate labels for each language or in a bilingual label with the English text in the format required by this section immediately followed by the text in the second language. All required information must be included in both languages. Numeric characters that are identical in both languages need not be repeated.

(d) For lamps that do not meet the definition of general service lamp or specialty consumer lamp, manufacturers and private labelers have the discretion to label with the Lighting Facts label as long as they comply with all requirements applicable to specialty consumer lamps in this part.

* * * * *

(f) * * *

(1) The required disclosures of any covered product that is a general service lamp or specialty consumer lamp shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is 125 volts or 130 volts, the disclosures of the wattage, light output, energy cost, and life ratings shall in each instance be:

* * * * *

(4) For any covered product that is a general service lamp or specialty consumer lamp and operates at discrete, multiple light levels (*e.g.,* 800, 1600, and 2500 lumens), the light output, energy cost, and wattage disclosures required by this section must be provided at each of the lamp's levels of light output and the lamp's life provided on the basis of the shortest lived operating mode. The multiple numbers shall be separated by a ''/'' (*e.g.,* 800/1600/2500 lumens) if they appear on the same line on the label.

(5) A manufacturer or private labeler who distributes general service fluorescent lamps, general service lamps, or specialty consumer lamp without labels attached to the lamps or without labels on individual retail-sale packaging for one or more lamps may meet the package disclosure requirements of this section by making the required disclosures, in the manner and form required by those paragraphs, on the bulk shipping cartons that are to be used to display the lamps for retail sale.

(6) Any manufacturer or private labeler who makes any representation, other than those required by this section, on a package of any covered product that is a general service fluorescent lamp, general service lamp, or specialty consumer lamp regarding the cost of operation or life of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, *e.g.,* purchase price, unit cost of electricity, hours of use, patterns of use. If those assumptions differ from those required for the cost and life information on the Lighting Facts label (11 cents per kWh and 3 hours per day), the manufacturer or private labeler must also disclose, with equal clarity and conspicuousness and in close proximity to, the same representation based on the assumptions for cost and life required on the Lighting Facts label.

* * * * *

■ 7. In § 305.20, revise paragraphs (a)(1)(i) and (a)(1)(ii) introductory text to read as follows:

§ 305.20 Paper catalogs and Web sites.

(a) * * *

(1) *Content*—(i) *Products required to bear EnergyGuide or Lighting Facts labels.* All Web sites advertising covered refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service lamps, specialty consumer lamps (for products offered for sale after May 2, 2018), and televisions must display, for each model, a recognizable and legible image of the label required for that product by this part. The Web site may hyperlink to the image of the label using the sample EnergyGuide and Lighting Facts icons depicted in appendix L of this part. The Web site must hyperlink the image in a way that does not require consumers to save the hyperlinked image in order to view it.

(ii) *Products not required to bear EnergyGuide or Lighting Facts labels.* All Web sites advertising covered showerheads, faucets, water closets, urinals, general service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures must include the following disclosures for each covered product. For plumbing products, the Web site may hyperlink to the disclosures using a prominent link labeled ''Water Usage'' or a similar description which facilitates the disclosure of the covered product's rated water usage.

* * * * *

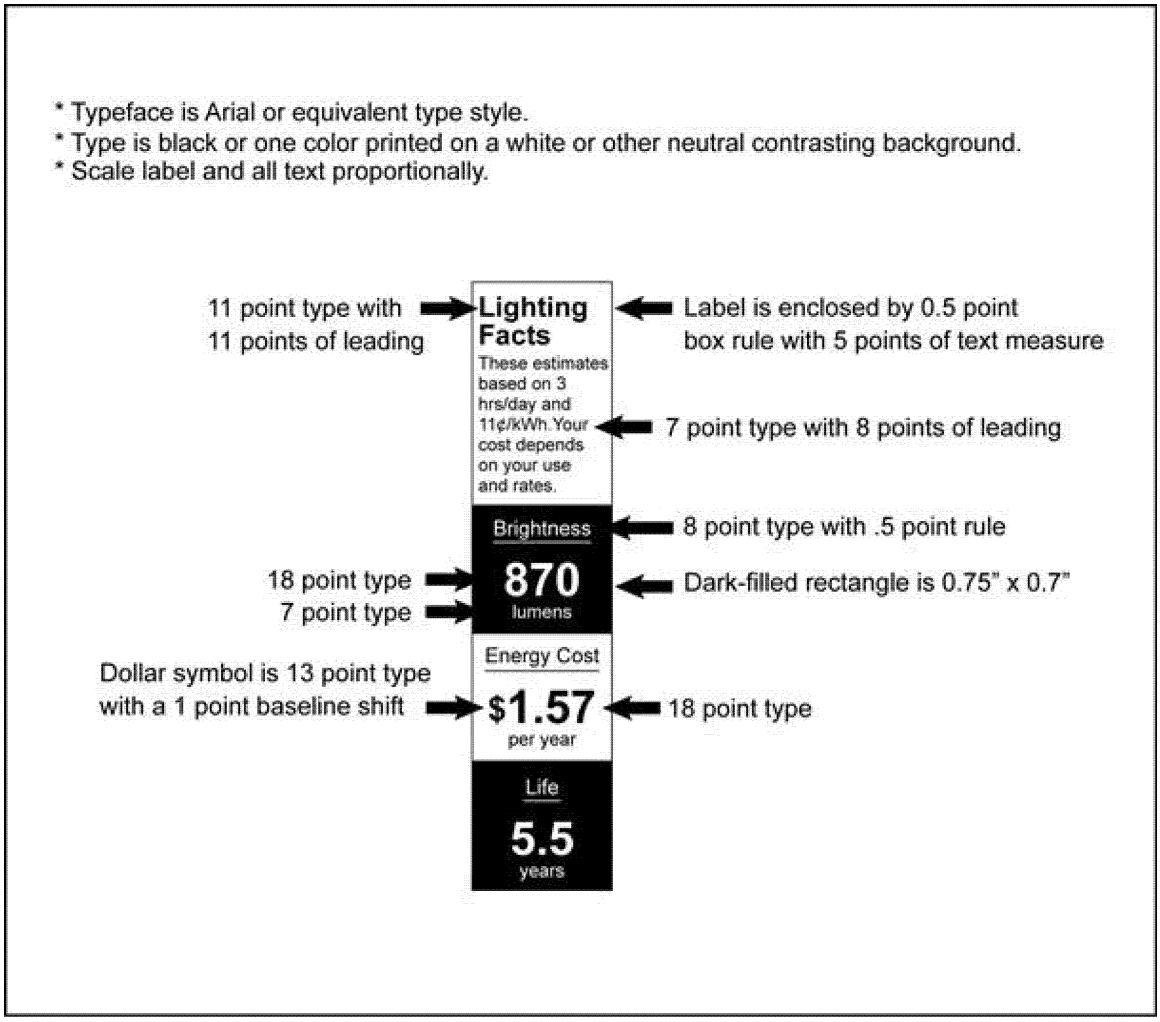
■ 8. In Appendix L, remove Sample Labels 1 and 2, redesignate Sample Labels 1A and 2A as Sample Labels 1 and 2, respectively, and add Prototype Label 7A and Sample Labels 13C and 13D.

The additions read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

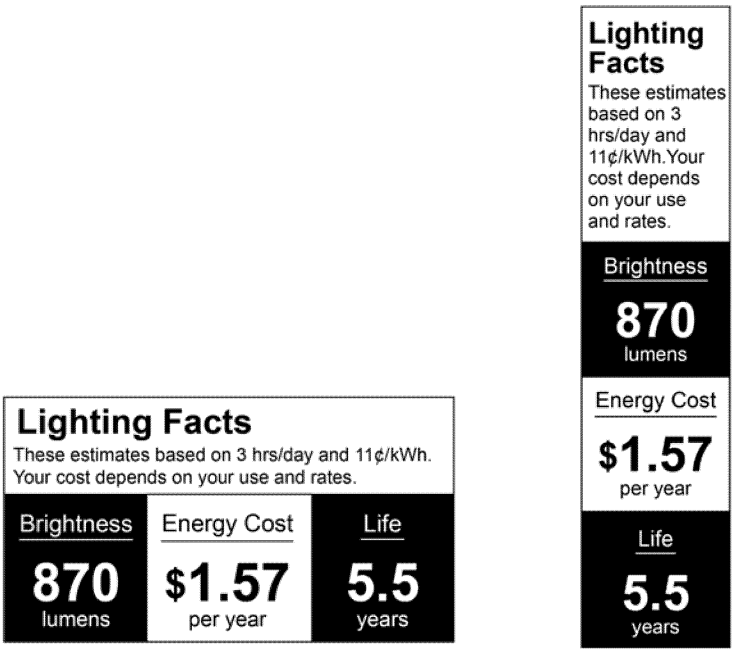
BILLING CODE 6750–01–P



Prototype Label 7A

Lighting Facts Label Alternative for Specialty Consumer Lamps

* * * * *



Sample Label 13C

Lighting Facts Label Alternative for Specialty Consumer Lamps

Sample Label 13D

Icon for Specialty Consumer Lamp Packages that Meet the Requirements of section 305.15(c)(2)(iv)

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–27772 Filed 10–30–15; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157, 260, and 284

[Docket Nos. RM96–1–038 and RM14–2–003; Order No. 587–W]

Standards for Business Practices of Interstate Natural Gas Pipelines; Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to incorporate by reference the latest version (Version 3.0) of seven business practice standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) applicable to interstate natural gas pipelines. These updated business practice standards contain and supplement the revisions to the NAESB scheduling standards accepted by the Commission in Order No. 809 as part of the Commission's efforts to harmonize gas-electric scheduling coordination, and are required to be implemented on April 1, 2016, the same date as the regulations adopted in Order No. 809. In addition, the updated standards revise

the codes used to identify receipt and delivery locations in the Index of Customers. Further, for consistency with the revisions to the Index of Customers, the Commission is also amending its regulations to make conforming changes to the Commission's regulations on interstate natural gas pipeline filings and postings.

DATES: This rule will become effective December 2, 2015. Implementation of these standards is required on April 1, 2016. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of December 2, 2015.

FOR FURTHER INFORMATION CONTACT:

Stanley Wolf (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6841, Email: *stanley.wolf@ferc.gov*.

Oscar F. Santillana (technical issues), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6392,Email: *oscar.santillana@ferc.gov*.

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8321,Email: *gary.cohen@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Order No. 587–W

Final Rule

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Order No. 587–W

Final Rule

(Issued October 16, 2015)

1. In this final rule, the Federal Energy Regulatory Commission (Commission) amends its regulations at 18 CFR 284.12 to incorporate by reference the latest version (Version 3.0) of seven business practice standards applicable to interstate natural gas pipelines adopted by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB). Interstate natural gas pipelines are required to implement these standards April 1, 2016.

2. The NAESB WGQ Version 3.0 package of standards includes standards governing coordination of the scheduling processes of interstate natural gas pipelines and public utilities that the Commission incorporated by reference in Docket No. RM14–2–000.[1] These updated business practice standards will replace the earlier version of these business practice standards that previously were incorporated by reference. The standards also revise the codes used to identify receipt and delivery locations in the Index of Customers. In addition, for consistency with the revisions to the Index of Customers, the Commission is also amending its regulations at 18 CFR 157.14, 157.18, 260.8, and 284.13 to have receipt and delivery point information in various interstate natural gas pipeline filings and postings use the same location point names as provided for in the NAESB WGQ Version 3.0 Standards. Finally, we also are making conforming changes to 18 CFR 284.126.

[1] *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities,* Order No. 809, Final Rule, 80 FR 23197 (Apr. 24, 2015), FERC Stats. & Regs. ¶ 31,368 (Order No. 809).

3. In addition, the Commission terminates, as moot, the proceeding in Docket No. RM14–2–003, as the standard corrections NAESB filed in Docket No. RM14–2–003 are included as part of the Version 3.0 standards that the Commission is incorporating by reference here, with the same implementation date of April 1, 2016.

I. Background

4. Since 1996, the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate natural gas pipelines to create a more integrated and efficient pipeline grid. These regulations have been promulgated in the Order No. 587 series of orders,[2] wherein the Commission has incorporated by reference standards for interstate natural gas pipeline business practices and electronic communications that were developed and adopted by NAESB's WGQ. Upon incorporation by reference, this version of these standards will become part of the Commission's regulations and compliance by interstate natural gas pipelines will become mandatory and will replace the earlier version of these standards that the Commission previously incorporated by reference in 2012.[3]

5. On July 23, 2013, as corrected on July 25, 2013, NAESB filed a report informing the Commission that it had adopted and ratified Version 2.1 of its business practice standards applicable to natural gas pipelines. NAESB reported that the WGQ reviewed, at the request of the industry, the necessity of maintaining the current location common codes system to determine if the system provides a significant benefit to the industry and should be continued.[4] NAESB (in its previous corporate incarnation as the Gas Industry Standards Board) adopted a system of registering common codes to identify interconnection points between pipelines using a single code for the shared point. The industry chose an independent third party to assign and maintain the common code database.

6. NAESB reported that, after extensive discussions, the WGQ reached the conclusion that the NAESB WGQ Standards should no longer support the location common codes system, as the NAESB membership concluded that the system provided little commercial benefit to the industry at large. Consistent with this determination, the Version 2.1 Standards added seven new standards, modified six standards, and deleted three standards to match up with a transition from common codes to the proprietary codes used by interstate pipelines to identify points.[5] These will be the codes assigned by the transportation service providers for the identification of locations.[6] The standards require pipelines to post sufficient information on their Web sites to permit shippers and the Commission to identify the interconnection points between pipelines that were previously identified through the common codes.

7. Additionally, as requested by the Commission in Order No. 587–V,[7] NAESB modified the standards to include reporting requirements for ''Design Capacity'' for each location by transportation service providers.[8] Other changes to the existing standards were made at the request of industry. These include changes to the NAESB WGQ Additional Standards, Nominations Related Standards, Flowing Gas Related Standards, Invoicing Related Standards, Quadrant Electronic Delivery Mechanism Standards, Capacity Release Related Standards, and Data Set Standards.[9] NAESB further reported on the changes it made to the NAESB WGQ Interpretations and Contracts and Manuals that the Commission has declined to incorporate by reference in past Final Rules.[10] NAESB also reported on all the minor corrections it made to the standards since Version 2.0 of the Standards.[11] Finally, NAESB reported on items that it considered changing but on which it took no action.[12]

8. On November 14, 2014, NAESB filed a report informing the Commission that it had adopted and ratified Version 3.0 of its business practice standards applicable to natural gas pipelines. NAESB reported that all of the modifications made in the Version 2.1 Standards are included in the Version 3.0 Standards and thus no action is needed on the Version 2.1 Standards.[13] The Version 3.0 Standards introduced modifications to the standards to support efforts to harmonize gas-electric scheduling coordination that NAESB had separately filed and that the Commission incorporated by reference in Order No. 809.[14] In addition, the Version 3.0 Standards contain revisions to the capacity release standards regarding posting requirements for offers to purchase released capacity that were the subject of the Commission's order to show cause in Docket No. RP14–442–000.[15] Other revisions in the Version 3.0 Standards are: (1) Revisions to the standards to define ''Operating Capacity'' and ''Design Capacity'' in response to the Commission request in Order No. 587–V;[16] (2) elimination of the WGQ Interpretations, which the Commission has long declined to incorporate by reference; (3) modifications to standards to reflect the elimination of the WGQ's interpretations of the standards; (4) modifications for maintenance purposes, which includes changes to eliminate the appearance of the electronic data interchange in the imbalance trading process; (5) modifications to reflect new data elements; and (6) edits for clarity and to increase user-friendliness. The Version 3.0 standards have also been revised to include 29 minor corrections.[17]

9. On July 7, 2015, NAESB filed a report informing the Commission that it made errata corrections to the WGQ Version 3.0 Business Practice Standards.[18] These corrections incorporated a 9:00 a.m. Central Clock Time (CCT) start to the gas operating day, consistent with the Commission's findings in Order No. 809[19] and also corrected other minor errors.

[2] This series of orders began with the Commission's issuance of *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587, FERC Stats. & Regs. ¶ 31,038 (1996).

[3] *Standards for Business Practices of Interstate Natural Gas Pipelines,* Final Rule, Order No. 587–V, FERC Stats. & Regs. ¶ 31,332 (2012) (Order No. 587–V).

[4] NAESB Version 2.1 Report dated July 23, 2013 (NAESB Version 2.1 Report). As explained in the NAESB Version 2.1 Report, this request was received by NAESB in November 2010 and was included by the NAESB Board of Directors in the 2011 WGQ Annual Plan as part of Item No. 7 and as part of the 2012 WGQ Annual Plan Item No. 8. *See* NAESB Version 2.1 Report at 3. The proposed modifications made in response to this request were developed by the WGQ's Business Practices Subcommittee and jointly by the Information Requirements/Technical Subcommittees.

[5] NAESB Version 2.1 Report at 2.

[6] *Id.* at 4.

[7] *See supra* n.3.

[8] NAESB Version 2.1 Report at 2–3.

[9] *Id.* at 3.

[10] *See, e.g.,* Order No. 587–V, FERC Stats. & Regs. ¶ 31,332 at n.11.

[11] NAESB Version 2.1 Report at 18.

[12] *Id.* at 17–18.

[13] NAESB Version 3.0 Report dated November 14, 2014 (NAESB Version 3.0 Report) at 2.

[14] *See supra* n.1.

[15] *Posting of Offers to Purchase Capacity,* 146 FERC ¶ 61,203, at P 6 (2014) (Show Cause Order); *B–R Pipeline Co.,* 149 FERC ¶ 61,031 (2014) (order accepting compliance filings).

[16] Order No. 587–V, FERC Stats. & Regs. ¶ 31,332 at P 8.

[17] The NAESB Version 3.0 Report also provides information on other NAESB activities and tools unrelated to standards development. A complete listing of all the revisions made in NAESB's WGQ Version 3.0 Business Practice Standards to NAESB's prior business practice standards can be found in the Appendix to the Version 3.0 NOPR, 80 FR 43987, FERC Stats. & Regs. ¶ 32,708 at 34,767.

[18] NAESB adopted two minor corrections, MC15009 and MC15012, approved on April 30, 2015 and May 29, 2015, respectively.

[19] Order No. 809, FERC Stats. & Regs. ¶ 31,368 at P 171.

10. On July 16, 2015, the Commission issued a Notice of Proposed Rulemaking (Version 3.0 NOPR) proposing to amend its regulations to incorporate by reference, with certain enumerated exceptions, the NAESB Version 3.0 business practice standards (referenced above) applicable to natural gas pipelines.[20] In addition, the Version 3.0 NOPR proposed certain conforming changes to the Commission's regulations at 18 CFR 157.14 and 157.18 (dealing with exhibits) and 260.8 (dealing with system flow diagrams).

11. In response to the Version 3.0 NOPR, comments were filed by three commenters. All three commenters express support for the Commission's proposal to incorporate by reference NAESB's Version 3.0 business practice standards. Tennessee Valley Authority (TVA) comments that it fully supports the full package of revisions reflected in the NAESB Version 3.0 Standards that are subject to the NOPR. Interstate Natural Gas Association of America (INGAA) comments that it ''supports the Commission's proposal to amend its regulations to incorporate by reference Version 3.0 of the business practice standards adopted by [NAESB's WGQ] applicable to natural gas pipelines,'' subject to a few suggested modifications.[21] It supports the Version 3.0 NOPR's proposal to introduce the use of proprietary location codes and to discontinue the use of industry common codes, but it offers suggested minor modifications to the regulatory text accomplishing this transition. Southern Star Central Gas Pipeline (Southern Star), likewise, comments that it ''supports the incorporation by reference of the NAESB WGQ Version 3.0 business practice standards in 18 CFR § 284.12 as proposed.'' [22] ''[H]owever, Southern Star asks the Commission to clarify its proposed corresponding changes to 18 CFR 157.14, 157.18, 260.8, and 284.13 to avoid confusion and ensure consistent compliance with the regulations.'' [23] In the discussion below, we will address the comments in greater detail. In addition, on September 25, 2015, NAESB filed a report with the Commission in Docket No. RM96–1–038 announcing that it had made additional minor corrections.[24] In this Final Rule, the version of the NAESB WGQ business practice standards that we are incorporating by reference into our regulations will include these additional minor corrections.

II. Discussion

A. Incorporation by Reference of the NAESB Standards

1. The NAESB WGQ Version 3.0 Business Practice Standards

12. The NAESB WGQ Version 3.0 Business Practice Standards made a number of changes to the earlier version of those standards that the Commission previously incorporated by reference in 2012 in Order No. 587–V.[25] Notable among these changes was a change, made at the request of the industry, to introduce the use of proprietary codes to identify the location of points of receipt and delivery. Consistent with this determination, the Version 2.1 Standards added seven new standards, modified six standards, and deleted three standards to match up with a transition from common codes to proprietary codes. Under the new standards, each transportation service provider assigns the proprietary codes it will use to identify the locations of its points of receipt and delivery. The standards require pipelines to post sufficient information on their Web sites to permit shippers and the Commission to identify the interconnection points between pipelines that were previously identified through the common codes.

13. Additionally, as requested by the Commission in Order No. 587–V,[26] NAESB modified the standards to include reporting requirements for ''Design Capacity'' for each location by transportation service providers. Other changes to the existing standards were made at the request of industry. These include changes to the NAESB WGQ Additional Standards, Nominations Related Standards, Flowing Gas Related Standards, Invoicing Related Standards, Quadrant Electronic Delivery Mechanism Standards, Capacity Release Related Standards, and Data Set Standards. NAESB further reports on the changes it made to the NAESB WGQ Interpretations and Contracts and Manuals that the Commission has declined to incorporate by reference in past final rules.[27] NAESB's Version 3.0 report also identified the minor corrections it made to the standards since Version 2.0 of the Standards.

2. NAESB's Process

14. NAESB used its consensus procedures to develop and approve the Version 3.0 Standards. As the Commission found in Order No. 587, the adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as means to carry out policy objectives or activities determined by the agencies unless an agency determines that the use of such standards would be inconsistent with applicable law or otherwise impractical.

3. NOPR Proposal

15. In the Version 3.0 NOPR, the Commission proposed to incorporate by reference, in its regulations, Version 3.0 of the NAESB WGQ's consensus business practice standards, with the exception of NAESB's standards specifying the terms of optional model contracts and its eTariff-related standards.[28]

4. Comments

16. As explained above, all of the commenters supported the Commission's proposal to incorporate by reference the NAESB WGQ Version 3.0 business practice standards as proposed in the Version 3.0 NOPR.[29]

5. Commission Determination

17. After a review of the comments filed in response to the Version 3.0 NOPR, the Commission is amending Part 284 of its regulations to incorporate by reference seven of the NAESB WGQ's Version 3.0 business practice standards. Further, as explained in the Version 3.0 NOPR, we are not incorporating by reference the NAESB WGQ's optional model contracts and eTariff-related

[20] *Standards for Business Practices of Interstate Natural Gas Pipelines,* Notice of Proposed Rulemaking, 80 FR 43979 (July 24, 2015), FERC Stats. & Regs. ¶ 32,708 (July 16, 2015) (Version 3.0 NOPR).

[21] INGAA at 1.

[22] Southern Star at 2.

[23] *Id.*

[24] MC15003, MC15004, and MC15005, which were adopted by the WGQ Executive Committee on April 9, 2015.

[25] *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587–V, FERC Stats. & Regs. ¶ 31,332 (2012).

[26] *Id.* P 30.

[27] *See, e.g., id.* n.11.

[28] Version 3.0 NOPR, 80 FR 43982, FERC Stats. & Regs. ¶ 32,708 at P 20.

[29] *See* discussion at P 11, *supra.*

standards.[30] In the discussion below, we also will discuss the various comments suggesting modifications to the regulatory text proposed in the Version 3.0 NOPR in the conforming changes we proposed to other provisions of our regulations.

6. Required Compliance Filings

18. To implement the standards we are incorporating by reference in this Final Rule, we will require each interstate natural gas pipeline to file a separate tariff record reflecting the changed standards by February 1, 2016, to take effect on April 1, 2016, and the natural gas pipelines will be required to comply with these standards on and after April 1, 2016.[31]

B. Use of Proprietary Codes To Replace Common Codes

1. NOPR Proposal

19. As explained in the Version 3.0 NOPR, at industry's request, NAESB reviewed the location common codes system and concluded that the NAESB WGQ Business Practice Standards should no longer support the location common codes system, as the NAESB membership concluded that the system provided little commercial benefit to the industry at large.[32] The industry determined that having a third party maintain a common code database is not worth the expense and effort and revised the standards to introduce the use of proprietary codes to identify the location of points of receipt and delivery. The revised standards include requirements to replace much of the information previously contained in the third party database. These standards require interstate pipelines to post on their internet Web sites information on each of the proprietary points that can be used among other things to determine which points are interconnecting points, one of the primary reasons for adoption of the common code database.

20. In the Version 3.0 NOPR, the Commission proposed to incorporate by reference the standards that revised the prior standards to introduce the use of proprietary codes to identify the location of points of receipt and delivery and that included requirements for the pipelines to post on their Web sites information on each of the proprietary points that can be used to determine which points are interconnecting points between pipelines.[33] We also proposed that these same codes be used by the Commission in its Index of Customers to identify the points on shippers' contracts and we proposed to revise § 284.13(c) of the regulations to assure that these provisions operate in harmony.[34] In the NOPR, we proposed to revise the Commission's regulations at § 284.13(c)(2)(vi) to reflect the use of the term ''location code'' rather than ''industry common code'' to identify the location of receipt and delivery points, and we also proposed to require pipelines to post information on their internet Web site regarding such location points, including the coordinates of each point, and an identification of the upstream or downstream entity, if any, at that point, and date the point becomes active or inactive.[35]

2. Comments

21. Southern Star & INGAA both support the Commission's proposal to use the term ''location code,'' rather than ''industry common code'' to identify the location of receipt and delivery points.[36] Southern Star and INGAA, however, point out that the term ''common code'' recurs in a number of places in the Commission's regulations other than in the Index of Customers, and contend that, as a result, the Commission should establish a separate regulation at 18 CFR 284.13(f) for the posting requirement to eliminate the need for repetition.[37]

3. Commission Determination

22. We will incorporate by reference NAESB's standards requiring interstate pipelines to refer to location points using their own proprietary code, together with a posting of information regarding these codes on the pipelines' Web site, rather than requiring the pipelines to maintain a common code database implemented by a third party. Given the ability of the Commission and customers to continue to identify interconnection points referenced in the Index of Customers through the Web site postings, the Commission also will revise its regulations governing the filing of the Index of Customers and other regulations requiring the specification of location point codes to align with the NAESB standards.

23. We also will adopt Southern Star and INGAA's recommendations to modify the regulations to create a separate requirement at 18 CFR 284.13(f) for the posting of information regarding the location points to make cross-reference easier. Consistent with the proposal in the Version 3.0 NOPR, we are requiring interstate pipelines to file their Index of Customers using the new location names and codes for all active points. In addition, as proposed in the Version 3.0 NOPR, we are requiring pipelines to maintain and post on their Web sites a complete listing of all inactive points. Finally, for the convenience of those reviewing past Index of Customers filings, or those wishing to compare past Index of Customers filings to newer Index of Customers filings, we will post the old common code file for past indices on the Commission's Web site prior to April 1, 2016.

C. Index of Customers

1. Filing Format

a. NOPR Proposal

24. In the Version 3.0 NOPR, we explained that pipelines currently file the Index of Customers using a tab-delimited file format consistent with Form No. 549B—Index of Customers Instruction Manual.[38] While we did not propose any changes to that formatting in the Version 3.0 NOPR, we further explained that,

> [b]ecause tab-delimited file formats can be difficult and can result in errors that impose burdens both on Commission and pipeline staff to correct, we also are adding the Index of Customers form to the list of forms that are being updated as part of the Commission's forms refresh project in Docket No. AD15–11–000 (Forms Project). Adding the Index of Customers to the Forms Project will move the Commission towards the use of a standard approach for all Commission forms that will result in more efficient filing and processing of forms.[39]

b. Comment

25. TVA comments that, while it was neutral in the past, it has come to appreciate that a user-friendly format for the Index of Customers is extremely beneficial to TVA in long-range planning. TVA asserts that, with growing staff to support the growth of gas-fired generation at TVA and counterparties, a user-friendly format for locations codes is a beneficial tool to

[30] We are also, as discussed in Section II.D below, making a number of conforming changes in other provisions of our regulations, for consistency with our action here.

[31] To aid in compliance, promptly after issuance of this Final Rule, the Commission will post a sample tariff record on the Commission's Web site that may be accessed at *http://www.ferc.gov/docs-filing/elibrary.asp.* All pipelines are to file their tariff records in conformance with this sample tariff record.

[32] Version 3.0 NOPR, FERC Stats. & Regs. ¶ 32,708 at P 4.

[33] *Id.* PP 15–16.

[34] *Id.*

[35] *Id.* at proposed regulatory text for § 284.13(c)(2)(vi). (80 FR 43987).

[36] INGAA at 2. Southern Star at 3.

[37] Southern Star at 2–3.

[38] Version 3.0 NOPR, FERC Stats. & Regs. ¶ 32,708 at P 17.

[39] *Id.*

avoid potential miscommunication of receipt and delivery points from occurring.[40]

c. Commission Determination

26. The transition from the current tab delimited file format for the Index of Customers information reported on Form No. 549B to a more up-to-date format will improve the efficient filing and processing of this information. As we explained in the Version 3.0 NOPR, the Commission issued an order (Forms Project Order) initiating a proceeding in Docket No. AD15–11–000 to consider the transition to a new filing format for a number of other Commission forms and has enlisted the assistance of NAESB in this endeavor.[41] As we explained in Forms Project Order, the current software which the Commission requires industry to use for the electronic filing of many of the forms (Visual Fox Pro) is no longer supported by its developer.[42] The Commission enlisted NAESB in an effort to transition to an electronic filing format based on the use of Extensible Mark-Up Language (XML), which NAESB helped to develop for electronic tariff filing.[43] We recognize that NAESB's highest priority is to develop the XML standards for the forms to replace the unsupported and outdated Visual Fox Pro software. While the Index of Customers can still be filed in the current tab delimited format, we agree with TVA that continued use of this format is inefficient for both the industry and the Commission. Accordingly, we request that NAESB consider revisions to the Index of Customers as part of their ongoing deliberations.

2. Index of Customers Instruction Manual

a. NOPR Proposal

27. In the Version 3.0 NOPR, the Commission proposed to post on the Commission's Web site a revised instruction manual for the filing of Form No. 549B—Index of Customers.[44] As promised, after issuance of the Version 3.0 NOPR, the Commission posted the proposed revised instruction manual on its Web site. The only proposed changes to the instruction manual were to Item ID yj (Point identification Code Qualifier) and Item ID yk (Point identification Code) to specify that the new proprietary location names and codes were to be used in identifying points of receipt and delivery in the Index of Customers.

b. Comments

28. Southern Star and INGAA both suggest that three changes are needed to the proposed instruction manual for the Index of Customers:[45] First, in the instructions for Item yh (the Point Identifier Code), the commenters suggest that the references to G1-Gas Transaction Point 1 and G2-Gas Transaction Point 2 should be deleted as these are antiquated codes that are no longer used in the referenced NAESB business standard.

29. Second, for Item yj (the Point identification Code Qualifier), the commenters suggest that the instructions should simply read ''Enter 95'' as all location codes will now be assigned by the pipeline (the Transportation Service Provider).

30. Third, for Item yk (the Point Identification Code), the commenters suggest that the instructions should simply read ''Enter the Transportation Service Provider's Location (LOC)'' as there is no longer an industry common code to enter. INGAA asserts that this item should read ''Enter the pipeline's location code.'' It makes this suggestion because ''Pipeline'' is the term utilized throughout the Instruction Manual.

c. Commission Determination

31. As to the suggestion to revise the instruction manual to delete references to references to G1 and G2 in the instructions for Item yh (the Point Identifier Code), we find this suggestion reasonable and will make this change.

32. As to the suggestion to revise the instruction manual to revise the instructions for Item yj, we see merit in this suggestion, but believe the suggested language would be clearer if it read ''Enter 95 whenever item yk is the Transmission Service Provider's Location (LOC)'' and will revise the instruction manual accordingly.

33. As to the suggestion to revise the instruction manual to revise the instructions for Item yk to read ''Enter the Transmission Service Provider's Location (LOC),'' we find this suggestion reasonable and will make this change.

34. As to the suggestion to revise the instruction manual to revise the instructions for Item yj to substitute the term ''Pipeline'' in lieu of the term ''Transmission Service Provider,'' we are not persuaded to make this revision, as the term ''Transmission Service Provider'' matches the terminology in the standards we are incorporating. As we did after we issued the Version 3.0 NOPR, we will post a link to the revised instruction manual on our Web site after issuance of this Final Rule.[46]

35. Finally, our review of the comments also brought to our attention that Item yi (Point Name) also needs revision to reflect the transition to the use of proprietary location codes in the Version 3.0 standards. Thus, the Instructions for Item ID yi will now read as follows: ''Enter the Location Name (LOC Name) of the point or facility.''

D. Cross-References/Conforming Changes

1. NOPR Proposal

36. In the Version 3.0 NOPR, the Commission proposed conforming changes to reference the new location names and codes at 18 CFR 157.14 and 18 CFR 157.18 (dealing with exhibits), in 18 CFR 260.8 (dealing with system flow diagrams), and in 18 CFR 284.13 (dealing with reporting requirements for interstate pipelines).

2. Comments

37. Along with their comments suggesting that the Commission move its proposed regulation at § 284.13(c)(2)(6) into a new subsection § 284.13(f), the commenters point out the Commission missed two references to common codes in § 284.13(b) and suggest revisions to the accompanying cross references proposed in the Version 3.0 NOPR.[47] INGAA further requests two minor additional modifications.[48] In § 157.14(a), INGAA argues that the Commission should remove the reference to Exhibit H(iv) that appears in the proposed regulatory text because Exhibit H(iv) no longer exists. In addition, INGAA requests the Commission to clarify that it did not intend to delete certain language after the asterisks in both §§ 157.14(a) and 157.18(c). Specifically, INGAA states that the Commission should revise the language at the beginning of item 2 of its proposed amendment to § 157.14(a) to state that ''Section 157.14 is amended by revising *the introductory language* of paragraph (a) to read as follows:'' (emphasis added), and insert ''(1)'' before the asterisks. In INGAA's view,

[40] TVA at 3.

[41] *Electronic Filing Protocols for Commission Forms,* 151 FERC ¶ 61,025 (2015).

[42] *Id.* P 1.

[43] *Electronic Tariff Filings,* Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

[44] Version 3.0 NOPR, FERC Stats. & Regs. ¶ 32,708 at P 17 & n.26.

[45] Southern Star at 5–6 and INGAA at 7–9.

[46] To aid in compliance, promptly after issuance of this Final Rule, a Revised Instruction Manual for filing Form No. 549B, Index of Customers, will be posted on the Commission's Web site and may be accessed at *http://www.ferc.gov/industries/gas/indus-act/pipelines/standards.asp.* All pipelines are to file their Index of Customers in accordance with the instructions provided in this manual.

[47] INGAA at 2–4, Southern Star at 3–4.

[48] INGAA at 7.

this would remove any doubt about how much of the existing section is being replaced with the new proposed language.

3. Commission Determination

38. Given the Commission's determination that, as proposed by the commenters, the proper provision in which to place the requirement for pipelines to use ''location code'' rather than ''industry common code'' to identify the location of receipt and delivery points is at 18 CFR 284.13(f), we will make appropriate cross-references. We agree with INGAA that the inclusion of Exhibit H(iv) in the regulatory text of proposed § 157.14(a) is in error. Reference to this exhibit was deleted in Order No. 699 as an erroneous or outdated reference.[49] Thus, we will delete any reference to Exhibit H(iv) in the regulatory text we are promulgating in this Final Rule. In addition, as requested, we will clarify that our revisions to § 157.14(a) and § 157.18(c) are not intended to delete language that follows later in these provisions.

39. Finally, as a result of the INGAA comment that we needed to make additional conforming changes that were overlooked, we also will make a conforming change to 18 CFR 284.126 to remove the reference to common codes. Intrastate pipelines filing Form No. 549D should identify their location codes and names in their list of jurisdictional points of receipt and delivery.

III. Implementation Schedule

40. In the Version 3.0 NOPR, the Commission stated that we anticipated acting on the proposed rule in order to permit these standards to become effective April 1, 2016 at the same time as the Gas-Electric Harmonization standards, with compliance filings due February 1, 2016.[50] We explained that requiring implementation of the updated business practice standards and the Gas-Electric Harmonization standards on the same date should reduce the compliance burden on the pipelines and avoid confusion.[51] We also explained our policies on tariff filings and on waiver requests.[52]

41. None of the comments took issue with the Commission's proposed implementation schedule. Nor did the comments take issue or seek clarification with regard to the Commission's explanation of its policies on tariff filings and on waiver requests. We are not modifying these policies in this Final Rule and stand by the explanation of those policies we made in the Version 3.0 NOPR. The Commission will require interstate natural gas pipelines to comply with the revised NAESB standards that we are incorporating by reference in this Final Rule beginning on April 1, 2016. Thus, among other requirements, when pipelines make their Index of Customers filing for the second quarter of 2016 and thereafter they should do so using the new location names and codes for all active points. We are requiring this implementation schedule to give the interstate natural gas pipelines subject to these standards adequate time to implement these changes. In addition, the interstate natural gas pipelines must file tariff records to reflect the changed standards by February 1, 2016.

42. In addition, consistent with the requirements in Order Nos. 587–V and 809,[53] the Commission is including the following compliance filing requirements to increase the transparency of the pipelines' incorporation by reference of the NAESB WGQ Standards so that shippers and the Commission will know which tariff provision(s) implements each standard as well as the status of each standard.

(1) The pipelines must designate a single tariff record under which every NAESB standard currently incorporated by reference by the Commission is listed.[54] This section should be a separate tariff record under the Commission's electronic tariff filing requirement and should be filed electronically using the eTariff portal using the Type of Filing Code 580. The Commission will post on its eLibrary Web site (under Docket No. RM96–1–038) a sample tariff record, to provide filers an illustrative example to aid them in preparing their compliance filings;[55]

(2) For each standard, each pipeline must specify in the tariff record a list of all the NAESB standards currently incorporated by reference by the Commission:

(a) whether the standard is incorporated by reference;

(b) for those standards not incorporated by reference, the tariff provision that complies with the standard;[56] and

(c) a statement identifying any standards for which the pipeline has been granted a waiver, extension of time, or other variance with respect to compliance with the standard.[57]

(3) If the pipeline is requesting a continuation of an existing waiver or extension of time, it must include a table in its transmittal letter that states the standard for which a waiver or extension of time was granted, and the docket number or order citation to the proceeding in which the waiver or extension was granted.

IV. Notice of Use of Voluntary Consensus Standards

43. Office of Management and Budget Circular A–119 (section 11) (February 10, 1998) provides that federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this Final Rule, the Commission is amending its regulations to incorporate by reference voluntary consensus standards developed by NAESB's WGQ. In section 12(d) of NTT&AA, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations to carry out policy objectives or activities determined by the agencies unless use of such standards would be inconsistent with applicable law or otherwise impractical.[58]

44. In section 12(d) of NTT&AA, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations to carry out policy objectives or activities determined by the agencies unless use of such standards would be inconsistent with applicable law or otherwise impractical.

V. Incorporation by Reference

45. The Office of the Federal Register requires agencies incorporating material by reference in final rules to discuss, in the preamble of the final rule, the ways that the materials it incorporates by

[49] *Conforming Changes,* Order No. 699, FERC Stats. & Regs. ¶ 31,254 at P 10 (cross-referenced at 120 FERC ¶ 61,134 (2007)).

[50] Version 3.0 NOPR, FERC Stats. & Regs. ¶ 32,708 at P 23.

[51] *Id.*

[52] *Id.* PP 23–27.

[53] Order No. 587–V, FERC Stats. & Regs. ¶ 31,332 at PP 36–37; Order No. 809, FERC Stats. & Regs. ¶ 31,368 at P 169.

[54] *See supra* n.31.

[55] *Id.*

[56] For example, pipelines are required to include the full text of the NAESB nomination and capacity release timeline standards (WGQ Standards 1.3.2(i–vi) and 5.3.2) in their tariffs. *See, e.g., Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587–U, FERC Stats. & Regs. ¶ 31,307, at P 39 & n.42 (2010). The pipeline would indicate which tariff provision complies with each of these standards.

[57] Shippers can use the Commission's electronic tariff system to locate the tariff record containing the NAESB standards, which will indicate the docket in which any waiver or extension of time was granted.

[58] Pub L. No. 104–113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

reference are reasonably available to interested parties and how interested parties can obtain the materials.[59] The regulations also require agencies to summarize, in the preamble of the final rule, the material it incorporates by reference. The seven NAESB standards being incorporated by reference in this Final Rule can be summarized as follows:

- Additional Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015). These standards cover general areas or standards applicable to multiple business activities, such as creditworthiness and gas/electric operational communications.
- Nominations Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015). These standards define the business processes used to schedule natural gas service on pipelines.
- Flowing Gas Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015). These standards define the business processes related to the communication of entitlement rights to flowing gas at a location, the entitlement rights on a contractual basis, the management of imbalances, and the measurement and gas quality information of the actual flow of gas.
- Invoicing Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015). These standards define the business process for the communication of charges for services rendered (Invoice), communication of details about funds rendered in payment for services rendered (Payment Remittance), and communication of the financial status of a customer's account (Statement of Account).
- Quadrant Electronic Delivery Mechanism Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015). These standards establish the framework for the electronic dissemination and communication of information between parties in the North American wholesale gas marketplace for EDI/EDM transfers, batch flat file/EDM transfers, informational postings Web sites, EBB/EDM and interactive flat file/EDM.
- Capacity Release Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015). These standards define the business processes for communication of information related to the release or transfer of any portion of a transmission service requester's contract rights for transportation on pipelines.
- Internet Electronic Transport Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015). These standards define the implementation of various technologies necessary to communicate transactions and other electronic data using standard protocols for electronic commerce over the internet between NAESB trading partners.

46. Our regulations provide that copies of the NAESB standards incorporated by reference may be obtained from the North American Energy Standards Board, 801 Travis Street, Suite 1675, Houston, TX 77002, Phone: (713) 356–0060. NAESB's Web site is at *http://www.naesb.org/*. Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426, Phone: (202) 502–8371, *http://www.ferc.gov*.[60] The procedures utilized by NAESB make its standards reasonably available to those affected by the Commission regulations.[61] Participants can join NAESB, for an annual membership cost of $7,000, which entitles them to full participation in NAESB and enables them to obtain these standards at no cost.[62] Non-members may obtain the Individual Standards Manual or Booklets for each standard by email for $250 per manual or booklet, which in the case of these standards would total $1,000.[63] Nonmembers also may obtain the complete set of Standards Manuals, Booklets, and Contracts on CD for $2,000. NAESB also provides a free electronic read-only version of the standards for a three business day period or, in the case of a regulatory comment period, through the end of the comment period.[64] In addition, NAESB considers requests for waivers of the charges on a case by case basis based on need.

VI. Information Collection Statement

47. The collections of information for this Final Rule are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 [65] and OMB's implementing regulations.[66] OMB must approve information collection requirements imposed by agency rules. The burden estimates for this Final Rule are for one-time implementation of the information collection requirements of this Final Rule (including tariff filing, documentation of the process and procedures, and IT work), and ongoing burden.

48. The Commission solicits comments from the public on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, recommendations to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates are for implementing the information collection requirements of this Final Rule. The Commission asks that any revised burden estimates submitted by commenters include the details and assumptions used to generate the estimates.

49. The collections of information related to this Final Rule fall under FERC–545 (Gas Pipeline Rates: Rate Change (Non-Formal)) [67] and FERC–549C (Standards for Business Practices of Interstate Natural Gas Pipelines).[68] The following estimates of reporting burden are related only to this Final Rule and include the costs to pipelines to comply with the Commission's directives in this Final Rule. The burden estimates are primarily related to start-up to implement these standards and regulations and will not result in ongoing costs.

[59] 1 CFR 51.5. *See* Incorporation by Reference, 79 FR 66267 (Nov. 7, 2014).

[60] 18 CFR 284.12.

[61] As a private, consensus standards developer, NAESB needs the funds obtained from its membership fees and sales of its standards to finance the organization. The parties affected by these Commission regulations generally are highly sophisticated and have the means to acquire the information they need to effectively participate in Commission proceedings.

[62] North American Energy Standards Board Membership Application, *https://www.naesb.org/pdf4/naesbapp.pdf*.

[63] NAESB Materials Order Form, *https://www.naesb.org//pdf/ordrform.pdf*.

[64] Procedures for non-members to evaluate work products before purchasing, *https://www.naesb.org/misc/NAESB_Nonmember_Evaluation.pdf*. *See* Incorporation by Reference, 79 FR at 66271, n. 51 & 53 (Nov. 7, 2014) (citing to NAESB's procedure of providing ''no-cost, no-print electronic access,'' NAESB Comment, at 1, *available at http://www.regulations.gov/#!documentDetail;D=OFR-2013-0001-0023*).

[65] 44 U.S.C. 3507(d).

[66] 5 CFR 1320.

[67] FERC–545 covers rate change filings made by natural gas pipelines, including tariff changes.

[68] FERC–549C covers Standards for Business Practices of Interstate Natural Gas Pipelines.

ONE-TIME EFFECTS OF NOPR IN DOCKET RM96–1–038

[Rounded]

	Number of respondents [69] (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden and cost per response (4)	Total annual burden hours and total annual cost (3)*(4)=(5)	Cost per respondent [70] ($) (5)÷(1)
FERC–545A [71]	165	1	165	10 hrs.; $837	1,650 hrs.; $138,056	$837
FERC–549C [72]	165	1	165	22 hrs.; $1,841	3,630 hrs.; $303,722	$1,841
Totals					5,280 hrs.; $441,778.	

Information Collection Costs: The Commission estimates the average annualized cost for all respondents to be the following:

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$138,056	$303,722
Annualized Costs (Operations & Maintenance)	N/A	N/A
Total Annualized Costs	$138,056	$303,722

Total Cost for all Respondents = $441,778.

OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this Final Rule to OMB. These information collections are mandatory requirements.

Title: FERC–545,[73] Gas Pipeline Rates: Rates Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines

Action: Information collections.

OMB Control Nos.: 1902–0154, 1902–0174

Respondents: Business or other for profit (*i.e.,* Natural Gas Pipelines, applicable to only a few small businesses). Although the intraday reporting requirements will affect electric plant operators, the Commission is not imposing the reporting burden of adopting these standards on those entities.

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

50. *Internal Review:* The Commission has reviewed the proposed business practice standards of natural gas pipelines and has determined that the revisions the Commission makes in this Final Rule to its regulations are necessary to establish more efficient coordination between the natural gas and electric industries. Requiring such information ensures both a common means of communication and common business practices to eliminate miscommunication for participants engaged in the sale of electric energy at wholesale and the transportation of natural gas. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

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

52. Comments concerning the collections of information and the associated burden estimates should be sent to the Commission and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, telephone: (202) 395–0710, fax: (202) 395–4718]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include OMB Control Numbers 1902–0154 and 1902–0174.

VII. Environmental Analysis

53. The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under section 380.4(a) of the Commission's regulations, which provides a categorical exemption for actions that are clarifying, corrective, or procedural, or that do not substantively change the effect of legislation or regulations being amended, for information gathering, analysis, and dissemination, or for the

[69] The number of respondents is the number of entities in which a change in burden from the current standards to the proposed exists, not the total number of entities from the current or proposed standards that are applicable.

[70] Wage data is based on the Bureau of Labor Statistics data for 2012 (''May 2012 National Industry-Specific Occupational Employment and Wage Estimates, [for] Sector 22—Utilities'' at *http://bls.gov/oes/current/naics2_22.htm*) and is compiled for the top 10 percent earned. For the estimate of the benefits component, *see http://www.bls.gov/news.release/ecec.nr0.htm.*

[71] The mean hourly cost of tariff filings and implementation for interstate natural gas pipelines is $83.67. This represents the average wage (salary and benefits for 2,080 annual work-hours) of the following occupational categories: ''Legal'' ($128.02 per hour), ''Computer Analyst'' ($83.50 per hour), and ''Office and Administrative'' ($39.49 per hour). Wage data is available from the Bureau of Labor Statistics at *http://bls.gov/oes/current/naics2_22.htm* and is compiled for the top 10 percent earned. For the estimate of the benefits component, *see http://www.bls.gov/news.release/ecec.nr0.htm.*

[72] The mean hourly cost of tariff filings and implementation for interstate natural gas pipelines is $83.67. It is composed of the skill sets and related hourly costs described above.

[73] In the supporting statement for the NOPR, we submitted Gas and Pipeline Rates: Rate Changes (non-formal) under the temporary collection no. FERC–545A to ensure timely submission to OMB as another unrelated item was pending OMB review under FERC–545 (and only one item per collection can be pending at OMB).

sale, exchange, or transportation of natural gas under sections 4, 5, and 7 of the Natural Gas Act that require no construction of facilities.[74]

VIII. Regulatory Flexibility Act

54. The Regulatory Flexibility Act of 1980 (RFA)[75] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) revised its size standard (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees including affiliates.[76]

55. This Final Rule applies only to interstate natural gas pipelines, most of which are not small businesses. The Commission estimates that approximately 165 interstate pipeline entities are potential respondents subject to the data reporting requirements of FERC–545 and also are subject to data collection FERC 549–C reporting requirements. For the year 2012 (the most recent year for which information is available), only eleven companies not affiliated with larger companies had annual revenues of less than $25.5 million and are defined by the SBA as ''small entities.'' These companies constitute about seven percent of the total universe of potential respondents. The Commission estimates that the one-time implementation cost of the proposals in this Final Rule is $441,778 (or $2,677 per entity, regardless of entity size).[77] The Commission does not consider the estimated $2,677 impact per entity to be significant. Moreover, these requirements are designed to benefit all customers, including small businesses that must comply with them. Further, as noted above, adoption of consensus standards helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Because of that representation and the fact that industry conducts business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. Accordingly, pursuant to § 605(b) of the RFA,[78] the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

IX. Document Availability

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

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

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

X. Effective Date and Congressional Notification

59. These regulations are effective December 2, 2015. The Commission has determined (with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB) that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

List of Subjects

18 CFR Parts 157 and 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Issued: October 16, 2015.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends parts 157, 260, and 284, chapter I, title 18, *Code of Federal Regulations,* as follows.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717z.

■ 2. Section 157.14 is amended by revising paragraph (a) to read as follows:

§ 157.14 Exhibits.

(a) *To be attached to each application.* All exhibits specified must accompany each application when tendered for filing. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time as the Secretary will specify. Exhibits, except exhibits F, F–1, G, G–I, and G–II, must be submitted to the Commission on electronic media as prescribed in § 385.2011 of this chapter. Receipt and delivery point information required in various exhibits must be labeled with a location point name and code in conformity with the location name and code the pipeline has adopted in conformance with § 284.13(f) of this chapter. Intervenors and persons becoming intervenors after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

[74] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[75] 5 U.S.C. 601–612.

[76] SBA Final Rule on ''Small Business Size Standards: Utilities,'' 78 FR 77343 (Dec. 23, 2013).

[77] This number is derived by dividing the total cost figure by the number of respondents. $441,778/165 = $2,677.

[78] 5 U.S.C. 605(b).

■ 3. Section 157.18 is amended by revising paragraph (c) introductory text to read as follows:

§ 157.18 Applications to abandon facilities or service; exhibits.

(c) Exhibit V—Flow diagram showing daily design capacity and reflecting operation of applicant's system after abandonment. Receipt and delivery point information required in various exhibits must be labeled with a location point name and code in accordance with the location name and code the pipeline has adopted in conformance with § 284.13(f) of this chapter. A flow diagram showing daily design capacity and reflecting operating conditions of applicant's system after abandonment of facilities on that segment of the system affected by the abandonment, including the following:

* * * * *

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 4. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352.

■ 5. Section 260.8 is amended by revising paragraph (a) to read as follows:

§ 260.8 System flow diagrams: Format No. FERC 567.

(a) Each Major natural gas pipeline company, having a system delivery capacity in excess of 100,000 Mcf per day (measured at 14.73 p.s.i.a. and 60° F), shall file with the Commission by June 1 of each year five (5) copies of a diagram or diagrams reflecting operating conditions on its main transmission system during the previous twelve months ended December 31. For purposes of system peak deliveries, the heating season overlapping the year's end shall be used. Facilities shall be those installed and in operation on December 31 of the reporting year. All volumes shall be reported on a uniform stated pressure and temperature base. Receipt and delivery point information required in various exhibits must be labeled with a location point name and code in accordance with the location name and code adopted by the pipeline in accordance with § 284.13(f) of this chapter.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 6. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 7. Section 284.12 is amended by revising paragraph (a)(1) to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) An interstate pipeline that transports gas under subparts B or G of this part must comply with the business practices and electronic communications standards as promulgated by the North American Energy Standards Board, as incorporated herein by reference in paragraphs (a)(1)(i) thru (vii) of this section.

(i) Additional Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015);

(ii) Nominations Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015);

(iii) Flowing Gas Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015);

(iv) Invoicing Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015);

(v) Quadrant Electronic Delivery Mechanism Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015);

(vi) Capacity Release Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015); and

(vii) Internet Electronic Transport Related Standards (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015).

* * * * *

■ 8. Section 284.13 is amended by revising paragraphs (b)(1)(vi), (b)(2)(iv) and (c)(2)(vi), and adding paragraph (f) to read as follows:

§ 284.13 Reporting requirements for interstate pipelines.

(b) * * *

(1) * * *

(vi) The receipt and delivery points and the zones or segments covered by the contract, including the location name and code adopted by the pipeline in conformance with paragraph (f) of this section for each point, zone or segment;

* * * * *

(2) * * *

(iv) The receipt and delivery points and the zones or segments covered by the contract, including the location name and code adopted by the pipeline in conformance with paragraph (f) of this section for each point, zone or segment;

* * * * *

(c) * * *

(2) * * *

(vi) The receipt and delivery points and the zones or segments covered by the contract, including the location name and code adopted by the pipeline in conformance with paragraph (f) of this section for each point, zone or segment;

* * * * *

(f) *Location codes.* An interstate pipeline must maintain a posting on its publicly available Internet Web site of the pipeline's location names and codes for all current and inactive receipt and delivery points on its system, including, for each point: Direction of flow, the location of the point, the location zone if such exists, the Commission company identification code (CID), if any, of the upstream and/or downstream entity, the location type, the current status as active and inactive, and the date(s) the point becomes active or inactive. The pipeline must provide the information in downloadable file formats, in conformity with the requirements of 18 CFR 284.12 of this chapter.

■ 9. Section 284.126 is amended by revising paragraph (b)(1)(iv) to read as follows:

§ 284.126 Reporting requirements.

(b) * * *

(1) * * *

(iv) The primary receipt and delivery points covered by the contract, identified by the list of points that the pipeline has published with the Commission;

* * * * *

[FR Doc. 2015–27806 Filed 10–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2015–N–3392]

Medical Devices; Immunology and Microbiology Devices; Classification of Gastrointestinal Microorganism Multiplex Nucleic Acid-Based Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying a gastrointestinal microorganism multiplex nucleic acid-based assay into class II (special controls). The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective November 2, 2015. The classification was applicable January 14, 2013.

FOR FURTHER INFORMATION CONTACT: Andrew Grove, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5515, Silver Spring, MD 20993–0002, 301–796–6198.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of ''low-moderate risk'' or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on January 03, 2013 automatically classifying the xTAG® Gastrointestinal Pathogen Panel (GPP) in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, nor to a device that was subsequently reclassified into class I or class II. On January 10, 2013, Luminex Molecular Diagnostics, submitted a request for de novo classification of the xTAG® GPP under section 513(f)(2) of the FD&C Act.

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request for de novo classification in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on January 14, 2013, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 866.3990 (§ 866.3990).

Following the effective date of this final classification administrative order, any firm submitting a premarket notification (510(k)) for a gastrointestinal microorganism multiplex nucleic acid-based assay will need to comply with the special controls named in this final administrative order.

The device is assigned the generic name gastrointestinal microorganism multiplex nucleic acid-based assay, and it is identified as a qualitative in vitro diagnostic device intended to simultaneously detect and identify multiple gastrointestinal microbial nucleic acids extracted from human stool specimens. The device detects specific nucleic acid sequences for organism identification as well as for determining the presence of toxin genes. The detection and identification of a specific gastrointestinal microbial nucleic acid from individuals exhibiting signs and symptoms of gastrointestinal infection aids in the diagnosis of gastrointestinal infection when used in conjunction with clinical evaluation and other laboratory findings. A gastrointestinal microorganism multiplex nucleic acid-based assay also aids in the detection and identification of acute gastroenteritis in the context of outbreaks.

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

TABLE 1—IDENTIFIED RISKS AND REQUIRED MITIGATIONS

Identified risks	Mitigation measures
Failure of the device to detect and identify a targeted organism when such organism is present in the specimen (*i.e.*, false negative result for presence of organism).	The FDA document entitled ''Class II Special Controls Guideline: Gastrointestinal Microorganism Multiplex Nucleic Acid-Based Assays for Detection and Identification of Microorganisms and Toxin Genes from Human Stool Specimens,'' which addresses this risk through: Specific device description requirements, performance studies, and labeling.
Detection of the targeted microorganism when such organism is not present in the specimen (*i.e.*, false positive result for presence of organism).	The FDA document entitled ''Class II Special Controls Guideline: Gastrointestinal Microorganism Multiplex Nucleic Acid-Based Assays for Detection and Identification of Microorganisms and Toxin Genes from Human Stool Specimens,'' which addresses this risk through: Specific device description requirements, performance studies, and labeling.
Failure to correctly interpret test results	The FDA document entitled ''Class II Special Controls Guideline: Gastrointestinal Microorganism Multiplex Nucleic Acid-Based Assays for Detection and Identification of Microorganisms and Toxin Genes from Human Stool Specimens,'' which addresses this risk through: Specific device description requirements and labeling.

FDA believes that the measures set forth in the special controls guideline entitled ''Class II Special Controls Guideline: Gastrointestinal Microorganism Multiplex Nucleic Acid-Based Assays for Detection and Identification of Microorganisms and Toxin Genes from Human Stool Specimens'' are necessary, in addition to general controls, to mitigate the risks to health described in table 1.

II. Premarket Notification

A gastrointestinal microorganism multiplex nucleic acid-based assay is a prescription device. Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this type of device is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the gastrointestinal microorganism multiplex nucleic acid-based assay they intend to market.

III. Environmental Impact

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

IV. Paperwork Reduction Act of 1995

This final administrative order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 regarding quality systems have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809 regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

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

■ 2. Add § 866.3990 to subpart D to read as follows:

§ 866.3990 Gastrointestinal microorganism multiplex nucleic acid-based assay.

(a) *Identification.* A gastrointestinal microorganism multiplex nucleic acid-based assay is a qualitative *in vitro* diagnostic device intended to simultaneously detect and identify multiple gastrointestinal microbial nucleic acids extracted from human stool specimens. The device detects specific nucleic acid sequences for organism identification as well as for determining the presence of toxin genes. The detection and identification of a specific gastrointestinal microbial nucleic acid from individuals exhibiting signs and symptoms of gastrointestinal infection aids in the diagnosis of gastrointestinal infection when used in conjunction with clinical evaluation and other laboratory findings. A gastrointestinal microorganism multiplex nucleic acid-based assay also aids in the detection and identification of acute gastroenteritis in the context of outbreaks.

(b) *Classification.* Class II (special controls). The special controls are set forth in FDA's guideline document entitled: ''Class II Special Controls Guideline: Gastrointestinal Microorganism Multiplex Nucleic Acid-Based Assays for Detection and Identification of Microorganisms and Toxin Genes from Human Stool Specimens.'' For availability of the guideline document, see § 866.1(e).

Dated: October 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27817 Filed 10–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 9336]

RIN 1400–AD84

Visas: Procedures for Issuing Visas

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is updating its regulations regarding nonimmigrant visa format, and records retention procedures. These updates reflect changes in technology, including the current practice of issuing machine-readable visas and the planned future practice of issuing visas electronically. The Department is also removing an obsolete records retention provision and a visa review provision, both of which are now addressed in the Foreign Affairs Manual.

DATES: This rule is effective November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Lauren A. Boquin, Legislation and Regulations Division, Visa Services, Department of State, 600 19th St NW., Washington, DC 20006, (202) 485–7638.

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

Currently, 22 CFR 41.113 provides for the placement of a stamp in a visa holder's passport. The Department is amending paragraphs (a) and (c) to reflect the current practice of issuing machine-readable visas on adhesive foils that are affixed to passports, and the planned future practice of issuing such visas as electronic visas. An electronic visas is a machine readable tamper-resistant visa format, as required by 8 U.S.C. 1732, in that the U.S. Customs and Border Protection officers at the port of entry are expected to scan the machine readable zone of the visa holder's passport to verify the biometrics and identity of the individual and to authenticate the visa's validity by accessing information stored in the Department's electronic records database.

Conforming changes and minor nonsubstative edits were made to paragraphs (b) and (d) through (h). Paragraph (i) was revised to remove visa review and file retention instructions that are internal Department procedures addressed in Volume 9 of the Foreign Affairs Manual. *See http://www.state.gov/m/a/dir/regs/fam/.*

Regulatory Findings

Administrative Procedure Act

This regulation amends certain ''rules of agency organization, procedure, or practice'', which are not subject to the notice-and-comment rulemaking procedures set forth in 5 U.S.C. 553. See 5 U.S.C. 553(b). Therefore, the Department is issuing this amendment as a final rule.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This regulates individual aliens who seek consideration for nonimmigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. The Department is aware of no monetary effect on the economy that would result from this rulemaking, nor will there be any increase in costs or prices; or any effect on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Orders 12866 and 13563

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563, and has determined that the benefits of this regulation, *i.e.,* ensuring compliance with a Congressional mandate, outweigh any cost. The Department does not consider this rule to be a economically significant rulemaking action.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose or revise information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Foreign Officials, Immigration, Documentation of Nonimmigrants, Passports and Visas.

For the reasons stated in the preamble, the Department of State amends 22 CFR Part 41 as follows:

PART 41—[AMENDED]

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104; 8 U.S.C. 1182(d) ; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295); 112 Stat. 2681–795.

■ 2. Section 41.113 is revised to read as follows:

§ 41.113 Procedures in issuing visas.

(a) *Evidence of visa.* Except as provided in paragraph (b) of this section, a nonimmigrant visa shall be evidenced by a physical visa placed in the alien's passport or by an electronic visa located in the Department's

records. The appropriate symbol as prescribed in § 41.12, showing the classification of the alien, shall be entered on the visa.

(b) *Cases in which a physical visa is not placed in passport.* In the following cases a physical visa shall be placed on the prescribed Form DS–232. In issuing such a visa, a notation shall be made on the Form DS–232 on which the visa is placed, specifying the pertinent subparagraph of this paragraph under which the action is taken.

(1) The alien's passport was issued by a government with which the United States does not have formal diplomatic relations, unless the Department has specifically authorized the placing of the visa in such passport;

(2) The passport requirement has been waived; or

(3) In other cases as authorized by the Department.

(c) *Visa format.* A machine-readable visa shall be in the format designated by the Department, and contain, at a minimum, the following data:

(1) Full name of the applicant;

(2) Visa type/class;

(3) Location of the visa issuing office;

(4) Passport number;

(5) Sex;

(6) Date of birth;

(7) Nationality;

(8) Number of applications for admission authorized, or the letter ''M'' for multiple applications for admission authorized;

(9) Date of issuance;

(10) Date of expiration;

(11) Visa control number.

(d) *Insertion of name, petition, and derivative status notation.* (1) The surname and given name of the visa recipient shall be shown on the visa in the space provided.

(2) If the visa is being issued upon the basis of a petition approved by the Secretary of Homeland Security, the number of the petition, if any, the period for which the 'alien's admission has been authorized, and the name of the petitioner shall be reflected in the annotation field on the visa.

(3) In the case of an alien who derives status from a principal alien, the name of the principal alien and of the petitioner shall be reflected in the annotation field of the visa.

(e) *Period of validity.* If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the letter ''M'' shall be shown under the word ''entries''. Otherwise the number of permitted applications for admission shall be identified numerically. The date of issuance and the date of expiration of the visa shall be shown at the appropriate places in the visa by day, month, and year in that order. The standard three letter abbreviation for the month shall be used in all cases.

(f) *Restriction to specified port(s) of entry.* If a nonimmigrant visa is valid for admission only at one or more specified ports of entry, the names of those ports shall be entered in the annotation field. In cases where there is insufficient room to list the port(s) of entry, they shall be listed by hand on a clean passport page. Reference shall be made in the visa's annotation field citing the passport page upon which the port(s) of entry are listed.

(g) *Delivery of visa.* In issuing a nonimmigrant visa, the consular officer should deliver the passport containing the visa, or the prescribed Form DS–232 which bears the visa, to the alien or to the alien's authorized representative. Any relevant evidence furnished by the alien in accordance with § 41.103(b) should be retained, as required or necessary.

(h) *Disposition of supporting documents.* Original supporting documents furnished by the alien should be returned for presentation, if necessary, to the immigration authorities at the port of entry. Duplicate copies may be retained in the consular system, as required or necessary.

(i) *Review of nonimmigrant visa issuances.* Nonimmigrant visa issuances must be reviewed, in accordance with guidance by the Secretary of State, by consular supervisors, or a designated alternate, to ensure compliance with applicable laws and procedures.

Dated: September 9, 2015.

Michele T. Bond,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2015–27862 Filed 10–30–15; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0980]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, Portsmouth and Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Belt Line Railroad Bridge across the South Branch of the Elizabeth River, mile 2.6, between Portsmouth and Chesapeake, VA. This deviation allows the bridge to remain in the closed-to-navigation position to facilitate a tie replacement project.

DATES: This deviation is effective without actual notice from November 2, 2015 until 7 p.m. on November 5, 2015. For the purposes of enforcement, actual notice will be used from 11 a.m. on October 29, 2015, until November 2, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0980], 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 Norfolk and Portsmouth Belt Line Railroad Company, who owns and operates the Belt Line Railroad Bridge, has requested a temporary deviation from the current operating regulations to facilitate a tie replacement project on the bridge. The bridge is a vertical lift draw bridge and has a vertical clearance in the closed position of 6 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.997(a). Under this temporary deviation, the bridge will remain in the closed-to-navigation position from 11 a.m. to 7 p.m., except for scheduled daily openings at 2 p.m. and 5 p.m., from October 29, 2015 through November 5, 2015. During this temporary deviation, the bridge will operate per 33 CFR 117.997(a) from 7 p.m. to 11 a.m. The South Branch of the Elizabeth River is used by a variety of vessels including deep draft ocean-going vessels, U.S. government vessels, small commercial vessels, recreational vessels and tug and barge traffic. The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels

can arrange their transits to minimize any impacts caused by this 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: October 27, 2015.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2015–27774 Filed 10–30–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0992]

RIN 1625–AA00

Safety Zone; Grounded Vessel, Atlantic Ocean, Port St. Lucie, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters of the Atlantic Ocean, east of the Port St. Lucie Inlet. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a grounded vessel outside the Port St. Lucie Inlet. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Miami.

DATES: This rule is effective without actual notice from November 2, 2015] until November 15, 2015. For purposes of enforcement, actual notice will be used from October 27, 2015 through November 2, 2015.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–0992 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Benjamin R. Colbert, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305–535–4317, email *Benjamin.R.Colbert@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 Information and Regulatory History

In the evening of October 26, 2015, the Coast Guard was notified that a 60 foot motorized vessel was taking on water in the vicinity of the Port St. Lucie Inlet. Over the next several hours attempts to refloat the vessel were unsuccessful and the grounded vessel settled on the bottom. Local, state, and federal agencies are now engaged in emergency salvage operations.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because this rule is being established in response to an ongoing emergency situation. Delay in publishing this rule would be impracticable because the grounded vessel poses an immediate risk public safety. In addition, any delay in the publishing of this rule would be contrary to public interest. This rule is needed immediately in order to ensure safety of life on the navigable waters surrounding this ongoing emergency situation.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed above, delay in issuing this rule would be both impracticable and contrary to public interest. The rule is in response to an emergent safety issue and is needed in order to ensure safety of life in the area around this emergency situation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Miami (COTP) has determined that potential hazards associated with the grounded vessel will be a safety concern for anyone within a 100-yard radius of the vessel and equipment engaged in salvage operations. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while emergency salvage operations take place.

IV. Discussion of the Rule

This rule establishes a safety zone from October 27, 2015 through November 15, 2015. COTP may cease enforcement of the zone if emergency salvage operations end before November 15, 2015. The safety zone will cover all navigable waters within 100 yards of vessels and machinery being used by personnel to conduct emergency salvage operations. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while emergency salvage operations are conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (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 rule has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Atlantic Ocean for a limited duration during emergency salvage operations. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety zone implemented to protect persons and vessels in the vicinity of a grounded vessel. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T07–0992 to read as follows:

§ 165.T07–0992 Safety Zone; Grounded Vessel, Atlantic Ocean; Port St. Lucie, FL.

(a) *Regulated area.* The following regulated area is a safety zone. All waters of the Atlantic Ocean located east of the Port St. Lucie Inlet within 100 yards of the grounded vessel located at 27°9′55″ N., 080°10′36″ W. and all vessels and machinery assisting in emergency salvage operations. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) Participants and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by Captain of the Port Miami or a designated representative.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(d) *Effective date.* This rule will be effective from October 27, 2015 to November 15, 2015 and will be enforced with actual notice while emergency salvage operations are ongoing.

Dated: October 27, 2015.

M. C. Long,

Captain, U.S. Coast Guard, Acting Captain of the Port Miami.

[FR Doc. 2015–27751 Filed 10–30–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0187; FRL–9930–43–Region 9]

Revisions to Air Plan; Arizona; Stationary Sources; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of, and other actions on, revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the applicable state implementation plan (SIP) for the State of Arizona (State or Arizona) under the Clean Air Act (CAA or Act). These revisions submitted by Arizona are primarily intended to serve as a replacement of ADEQ's existing SIP-approved rules for the issuance of New Source Review (NSR) permits for stationary sources, including review and permitting of major and minor sources under the Act. After a lengthy stakeholder process, the State submitted a NSR program for SIP approval that satisfies most of the applicable CAA and NSR regulatory requirements, and which will significantly update ADEQ's existing SIP-approved NSR program. It also represents an overall strengthening of ADEQ's SIP-approved NSR program by clarifying and enhancing the NSR requirements for major and minor stationary sources. This final action updates the applicable plan while allowing ADEQ to remedy certain deficiencies in ADEQ's rules.

DATES: This rule is effective December 2, 2015.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2015–0187 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. Some docket materials, however, may be publicly available only at the hard copy location (*e.g.,* voluminous records, maps, copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, EPA Region 9, (415) 972–3811, *beckham.lisa@epa.gov.*

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For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.

(iii) The initials *A.R.S.* mean or refer to the Arizona Revised Statutes.

(iv) The initials *AQIA* mean or refer to air quality impact analysis.

(v) The initials *BACT* mean or refer to Best Available Control Technology.

(vi) The initials *CFR* mean or refer to Code of Federal Regulations.

(vii) The initials *CO* mean or refer to carbon monoxide.

(viii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(ix) The initials *FIP* mean or refer to Federal Implementation Plan.

(x) The initials *GHG* mean or refer to greenhouse gas.

(xi) The initials *IBR* mean or refer to incorporation by reference.

(xii) The initials *LAER* mean or refer to Lowest Achievable Emissions Rate.

(xiii) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(xiv) The initials *NA–NSR* mean or refer to Nonattainment New Source Review.

(xv) The initials NO_X mean or refer to nitrogen oxides.

(xvi) The initials *NSR* mean or refer to New Source Review.

(xvii) The initials *PAL* mean or refer to Plantwide Applicability Limits

(xviii) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers.

(xix) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).

(xx) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xxi) The initials *PTE* mean or refer to potential to emit.

(xxii) The initials *RACT* mean or refer to reasonably available control technology.

(xxiii) The initials *SER* mean or refer to significant emission rate.

(xxiv) The initials *SIP* mean or refer to State Implementation Plan.

(xxv) The initials *SMC* mean or refer to significant monitoring concentration.

(xxvi) The initials SO_2 mean or refer to sulfur dioxide.

(xxvii) The initials *SRP* mean or refer to the Salt River Project Agricultural Improvement and Power District.

(xxviii) The words *State* or *Arizona* mean the State of Arizona, unless the context indicates otherwise.

(xxix) The initials *TSD* mean or refer to the technical support document for this action.

(xxx) The initials *VOC* mean or refer to volatile organic compound.

I. Background

On March 18, 2015, the EPA provided notice of, and requested public comment on, our proposed CAA rulemaking to revise certain portions of the Arizona SIP for ADEQ. See 80 FR 14044 (Mar. 18, 2015). We proposed action on SIP submittals that comprise ADEQ's updated program for preconstruction review and permitting of new or modified stationary sources under ADEQ's jurisdiction in Arizona.[1] The SIP submittals that are the subject of this action, referred to herein as the ''NSR SIP submittal,'' provide a comprehensive revision to ADEQ's preconstruction review and permitting program for stationary sources and are intended to satisfy requirements under both part C (prevention of significant deterioration) (PSD) and part D (nonattainment new source review) of title I of the Act as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act.

As a component of its NSR SIP submittal, ADEQ also requested the removal from the Arizona SIP of numerous older rules, as well as one Arizona statutory provision, which are mostly superseded by the newer provisions that are the subject of this action or by newer provisions that have already been approved into the Arizona SIP. Accordingly, our action also will remove certain provisions from the Arizona SIP.

The EPA's rulemaking action on the ADEQ NSR SIP submittal is intended to update the applicable SIP consistent with ADEQ's requests, while allowing ADEQ to remedy certain deficiencies in

[1] These submittals and our current action also address two rules and one statutory provision that are not directly related to NSR.

the submittal where ADEQ's rules do not fully meet CAA requirements. In our proposed rulemaking action, we primarily proposed a limited approval and limited disapproval, with certain exceptions and additions with respect to specific statutory and rule provisions, as follows. We proposed partial disapproval of two specific components of ADEQ's NSR submittal that we believed were analogous to provisions in the federal NSR regulations that had been vacated by federal Courts and that we determined were separable from the remainder of the NSR SIP submittal. In addition, we proposed a limited approval for a portion of ADEQ's nonattainment NSR (NA–NSR) program based on requirements of section 189(e) of the Act related to the permitting of major sources of PM_{10} and $PM_{2.5}$ precursors, but did not propose a limited disapproval on this basis. For two non-NSR rules for which ADEQ requested SIP approval, we also proposed a limited approval and limited disapproval. For a non-NSR statutory provision for which ADEQ requested SIP approval, A.R.S. § 49–107, we proposed full approval into the SIP. Last, we proposed to remove numerous NSR and non-NSR rules from the SIP as requested by ADEQ.[2]

The ADEQ NSR SIP submittal was extensive in scope. We prepared a comprehensive Evaluation of the submittal in light of the requirements of the CAA and its implementing regulations, and provided a detailed discussion of our findings in the Technical Support Document (TSD) for our proposed action. Both the Evaluation and the TSD were available in the docket for our rulemaking during the public comment period. Our proposed rule discussed our analysis and findings, but focused primarily on the issues that formed the basis for our limited approval/limited disapproval of the ADEQ NSR SIP submittal, and referenced the TSD for additional information concerning our analysis. The Evaluation was an attachment to the TSD.

II. The EPA's Evaluation of the SIP Revision

A. What action is the EPA finalizing?

The EPA is finalizing a SIP revision for the ADEQ portion of the Arizona SIP for the rules and statutory provision listed in Table 1. The SIP revision will be codified in 40 CFR 52.120 by incorporating by reference the rules and statutory provision in ADEQ's NSR SIP submittal as listed in Table 1.[3] Certain non-regulatory submittals and clarifications provided by ADEQ will also be included as part of the Arizona SIP in 40 CFR 52.120. In this final action, the EPA is relying, in part, on the clarifications and interpretations provided by ADEQ, as described in the discussion of our responses to comments in Section II.C below.

TABLE 1—SUBMITTED STATUTES AND RULES APPROVED IN THIS ACTION

Rule or statute	Title	State effective date	Submitted
A.R.S. § 49–107	Local delegation of state authority	8/18/1987	07/2/2014
R18–2–101 [only definitions (2), (32), (87), (109), and (122)].	Definitions	08/07/2012	10/29/2012
R18–2–217	Designation and Classification of Attainment Areas	11/15/1993	10/29/2012
R18–2–218	Limitation of Pollutants in Classified Attainment Areas	08/07/2012	10/29/2012
R18–2–301	Definitions	08/07/2012	10/29/2012
R18–2–302	Applicability; Registration; Classes of Permits	08/07/2012	10/29/2012
R18–2–302.01	Source Registration Requirements	08/07/2012	10/29/2012
R18–2–303	Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration transition; Minor NSR Transition.	08/07/2012	10/29/2012
R18–2–304	Permit Application Processing Procedures	08/07/2012	10/29/2012
R18–2–306	Permit Contents	12/20/1999	10/29/2012
R18–2–306.01	Permits Containing Voluntarily Accepted Emission Limitations and Standards.	1/1/2007	10/29/2012
R18–2–306.02	Establishment of an Emissions Cap	09/22/1999	10/29/2012
R18–2–311	Test Methods and Procedures	11/15/1993	07/28/2011
R18–2–312	Performance Tests	11/15/1993	07/28/2011
R18–2–315	Posting of Permit	11/15/1993	10/29/2012
R18–2–316	Notice by Building Permit Agencies	05/14/1979	10/29/2012
R18–2–319	Minor Permit Revisions	08/07/2012	10/29/2012
R18–2–320	Significant Permit Revisions	08/07/2012	10/29/2012
R18–2–321	Permit Reopenings; Revocation and Reissuance	08/07/2012	10/29/2012
R18–2–323	Permit Transfers	02/03/2007	10/29/2012
R18–2–330	Public Participation	08/07/2012	10/29/2012
R18–2–332	Stack Height Limitation	11/15/1993	10/29/2012
R18–2–334	Minor New Source Review	08/07/2012	10/29/2012
R18–2–401	Definitions	08/07/2012	10/29/2012
R18–2–402	General	08/07/2012	10/29/2012
R18–2–403	Permits for Sources Located in Nonattainment Areas	08/07/2012	10/29/2012
R18–2–404	Offset Standards	08/07/2012	10/29/2012
R18–2–405	Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe.	08/07/2012	10/29/2012

[2] See Table 2, which identifies those rules and statutory provisions that are being removed from the Arizona SIP. This updated table corrects certain typographical errors in the preamble of our proposed action. See our discussion of those errors in our responses to comments 14–15 in our Response to Comments document.

[3] We listed an incorrect submittal date for certain rules in the ADEQ NSR SIP submittal in Table 1 of our proposed action; this date is corrected in Table 1 here. See response to comment 13 in our Response to Comments document.

TABLE 1—SUBMITTED STATUTES AND RULES APPROVED IN THIS ACTION—Continued

Rule or statute	Title	State effective date	Submitted
R18–2–406	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas.	08/07/2012	10/29/2012
R18–2–407 [excluding subsection (H)(1)(c)]	Air Quality Impact Analysis and Monitoring Requirements.	08/07/2012	10/29/2012
R18–2–409	Air Quality Models	11/15/1993	10/29/2012
R18–2–412	PALs	08/07/2012	10/29/2012

In addition, this final action removes the rules and appendices listed in Table 2 from the ADEQ portion of the Arizona SIP.

TABLE 2—SIP RULES AND APPENDICES REMOVED FROM ARIZONA SIP IN THIS ACTION

Rule or appendix	Title	EPA approval date	**Federal Register** citation
R9–3–101 [excluding subsection (20)]	Definitions	Various	Various
R9–3–217(B)	Attainment Areas: Classification and Standards	04/23/1982	47 FR 17483
R9–3–301, [excluding subsections (I), (K)]	Installation Permits: General	05/03/1983	48 FR 19878
R9–3–302	Installation Permits in Nonattainment Areas	08/10/1988	53 FR 30220
R9–3–303	Offset Standards	08/10/1988	53 FR 30220
R9–3–304, [excluding subsection (H)]	Installation Permits in Attainment Areas	05/03/1983	48 FR 19878
R9–3–305	Air Quality Analysis and Monitoring Requirements	05/03/1983	48 FR 19878
R9–3–306	Source Registration Requirements	05/03/1983	48 FR 19878
R9–3–307	Replacement	05/05/1982	47 FR 19326
R9–3–308	Permit Conditions	04/23/1982	47 FR 17483
R9–3–310	Test Methods and Procedures	10/19/1984	49 FR 41026
R9–3–311	Air Quality Models	04/23/1982	47 FR 17483
R9–3–312	Performance Tests	04/23/1982	47 FR 17483
R9–3–314	Excess Emissions Reporting	04/23/1982	47 FR 17483
R9–3–315	Posting of Permits	04/23/1982	47 FR 17483
R9–3–316	Notice by Building Permit Agencies	04/23/1982	47 FR 17483
R9–3–317	Permit Non-transferrable; Exception	04/23/1982	47 FR 17483
R9–3–318	Denial or Revocation of Installation or Operating Permit.	04/23/1982	47 FR 17483
R8–3–319	Permit Fees	04/23/1982	47 FR 17483
R9–3–322	Temporary Conditional Permits	10/19/1984	49 FR 41026
R9–3–1101	Jurisdiction	05/03/1983	48 FR 19878
Appendix 4	Fee Schedule for Installation and Operating Permits	09/19/1977	42 FR 46926
Appendix 5	Fee Schedule for Conditional Permits	09/19/1977	42 FR 44926

In summary, this action is primarily a limited approval and limited disapproval of a SIP submittal from Arizona for the ADEQ portion of the Arizona SIP that governs preconstruction review and the issuance of preconstruction permits for stationary sources, including the review and permitting of new major sources and major modifications under parts C and D of title I of the CAA as well as review of new and modified minor sources. The intended effect of our final limited approval and limited disapproval action is to update the applicable SIP with current ADEQ regulations, while allowing ADEQ to remedy the identified deficiencies in these regulations. We are also removing at ADEQ's request certain rules and appendices from the Arizona SIP, which are outdated and which are mostly being superseded by this action. In addition, we are finalizing a partial disapproval of one provision in ADEQ's NSR program that has been vacated by the courts. We are finalizing a limited approval of ADEQ's NA–NSR program for certain nonattainment areas based on requirements under section 189 of the Act related to PM_{10} and $PM_{2.5}$ precursors (without a limited disapproval on this basis). Last, we are finalizing a limited approval and limited disapproval of two ADEQ non-NSR rules relating to test methods and procedures and performance tests, and finalizing the approval of an Arizona statutory provision relating to local delegation of state authority.

We are finalizing the above-described action because, although we find that the new and amended rules submitted by ADEQ meet most of the applicable CAA requirements for preconstruction review programs and other CAA requirements, and that overall the SIP revisions improve and strengthen the existing SIP, we have found certain deficiencies that prevent full approval, as explained in our proposed action and in the TSD for this rulemaking, and in this final action and our Response to Comments document.

We reviewed the ADEQ NSR SIP submittal in accordance with applicable CAA requirements, primarily including those that apply to: (1) General preconstruction review programs, including for minor sources, under section 110(a)(2)(C) of the Act; (2) PSD permit programs under part C of title I of the Act; and (3) NA–NSR permit programs under part D of title I of the Act. For the most part, ADEQ's submittal satisfies the applicable CAA requirements, including those for these preconstruction review programs, and our approval will strengthen the applicable SIP by updating the

regulations and adding provisions to address new or revised federal NSR permitting and other requirements. However, the submitted rules also contain specific deficiencies and inconsistencies with CAA requirements that prevent us from granting full SIP approval. These deficiencies form the basis for our limited approval and limited disapproval action, and for our partial disapproval of one rule provision.

B. What changes is the EPA making from its proposed action?

We are largely finalizing our action as proposed. However, in response to public comments we received, our final action differs in some respects from our proposed action. For certain deficiencies identified in our proposal as bases for limited disapproval, we have changed our determination and no longer find that these are bases for our limited disapproval. In addition, we have changed our determination concerning one of the ADEQ rule provisions for which we had proposed partial disapproval; we are not finalizing our partial disapproval of this provision.

Specifically, the following issues that had been identified in our proposed action as bases for limited disapproval are not a basis for our final limited disapproval: (1) ADEQ's use of the term ''proposed final permit'' in its rules for the minor NSR, PSD and NA–NSR programs; (2) a question concerning whether ADEQ rule R18–2–334(E) requires ADEQ to review potential impacts on the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for all minor sources subject to new source review under ADEQ rule R18–2–334;[4] (3) the lack of a definition in ADEQ's PSD regulations for the term ''subject to regulation;'' (4) the lack of a reference in ADEQ's PSD rules to pollutants subject to regulation in the definition of ''regulated NSR pollutant,'' per 40 CFR 51.166(b)(49)(iv); (5) the lack of certain language in ADEQ's PSD rules concerning condensable particulate matter, per 40 CFR 51.166(b)(49)(i); (6) potential ambiguity as to whether references to the undefined term ''Arizona Ambient Air Quality Standards'' in ADEQ's NSR regulations refer to ADEQ's Article 2 air quality standards; (7) language concerning the calculation of baseline actual emissions under ADEQ's plantwide applicability limits (PALs) provisions for the PSD and NA–NSR programs; and (8) public notice requirements for alternative or modified air modeling under ADEQ's rules for the PSD program. In addition, we are not finalizing a partial disapproval of ADEQ's definition for ''basic design parameter.'' We now find the ADEQ NSR SIP submittal approvable with respect to these particular issues. Our rationale for changing our determination on these issues is included in our Response to Comments document for this action, and some of these issues are also discussed in the Public Comments and Responses section below.

In addition, we are making three technical corrections to address typographical errors, as noted by commenters: (1) Correction of SIP submittal dates listed in Table 1 (listing the rules and statutory provisions that we are approving into the SIP) so that ''10/29/2012'' is listed instead of ''10/29/2014,'' (2) correction of Table 2 (the list of rules and appendices that we are removing from the SIP) to exclude subsection (20) from the provisions of ADEQ rule R9–3–101 that we are removing from the SIP, and (3) the addition of ADEQ rules R9–3–310 and R9–3–312 to the list of rules in Table 2. Additional detail regarding these technical corrections is provided in response to comments 13 through 15 in our Response to Comments document.

C. Public Comments and Responses

Our March 18, 2015 proposed rule included a 30-day public comment period that ended on April 17, 2015. We received 3 written comments, one each from the Office of Robert Ukeiley, the Salt River Project Agricultural Improvement and Power District (SRP), and ADEQ. Copies of each comment have been added to the docket for this action and are accessible at *www.regulations.gov.* Our Response to Comments document in the docket for this action contains a summary of all comments received and the EPA's responses to the comments. Below we provide the major issues raised by commenters and our responses to those comments.

Comment 1:

The **Federal Register** notice does not make it clear if the Arizona rules proposed to be approved into the SIP include the $PM_{2.5}$ increments. The EPA must disapprove this rule if it does not include the $PM_{2.5}$ increments.

Response 1:

In the EPA's March 18, 2015 **Federal Register** notice, we proposed to approve ADEQ rule R18–2–218 into the Arizona SIP, and stated ''ADEQ adopted the increments, or maximum allowable increases, in R18–2–218—*Limitation of Pollutants in Classified Attainment Areas.''* 80 FR 14044, 14045, 14051. The $PM_{2.5}$ increments are included in Section A of ADEQ rule R18–2–218. As such, ADEQ submitted, and we are approving into the Arizona SIP, ADEQ rule R18–2–218 containing the $PM_{2.5}$ increments.[5]

Comment 2:

ADEQ states that its methodology for establishing minor NSR thresholds was valid for all areas under ADEQ's jurisdiction. The CAA does not impose strict, specific requirements on NSR programs for minor sources, as it does for major NSR. Rather, section 110(a)(2)(C) generally requires that each state include a program regulating the modification and construction of any stationary source *as necessary* to assure achievement of the NAAQS. The sizes of minor source facilities, buildings, structures, or installations are assessed and compared to threshold levels to determine whether their potential to emit is so high as to affect the NAAQS. Each state establishes its own threshold levels to define the limits of its minor NSR regulations to create an effective pollution control strategy without also creating unnecessary regulatory burden.

Citing the EPA's proposed Tribal NSR Rule, ADEQ states that in the past, the EPA has asserted that threshold levels are appropriate where ''sources and modifications with emissions below the thresholds are inconsequential to attainment and maintenance of the NAAQS.''[6] In creating a federal minor NSR program for Indian Country, the EPA emphasized the importance of a cost-effective plan, as well as one that reduces the burden on sources and reviewing authorities.

ADEQ set an adequate, yet cost-effective threshold level of one half the significant emission rate (SER) for nonattainment areas. Just as the EPA did in the Tribal Minor NSR Rule, ADEQ identified the level at which a lower threshold merely creates a larger pool of regulated minor sources without

[4] Due to a typographical error, in discussing this issue, the notice for our proposed action inadvertently referenced subsection (G) of R18–2–334 instead of subsection (E).

[5] Our proposed action also points out that certain terminology used in ADEQ's PSD rules with respect to the increments is not clear, and that ADEQ's rules contain provisions that allow for exclusions from increment consumption for certain temporary emissions that do not conform to the analogous federal regulatory requirements. These issues provided a basis for our proposed limited disapproval of ADEQ's PSD program. See Section II.C.1 of the preamble at 80 FR 14051. Neither this commenter nor any other commenter addressed these specific issues, thus we continue to believe that these issues are deficiencies that ADEQ must correct for full approval of the PSD portion of the ADEQ NSR SIP submittal, and these issues provide a basis for our final limited disapproval.

[6] 71 FR 48696, 48701 (Aug. 21, 2006).

substantially reducing emissions. Research data provided by a consultant was used to make an informed determination which threshold levels would in fact be most cost-effective, while still achieving the goals of the minor source program. ADEQ included a table of the results provided by its contractor for two potential NSR threshold scenarios.[7] Scenario 1 illustrates the impact of a minor threshold of one half the SER and Scenario 2 illustrates the impact of a threshold set at one quarter the SER. Lowering the threshold beyond one half the SER essentially doubles the percentage of sources regulated, which certainly increases the state's ability to reach more minor sources. However, regulating more sources does not necessarily translate to effective emissions reductions. Rather there is a diminishing return on emission reductions as the threshold level is pushed further down to include sources with fewer emissions.

ADEQ illustrated this statement through a figure provided in its comments showing a comparison of potential threshold levels and relative impact, by pollutant.[8] The figure compares the percent of emissions regulated with the percent of sources regulated at the two NSR exemption scenarios considered by ADEQ. ADEQ states that the slopes between the significance level points in the graph for each pollutant illustrate the incremental percentage of emissions that would be covered when the threshold level is moved from one half to one quarter. Both possible threshold options would result in a relatively large percentage of emissions from minor sources becoming subject to regulation. However, the average emissions covered per source decreases significantly for all additional sources that fall below one half of the significant level. The disproportionate effect between the changes in the amount of sources relative to the change in the amount of emissions covered provides a firm basis for ADEQ's decision. The thresholds in ADEQ's minor NSR program meet federal requirements without creating a system in which the burdens of regulation would outweigh the benefits to air quality.

Response 2:

As noted by ADEQ, CAA section 110(a)(2) generally requires that each state include a program regulating the modification and construction of any stationary source as necessary to assure achievement of the NAAQS. While we appreciate ADEQ's comments on this issue, to date, ADEQ has not provided sufficient information about the nature, scope and emissions that are contributing to nonattainment in the areas subject to ADEQ's jurisdiction to change our proposed determination that ADEQ has not provided an adequate basis for its NSR exemption thresholds as applied in such nonattainment areas.

The implementing regulations for the minor NSR program make clear that SIPs must include legally enforceable procedures that enable the decisionmaking authority to determine whether the construction or modification of stationary sources will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of the NAAQS, and that such procedures include means by which the decisionmaking authority can prevent such construction or modification if it will result in such violation or interference. 40 CFR 51.160(a) and (b). Further, 40 CFR 51.160(e) provides:

> The procedures must identify types and sizes of facilities, buildings, structures or installations which will be subject to review under this section. The plan must discuss the basis for determining which facilities will be subject to review.

Under CAA section 110(a)(2) and 40 CFR 51.160(e), we agree with ADEQ that States are not necessarily required to regulate all stationary sources under the minor NSR program. States can exempt from review those stationary sources with emissions that they can demonstrate would not pose a threat to the attainment or maintenance of the NAAQS, thereby satisfying the requirement in CAA section 110(a)(2)(C) that their minor NSR program regulate the modification and construction of any stationary source within the areas covered by the plan as necessary to ensure that the NAAQS are achieved. The EPA's interpretation was discussed in the proposal for our Tribal Minor NSR Rule:

> A review of several State minor NSR programs indicated that a number of State programs have established cutoff levels or minor NSR thresholds, below which sources are exempt from their minor NSR rules. We believe that such an approach is also appropriate in Indian country. Section 110(a)(2)(C) of the Act requires minor NSR programs to assure that the NAAQS are attained and maintained. Applicability thresholds are proper in this context provided that the sources and modifications with emissions below the thresholds are inconsequential to attainment and maintenance of the NAAQS. For each pollutant, only around 1 percent (or less) of total emissions would be exempt under the minor NSR program.

Review of New Sources and Modifications in Indian Country, Proposed Rule, 71 FR 48696, 48703 (Aug. 21, 2006); see also Review of New Sources and Modifications in Indian Country, Final Rule, 76 FR 38758 (finding that sources with emissions below the NSR exemption thresholds selected by the EPA in the Tribal Minor NSR Rule would be inconsequential to attainment or maintenance of the NAAQS). We note that in our Tribal NSR Rule, ''the selected minor source thresholds distinguish between minor stationary sources of regulated NSR pollutants located in nonattainment areas and attainment areas,'' with lower thresholds in nonattainment areas. 71 FR at 48702; see 76 FR at 38758 (finalizing thresholds as proposed).

In our proposed action on ADEQ's NSR SIP submittal, we found deficiencies in the basis ADEQ provided for determining which sources would be subject to review under its minor NSR program under 40 CFR 51.160(e), applying the statutory and regulatory standard discussed above. 80 FR at 14049. These deficiencies provided a basis (among other bases) for our proposed limited disapproval of ADEQ's minor NSR program. As stated in our proposal, we found ADEQ's general approach to meeting 40 CFR 51.160(e) acceptable. However, we proposed a limited disapproval for three aspects of ADEQ's minor NSR program under 40 CFR 51.160(e): The adequacy of ADEQ's NSR exemption thresholds for nonattainment areas; certain exemptions for agricultural and fuel burning equipment; and the lack of any basis for the $PM_{2.5}$ NSR exemption threshold in any areas under ADEQ's jurisdiction. None of the comments on our proposal addressed our proposed limited disapprovals related to agricultural and fuel burning equipment exemptions or the missing explanation in the submittal for the $PM_{2.5}$ NSR exemption threshold. As such, we continue to determine that these two issues warrant a limited disapproval, and further consider ADEQ's comments as they apply to the basis provided for ADEQ's NSR exemption thresholds for pollutants in nonattainment areas.[9]

ADEQ's comments focus largely on the argument that expanding its minor

[7] The EPA provided the same table in its TSD for this action. See Table 5 of the TSD—Results of ADEQ's Stationary Source Distribution Analysis.

[8] See ADEQ's April 17, 2015 comment letter at 14.

[9] We note that the reasoning the EPA provides in these responses to comments concerning NSR exemption thresholds in nonattainment areas would apply equally to our review of the basis for NSR exemption thresholds for $PM_{2.5}$ in nonattainment areas.

NSR program to cover even smaller sources (*i.e.,* sources with emissions of approximately ¼ of the PSD significant emission rates) would result in diminishing returns on emission reductions. ADEQ argues that while more emissions would be regulated under such an approach, in some instances, this would result in significantly more stationary sources becoming subject to the program. In the case of VOC, for example, the percentage of all stationary sources regulated would approximately double from 8% to 16%. ADEQ appears to reason that while ADEQ would be able to regulate more emissions with such a lower threshold, the types of projects brought into the program would be smaller and less likely to be regulated in a way to achieve useful emission reductions. However, as discussed above, our determination of whether a minor NSR program is sufficient to meet CAA SIP requirements is based on whether the State has provided an adequate basis that the exempt emissions do not need to be reviewed to ensure attainment and maintenance of the NAAQS in the particular geographic areas covered by the program because they are inconsequential to attainment or maintenance, considering the particular air quality concerns in such areas. The information provided by ADEQ to date, including the amount of sources regulated as compared with the volume of emissions per such source, does not demonstrate that the adopted thresholds are those necessary to assure attainment and maintenance of the NAAQS. For example, if an area happens to have a large volume of sources in a particular source category that are typically minor sources but emit the pollutants that contribute to nonattainment, then regulation of those sources may be necessary to assure attainment and maintenance of the NAAQS in that area. The thresholds established in the Tribal NSR Rule exempted around 1 percent of total emissions, while exempting from 42 percent to 76 percent of sources, depending on the pollutant. 76 FR at 68758.

We recognize that the reference that the EPA made in its proposed action to ADEQ's submittal not providing a clear basis for concluding that its NSR exemption thresholds would ensure that a ''sufficient percentage of minor sources'' would be subject to review in nonattainment areas, rather than referring to a ''sufficient percentage of minor source emissions,'' was imprecise and may have led to confusion about the nature of the EPA's concern. As such, we are clarifying that our disapproval is related to ensuring that ADEQ's NSR program exempts from review only those sources with emissions that do not pose a threat to attainment and maintenance of the NAAQS because they are inconsequential to attainment or maintenance. The particular percentage of stationary sources that are being regulated would generally not be an adequate basis under 40 CFR 51.160(e) for determining the sizes and types of stationary sources that will be subject to NSR review as necessary to ensure compliance with CAA section 110(a)(2) and 40 CFR 51.160(a) and (b). As noted, the Tribal NSR Rule exempted as many as 76 percent of the *sources* of a pollutant, but required review of about 99% of total *emissions.* 76 FR at 38758. In this case, ADEQ has not shown that the emissions exempt from its NSR program will not threaten attainment and maintenance of the NAAQS in its nonattainment areas. Accordingly, after consideration of ADEQ's comments, we continue to find that a limited disapproval of ADEQ's program under 40 CFR 51.160(e), as it pertains to the NSR exemption threshold for nonattainment areas, is necessary.

As stated in our proposal, in addressing this deficiency, ADEQ does not necessarily have to consider overall lower NSR exemption thresholds in nonattainment areas, see 80 FR 14049 n. 13, although, as noted, the Tribal NSR Rule established lower thresholds for nonattainment areas. 76 FR at 38758. For example, ADEQ could provide further analysis to demonstrate that the adopted thresholds are protective of the NAAQS in nonattainment areas, or ADEQ could consider a different approach, such as requiring minor sources in nonattainment areas subject to a pre-existing SIP requirement for the nonattainment pollutant, or its precursors, to be subject to review under ADEQ's registration program. In addressing this limited disapproval issue, we recommend that ADEQ focus its consideration on the contribution that emissions from minor stationary sources with emissions below its currently adopted NSR exemption thresholds are expected to make with respect to attainment and maintenance of the NAAQS in nonattainment areas.

In addition, we wish to clarify that while the EPA's proposed rulemaking for the Tribal NSR program discussed cost-effectiveness and attempted to strike a ''balance between environmental protection and economic growth,'' it also recognized the need for exemption thresholds to ensure ''that sources with emissions below the proposed minor NSR thresholds will be inconsequential to attainment and maintenance of the NAAQS.'' 71 FR at 48703. See also 76 FR at 38758. The EPA recognized the overarching need for standards stringent enough to ensure NAAQS protection, and agreed to ''consider changing the minor NSR thresholds as appropriate'' to ensure that they are sufficiently protective. 76 FR at 38759. Thus, cost-effectiveness is not a relevant criterion for determining whether a minor NSR program's exemption thresholds will assure attainment and maintenance of the NAAQS, and the test is not whether the benefits of the program outweigh the burdens of regulation, but whether the state's program meets the requirement in CAA section 110(a)(2)(C) to ''assure that national ambient air quality standards are achieved.''

Comment 3:

SRP and ADEQ state that the EPA may not substitute its policy preferences for ADEQ's in proposing to disapprove ADEQ's minor NSR program with respect to nonattainment areas. There are no regulatory provisions or CAA statutory provisions that specify that a State must regulate a ''sufficient percentage'' of minor sources in nonattainment areas. The EPA's objection appears to be based on its own policy preferences, and the EPA simply lacks authority to substitute its preferences for those of the State. The EPA points to no flaws in the reasoning behind the analysis, nor does the EPA provide an alternative analysis demonstrating that modifications or construction of minor sources of a certain size or type have caused air quality concerns within ADEQ's jurisdiction.

Further, each state, region, and control area encounters unique circumstances that contribute to air quality issues, as well as the strategies necessary to comply with the requirements of the CAA. At page 14049 n. 12 of the proposal, which accompanied a generalized comparison to other states, the EPA referenced threshold levels for Sacramento, California. It is erroneous for the EPA to compare Arizona's minor NSR program with that of California, due to the extraordinary severity of the nonattainment problems in California. The EPA's implication that ADEQ should create a minor source NSR program that looks and functions like other states, and particularly California, is an improper basis for disapproval.

ADEQ also asserts that the EPA has advanced no reason for concluding that ADEQ's analysis is any less valid for nonattainment areas than it is for attainment areas.

Response 3:

Contrary to the commenters' assertions, our proposed limited disapproval of ADEQ's program concerning the NSR exemption threshold for nonattainment areas was not based on a policy preference by the EPA to regulate ''more'' sources in nonattainment areas. As explained in detail in our response to comment 2, the EPA's proposed disapproval based on 40 CFR 51.160(e) stemmed in part from the lack of sufficient justification in ADEQ's NSR submittal to support its chosen thresholds for coverage of the minor NSR program in nonattainment areas as required by 40 CFR 51.160(e) and CAA section 110(a)(2). It is the State's obligation to demonstrate that emissions from sources exempt under its chosen NSR exemption threshold will not pose a threat to attainment or maintenance of the NAAQS. We found at the time of our proposal that ADEQ had not done so with respect to the NSR exemption thresholds in nonattainment areas, and we continue to find that this is the case.[10]

Our March 18, 2015 proposed action made clear that ADEQ could consider various options for addressing this deficiency and we did not mandate that ADEQ adhere to a particular policy choice of the EPA in this regard. 80 FR at 14049 and n. 13. See also response to comment 2. The EPA agrees with the commenters that ADEQ has the discretion to determine the types and sizes of sources that need to be regulated under its NSR program to attain and maintain the NAAQS. But ADEQ, like other States, must provide a reasoned basis for the scope of emissions (and stationary sources of such emissions) regulated under its program that demonstrates that exemption of such emissions from NSR review will not threaten the attainment and maintenance of the NAAQS in nonattainment areas.

Air quality concerns in nonattainment areas differ from those in attainment areas and thus the measures necessary to attain and maintain the NAAQS may be more stringent in nonattainment areas than in attainment areas. When an area is already in nonattainment with a NAAQS for a particular pollutant, it is logical to conclude that relatively low levels of emissions increases of that nonattainment pollutant may well contribute to nonattainment and interfere with achievement of the NAAQS, while a source with the same level of emissions in an attainment area may pose little threat to maintaining the NAAQS. Thus, SIPs may need to provide greater or more detailed justification for exempting smaller sources of emissions from NSR review in nonattainment areas, depending on the particular air quality concerns in the area at issue. Indeed, as noted, the EPA's Tribal NSR Rule established more stringent thresholds for minor NSR in nonattainment areas, in most cases at 50% of the thresholds for attainment areas. 76 FR 38758 (Table).

ADEQ's jurisdiction covers both attainment and nonattainment areas, and ADEQ's analysis supporting its NSR exemption thresholds made no distinction between these types of areas nor did it provide additional information to support the thresholds in nonattainment areas under ADEQ's jurisdiction. For example, ADEQ's analysis indicated that it would exempt approximately 65% of CO emissions, 78% of SO_2 emissions, and 40% of VOC emissions from review under its NSR program. By comparison, the EPA's analysis for the Tribal Minor NSR program, cited by ADEQ in its analysis, demonstrated that the EPA anticipated exempting around 1% of stationary source emissions from review under NSR, based on National Emissions Inventory data for all stationary point source emissions in both attainment and nonattainment areas. As such, ADEQ did not provide enough detail to demonstrate that NSR review of emissions from the exempted sources would not be necessary for attainment and maintenance of the NAAQS in nonattainment areas because sources below the thresholds would be ''inconsequential to attainment or maintenance of the NAAQS.'' 76 FR at 38758. Accordingly, we found that ADEQ had not provided an adequate basis under 40 CFR 51.160(e) for its NSR program exemption thresholds as they pertain to nonattainment areas.

In the case of attainment areas, the EPA is approving the basis provided by ADEQ for its selected NSR exemption thresholds. We find it reasonable to conclude, based on the information and analysis provided by ADEQ, that expanding the NSR program to cover more emissions in areas that are already attaining the NAAQS will ensure that those areas will continue to attain and maintain the NAAQS. We cannot reach the same conclusion for nonattainment areas where the minor sources in a particular nonattainment area may, in fact, significantly contribute to nonattainment in that area.[11]

The reference in our proposal to the approaches taken by other permitting programs, including a California agency, with respect to NSR exemption thresholds in nonattainment areas is not an indication that the EPA believes that such approaches or thresholds are required for ADEQ, but simply information showing that it is common for agencies in nonattainment areas to find it necessary to regulate more emissions. In providing this information, the EPA was not suggesting that there was a particular percentage of emissions that should be regulated, but that other nonattainment areas have found it necessary to exempt fewer emissions from their programs (including Maricopa County, Arizona, Colorado, and the EPA's Tribal Minor NSR rule, which were also referenced in our proposed action).[12] It was ADEQ's lack of demonstration that its selected thresholds are adequate to ensure attainment and maintenance of the NAAQS in light of the specific air quality issues in the nonattainment areas under its jurisdiction that led to our proposed disapproval.

In sum, the EPA did not conclude that ADEQ's NSR exemption thresholds are necessarily deficient, or suggest that some other agency's threshold must be applied. The EPA's proposed limited disapproval for ADEQ's NSR exemption thresholds for nonattainment areas under 40 CFR 51.160(e) relates only to the fact that ADEQ had not provided an adequate basis for the thresholds that were set for these areas. As discussed in response to comment 2, our final limited disapproval is also based on this finding.

Comment 4:

ADEQ submitted comments related to the EPA's proposed limited disapproval of ADEQ's NSR SIP submittal for its use of the term ''proposed final permit.'' ADEQ explains that the purpose of allowing sources to construct after issuance of a proposed final permit—the version of the permit that ADEQ

[10] We addressed the comment concerning the reference in the EPA's proposal to regulation of a ''sufficient percentage of minor sources'' in our response to comment 2.

[11] We acknowledge that ADEQ's analysis explained that sources that contribute to noncompliance with the SO_2 NAAQS are well-defined, large industrial sources already subject to the permitting program. However, ADEQ's analysis did not provide information or details to support these statements or otherwise provide information sufficient to allow the EPA to reach the conclusion that the NSR exemption thresholds selected by ADEQ exempt only those stationary sources with emissions that do not pose a threat to attainment and maintenance of the NAAQS in nonattainment areas.

[12] There was a typographical error in our FR notice that referenced a ''Table 3,'' when there was not a Table 3 in the **Federal Register** notice. The notice should have referenced Table 3 of our TSD.

forwards to the EPA for review under the title V program for title V sources—is to ensure that Arizona's unitary permit program does not place restrictions on Arizona industries that they would not face in jurisdictions with binary permitting programs. Under a binary program, separate permits are issued to construct and operate, and only permits to operate are subject to the EPA's review under title V. Thus a source in a jurisdiction with a binary program ordinarily would have the authority to proceed with construction under a construction permit before the EPA's review of the title V permit or permit revision occurred.

ADEQ specifically takes issue with the EPA's proposed determination that the program does not provide ADEQ with clear authority to prevent construction or modification before it issues a final decision on the request for authority to construct as is required per 40 CFR 51.160(a) and (b). 80 FR at 14048. ADEQ states that this objection is invalid for two reasons. First, 40 CFR 51.160(b) does not require a minor NSR program to include authority to prevent construction ''before [an agency] issues a final decision.'' It requires only that the program include procedures by which the agency ''will prevent . . . construction or modification.'' The Arizona program manifestly includes such procedures: ADEQ can prevent construction of a source that threatens the NAAQS or control strategy by denying the permit application before a proposed final permit is issued. No more is required. Second, by ''final'' the EPA appears to mean subject to administrative and judicial review. See 80 FR at 14053. The EPA maintains that although ADEQ has issued guidance stating that it ''will treat [a] proposed final permit as a final, appealable agency action,'' the rule itself is not sufficiently clear to be fully approved. 80 FR at 14048.

The EPA, however, has mischaracterized ADEQ's guidance. ADEQ did not state that it ''will treat'' proposed final permits'' as appealable agency actions. Rather, the Department stated that it ''must'' do so. Under Arizona administrative law, an ''appealable agency action'' is defined as ''an action that determines the legal rights, duties or privileges of a party.'' A.RS. § 41–1092(3). Because a proposed final permit or permit revision under the revised rules determines the applicant's right to construct, it must be treated as an appealable agency action separate from the issuance of the final permit or permit revision. ADEQ must therefore issue a notice of appealable agency action under A.R.S § 41–1092.03 for both the proposed final permit or permit revision, as well as the final permit or permit revision.

ADEQ states that there is no ambiguity under Arizona law (which mirrors the administrative law of most states). Under the clear terms of ADEQ's regulations, a proposed final permit confers a right to construct and is therefore appealable.

Response 4:

The EPA appreciates ADEQ's comments concerning the question of whether ADEQ's NSR program provides for the issuance of a final NSR decision prior to sources being allowed to begin construction. Our proposed action on ADEQ's NSR SIP submittal stated that certain sources were allowed to begin construction upon issuance of a proposed final permit, and that we believed that ADEQ's regulations were ambiguous as to whether issuance of a ''proposed final permit'' was a final NSR decision. As a result, we proposed to find that ADEQ's NSR SIP submittal did not satisfy several related CAA requirements, and those deficiencies provided some of the bases for our proposed limited disapproval of ADEQ's PSD program, NA–NSR program, and minor NSR program.

The EPA continues to believe that the CAA and its implementing regulations require that PSD and NA–NSR programs must provide for the issuance of final NSR permit decisions imposing permit conditions necessary to ensure compliance with the applicable NSR program requirements before sources subject to those programs may begin construction. We also interpret the CAA to require that PSD programs provide an opportunity for judicial review of PSD permit decisions. See generally CAA sections 110(a)(2)(C), 165, 172(c)(5), 173; 40 CFR 51.165(a)(2), 51.166(a)(7)(iii), 166(q)(2)(vii).[13]

The CAA and its implementing regulations also require that minor NSR programs provide for legally enforceable procedures including means by which the Agency responsible for final decisionmaking on an application for approval to construct or modify has authority to prevent such construction or modification if such construction or modification will result in a violation of applicable portions of the control strategy or will interfere with the attainment or maintenance of a NAAQS. CAA section 110(a)(2)(C), 40 CFR 51.160(a)–(b). We continue to believe that decisionmaking authorities must make final NSR decisions for minor sources, as well as major sources, subject to their NSR program prior to allowing sources to begin construction in order to satisfy this requirement that the plan provide for such ''legally enforceable procedures.'' [14]

The EPA acknowledges the interpretation that ADEQ recently provided to clarify that ADEQ *must* treat ''proposed final permits'' as ''appealable agency actions,'' which are defined under Arizona law as actions that ''determine[] the legal rights, duties or privileges of a party'' pursuant to A.R.S. section 41–1092(3). ADEQ Memorandum—Proposed Final Permits to Be Treated as Appealable Agency Actions, dated February 10, 2015. ADEQ also provided additional clarifications after the end of the public comment period, specifically stating that ''[p]roposed final permits are enforceable at the time that the permits are issued.'' [15] After further review of this issue and consideration of ADEQ's comments and interpretation of its regulations, and in reliance on ADEQ's stated interpretation of its regulations, we have determined that ''proposed final permits'' constitute final, binding, and enforceable NSR decisions by ADEQ that are issued before sources may begin construction and which are immediately subject to review.

We therefore conclude that ADEQ's NSR program provides, in all instances, for the issuance of a final NSR decision prior to sources being allowed to begin construction, thus this issue no longer provides a basis for our limited disapproval of the ADEQ NSR SIP submittal. Specifically, we agree that: (1) ADEQ's NSR program provides ADEQ with clear authority to prevent construction or modification before it issues a final decision on the request for authority to construct as required by 40 CFR 51.160(a) and (b); (2) ADEQ's PSD

[13] The notice for our proposed action noted discussed the fact that we interpret the CAA to require an opportunity for judicial review of a decision to grant or deny a PSD permit, whether issued by the EPA or by a State under a SIP-approved or delegated PSD program. See 80 FR 14053.

[14] We agree that ADEQ has authority to decline to issue a proposed final permit for a particular source if it finds that the emissions from such source would result in a violation of applicable portions of the control strategy or would interfere with the attainment or maintenance of the NAAQS. However, in cases where a permit requirement would be needed to ensure compliance with the NAAQS for a particular source, if such a permit decision were not final, binding and enforceable at the time construction of the source was authorized, there would not be a legally enforceable procedure in place to prevent construction of that source in a manner that could violate the NAAQS as required by 40 CFR 51.160.

[15] See June 8, 2015 email ''Clarification of ADEQ's Comments on the EPA's Proposed Action'' from Eric C. Massey, Air Quality Division Director at ADEQ to Lisa Beckham, Air Permits Office, EPA Region 9.

and NA–NSR programs do not allow a source to begin construction prior to issuance of a final PSD or NA–NSR permit; and (3) ADEQ's PSD program satisfies the CAA requirement for an opportunity for judicial review of PSD permit decisions. We are also including the clarifying memorandum from ADEQ dated February 10, 2015 as additional material in our final rule.

However, we continue to recommend that ADEQ revise its regulations to clarify that a proposed final permit is a final, enforceable, and appealable NSR permit decision in order to minimize confusion among the public and the regulated community. We reiterate that such a revision is not a requirement for approval of ADEQ's NSR program into the SIP.

Comment 5:

ADEQ disagrees with the EPA's proposed limited disapproval of ADEQ's program under 40 CFR 51.160(a)(2) and (b)(2) because rule R18–2–334 does not require ADEQ to evaluate whether the project under review will interfere with attainment or maintenance of the NAAQS in all cases, and instead allows sources to apply reasonably available control technology (RACT) in lieu of such an evaluation. ADEQ also takes issue with the EPA's determination that R18–2–334(E) allows for too great of Director's discretion when determining when to require a NAAQS analysis. ADEQ believes this objection is fundamentally at odds with the EPA's own approach to air quality impact analysis (AQIA) in the Tribal Minor NSR Rule. The tribal rule initially imposes a case-by-case control technology requirement, but gives the ''reviewing authority'' (which may be the EPA or a tribe with delegated authority) discretion to conduct an AQIA. 40 CFR 51.154(c) and (d). ADEQ also cites to the EPA's response to comments for the Tribal Minor NSR Rule where the EPA indicated that reviewing authorities implementing the Tribal Minor NSR Rule should be allowed the discretion to determine when an AQIA might be needed from the applicant. See 76 FR 38761. Further, ADEQ argues that ADEQ's rule is actually stricter and confers less discretion than the EPA's Tribal Minor NSR Rule. ADEQ must consider the source's emission rates, location of emission units within the facility and their proximity to ambient air, the terrain in which the source is or will be located, the source type, the location and emissions of nearby sources, and background concentration of regulated minor NSR pollutants. By comparison, the criteria in the EPA's Tribal Minor NSR Rule states that if the reviewing authority has reason to be concerned that the construction of your minor source or modification *would* cause or contribute to a NAAQS or PSD violation, it *may* require the source to conduct and submit an AQIA. (emphasis added). ADEQ believes that this comparison demonstrates that ADEQ's discretion is far from being ''too great;'' ADEQ's discretion under R18–2–334(E) is minimal.

Finally, ADEQ disagrees with the EPA's determination that R18–2–334(C)(1)(a)–(b) ''appears to allow sources with lower levels of emissions to avoid both substantive NAAQS review and RACT requirements'' and that the state's minor NSR Program therefore fails to ensure ''that all sources subject to review under its NSR program will not interfere with attainment or maintenance of the NAAQS.'' This objection is incorrect for two reasons. First, R18–2–334(C)(1)(a)–(c) represents ADEQ's reasonable judgment that the imposition of RACT on units with low emissions (20 percent of the source threshold) within a source otherwise subject to RACT is not a cost-effective means of protecting the NAAQS. Second, this provision does not, as the EPA contends, allow sources to avoid substantive NAAQS review. This provision clearly applies solely to sources that elect to comply with minor NSR through installation of RACT. These sources remain subject to the obligation to conduct an AQIA on the Director's request under R18–2–334(E), and there is nothing in the rule to suggest that emissions from units below the R18–2–334(C)(1)(a)–(b) thresholds would be excluded from the AQIA.

SRP also disagrees with the EPA's proposed disapproval based on the EPA's finding that the Director's discretion under R–18–2–334(E) was too great, and asserts that the EPA's proposed action conflicts with the EPA's policy on approving director discretion provisions. SRP argues that the Director's discretion in this regard is sufficiently specific in identifying when it applies and what criteria are to be applied and that therefore the relevant provisions are fully approvable into the Arizona SIP.

Response 5:

Upon review of ADEQ's comments, including clarifications regarding how the provisions of R18–2–334(E) apply, and in reliance on ADEQ's stated interpretation of its regulations, we no longer find that ADEQ's minor NSR program does not satisfy 40 CFR 51.160(a)(2) and (b)(2) based on the view that rule R18–2–334 does not require ADEQ to evaluate whether all sources subject to review under that rule may interfere with attainment or maintenance of the NAAQS.[16] After the close of the public comment period, ADEQ provided additional clarifications, stating that it interprets R18–2–334 to ''require[] ADEQ to consider the air quality impacts of a project, using the criteria established in R18–2–334(E)(1) through (6), in each instance where the applicant has not submitted an AQIA under R18–2–334(C)(2).'' [17] ADEQ has explained that it interprets R18–2–334 to require ADEQ to consider, for *all* sources subject to R18–2–334, whether there is reason to believe that the source could interfere with attainment or maintenance of the NAAQS. Some sources will comply with this requirement by submitting an AQIA under R18–2–334(C)(2). All other sources will be reviewed by ADEQ using the criteria in R18–2–334(E), and those criteria will be used to determine whether a more formal AQIA is necessary. That is, ADEQ does not have discretion to determine in which instances it will or won't apply the criteria in R18–2–334(E)(1) through (6); instead, ADEQ interprets its regulations to require that ADEQ apply such criteria for all sources subject to R18–2–334 where the applicant has not submitted an AQIA. Accordingly, this issue does not provide a basis for our final limited disapproval.

We would also like to clarify that our proposed limited disapproval was not specifically related to ADEQ's choice to apply RACT for some sources subject to R18–2–334 while allowing certain smaller sources subject to the rule to avoid RACT. Rather, our proposed disapproval action related only to what we understood to be the potential for sources subject to R18–2–334 to apply RACT (or to proceed without applying RACT for certain sources with lower emissions) *in lieu of any review* by ADEQ of the source's potential impacts on the NAAQS under the ADEQ NSR program. As discussed immediately above, this is no longer a concern as ADEQ has explained that it must review all sources subject to R18–2–334 to consider whether the source could interfere with attainment or maintenance of the NAAQS.

Given our revised determination on this issue, it is not necessary to address all the arguments made by SRP concerning this issue, but we note that we agree with SRP (and ADEQ) that the

[16] The EPA's proposal inadvertently referred to R18–2–334(G) instead of R18–2–334(E) when describing this issue.

[17] See June 8, 2015 email ''Clarification of ADEQ's Comments on EPA's Proposed Action'' from Eric C. Massey, Air Quality Division Director at ADEQ to Lisa Beckham, Air Permits Office, EPA Region 9.

criteria ADEQ will be applying when making its determination under R18–2–334(E) do not afford undue discretion to the Director.

Comment 6:

One commenter takes issue with the EPA's statements that finalizing its proposed limited disapproval would trigger an obligation for the EPA to promulgate a Federal Implementation Plan (FIP) and impose CAA sanctions if ADEQ does not correct the alleged deficiencies within 18 to 24 months. The commenter asserts that this contradicts the statutory limitations on the EPA's SIP-action authority under the CAA.

Section 110(c)(1) provides the EPA the authority to promulgate a FIP in only two circumstances: (1) The State failed to make a required SIP submission, or (2) the Administrator disapproves a SIP submission in whole or part. Section 179(a) contains similar conditions for imposing sanctions in nonattainment areas. The commenter claims that the EPA interprets its authority to impose a FIP or sanctions only when the disapproval relates to a mandatory SIP submission. In support of this assertion, the commenter cites to one action from Region 6 of the EPA that disapproved elements of the Texas Commission of Environmental Quality's (TCEQ's) major NSR rule to address the 2002 NSR changes (''[t]he provisions in these submittals . . . were not submitted to meet a mandatory requirement of the Act. Therefore, this final action to disapprove . . . the State submittals does not trigger a sanction or Federal Implementation Plan clock.''). The commenter concludes that such an interpretations of Section 110(c)(1) and Section 179(a) are reasonable because the EPA would otherwise, for example, be required to promulgate a FIP for disapproving a State's request to include odor provisions in its SIP that are unrelated to NAAQS compliance.

The commenter further states that ADEQ's current SIP contains fully-approved, minor NSR and major NSR permitting programs. As such, the State's requested SIP revisions addressed in the EPA's proposed action are not mandatory. The commenter further argues that the EPA referenced no information suggesting that it made a formal call for plan revision as required by Section 110(k)(5) of the CAA related to its proposed limited disapproval of ADEQ's NSR SIP submittal. As such, in general, Arizona is not under a mandatory duty to revise its existing SIP with regards to its NSR programs. The commenter argues that it is inappropriate for the EPA to replace a fully approved-SIP with a program that it alleges does not fully satisfy CAA requirements by using an approach that triggers the FIP clock and potentially imposes sanctions. ADEQ could withdraw the requested SIP submission and face no threat of a FIP or sanctions.

Response 6:

The EPA disagrees with the commenter's statement that the EPA's limited disapproval in this action does not trigger a FIP clock or potential sanctions, and disagrees that the EPA's action is inappropriate in light of this result.

The EPA continues to believe that limited disapproval of ADEQ's NSR SIP submittal triggers an obligation to promulgate a FIP unless ADEQ corrects the identified deficiencies and the EPA approves the related SIP revisions within 2 years, and that sanctions would be triggered by the EPA's limited disapproval of ADEQ's NA–NSR program revisions based on deficiencies related to CAA title I, Part D requirements for nonattainment areas if ADEQ fails to remedy the identified deficiencies so that the EPA can approve the revisions into the SIP before the sanctions apply. As stated in the notice for our proposal, we intend to work with ADEQ to remedy these deficiencies in a timely manner. Importantly, we note that the EPA's other option would have been a full disapproval of ADEQ's NSR SIP submittal, which would have required ADEQ to continue to implement the outdated rules in its SIP while also implementing its newer rules under State law. This would require ADEQ and permit applicants to continue to implement and comply with two redundant and sometimes inconsistent sets of NSR rules, contrary to ADEQ's request to update its SIP to incorporate its newer rules and remove its older, outdated rules.

Pursuant to section 110(c)(1) of the CAA, the EPA must promulgate a FIP within two years after our final limited disapproval of ADEQ's NSR SIP submittal, unless ADEQ adequately corrects the identified deficiencies and the EPA approves the corrected program into the Arizona SIP before that time. The commenter argues that the FIP clock applies only when a disapproval relates to a mandatory SIP submission, and asserts that the submitted revisions are not mandatory because ADEQ's existing SIP contains fully-approved minor and major NSR programs, and the revisions were not developed in response to a SIP call under CAA section 110(k)(5). The EPA disagrees with the commenter's argument.

Even if the EPA has not issued a SIP call under CAA section 110(k)(5),[18] a FIP is generally required under CAA section 110(c)(1) when the EPA disapproves a plan submission, unless the State adequately corrects the basis for the disapproval and the EPA approves a corrected SIP submittal in a timely manner, or the EPA determines that an existing plan is in place that meets the relevant CAA requirements. See *AIR* v. *EPA,* 686 F.3d 668, 675–76 (9th Cir. 2012). We note that NSR programs consistent with CAA requirements are required elements of a SIP. CAA §§ 110(a)(2)(C), 161, 165, 172(c)(5), 173; 40 CFR 51.160–51.166.

In this case, the EPA cannot rely on provisions in the existing Arizona SIP to adequately address the deficiencies with the ADEQ NSR SIP submittal that we identified in our proposed rule and which form the basis for our final limited disapproval. ADEQ must address these deficiencies in a timely manner in order to avoid the requirement for the EPA to promulgate a FIP. As we made clear in the notice for our proposed action,[19] ADEQ's NSR SIP submittal included the removal of most of ADEQ's existing NSR program elements from the Arizona SIP.[20] Upon our final action,[21] there will not be an ''existing plan'' that could potentially satisfy the specific CAA NSR requirements that the EPA has determined are not satisfied in ADEQ's NSR SIP submittal.[22] In general, the

[18] There is no existing SIP call under CAA section 110(k)(5) that specifically pertains to the deficiencies with ADEQ's NSR program.

[19] See 80 FR at 14046–14047.

[20] See October 29, 2012 ADEQ submittal at 4 and Table 2–1; see also ADEQ's February 23, 2015 supplemental submittal at 3–7.

[21] We note that the EPA's limited approval/limited disapproval of ADEQ's NSR SIP submission allows ADEQ to use its updated NSR rules, to the extent the EPA is granting limited approval in this action, to carry out the NSR program. Continuing to leave old and outdated Arizona NSR SIP elements in place would not be consistent with ADEQ's SIP submission and request to the EPA, and would require ADEQ and permit applicants to implement and comply with two redundant and sometimes inconsistent sets of NSR rules. Whether ADEQ could withdraw its ADEQ NSR SIP submittal and what consequences would ensue is not relevant; ADEQ has not done so.

[22] The commenter asserts that when the EPA disapproved elements of the Texas Commission of Environmental Quality's (TCEQ's) major NSR rule, the EPA found that the provisions in the submittals were not submitted to meet a mandatory requirement of the Act and thus noted that its final action to disapprove the State submittals did not trigger a sanction or FIP clock. The TCEQ example is inapposite, however, because our action on the ADEQ NSR SIP submittal approves rules with identified deficiencies into the SIP where the action in Region 6 did not. The EPA found the deficiencies in the TCEQ submission to be separable and issued partial disapprovals for them, resulting in a SIP that did not contain the deficiencies. In that situation,

EPA's role in reviewing SIP submittals, including the ADEQ NSR SIP submittal, is to defer to the State's choices as to how to implement CAA requirements provided those choices are consistent with the pertinent CAA requirements, whether or not a program submittal is considered ''mandatory.'' The EPA's limited approval/limited disapproval action on ADEQ's NSR SIP submittal, including ADEQ's request to remove old and largely outdated NSR provisions from the Arizona SIP, allows us to approve into the SIP the State's choice to adopt and implement its updated and strengthened NSR program while giving ADEQ time to remedy certain deficiencies that cause us not to grant full approval of the submittal. Furthermore, even if one assumed *arguendo* that these older Arizona NSR provisions were not being removed from the Arizona SIP, the commenter has not explained how the old NSR provisions would, in fact, meet the NSR requirements for which the EPA has found specific deficiencies in ADEQ's updated NSR program.[23]

Similarly, for deficiencies related to CAA title I, Part D requirements for nonattainment areas, final limited disapproval of ADEQ's NSR SIP submission will result in the application of sanctions under CAA section 179 unless the deficiencies have been adequately corrected before the sanctions apply.

As with its arguments concerning the FIP clock, the commenter argues that CAA sanctions apply only when a disapproval relates to a mandatory SIP submission, and asserts that the submitted revisions are not mandatory because ADEQ's existing SIP contains fully-approved NSR permitting programs, and the revisions were not developed in response to a SIP call under CAA section 110(k)(5). The EPA again disagrees with the commenter's argument.

Even if the EPA has not issued a SIP call under CAA section 110(k)(5), sanctions generally will apply under CAA section 179 when the EPA disapproves a plan submission based on plan deficiencies that relate to title I, Part D requirements, unless ADEQ adequately corrects those deficiencies and the EPA takes action to approve a corrected plan submittal before the sanctions apply, or the EPA determines that the existing plan meets the applicable Part D requirements. See 40 CFR 52.31. A NA–NSR program that meets CAA requirements is a required element of a SIP. CAA §§ 110(a)(2)(C), 172(c)(5), 173; 40 CFR 51.165.

As discussed above, ADEQ's NSR SIP submittal included the removal of most of ADEQ's existing NSR program elements from the Arizona SIP, so upon the EPA's final action there will not be older NA–NSR SIP provisions that could potentially meet the CAA NA–NSR requirements that the EPA has determined are not satisfied in the NA–NSR program in ADEQ's NSR SIP submittal. The EPA's limited approval/limited disapproval action on ADEQ's NSR SIP submittal, including ADEQ's request to remove old and largely outdated NSR provisions from the Arizona SIP, allows us to approve into the SIP the State's choice to adopt and implement its updated and strengthened NA–NSR program while giving ADEQ time to remedy certain deficiencies that cause us not to grant full approval of the submittal. Furthermore, even if one assumed *arguendo* that these older Arizona NA–NSR provisions were not being removed from the Arizona SIP per ADEQ's request, the commenter has not explained how the old NA–NSR provisions would, in fact, meet the specific NA–NSR requirements for which the EPA has found deficiencies with ADEQ's updated NA–NSR program. For example, ADEQ's old SIP-approved program did not include NO_X as a precursor to ozone.

We note that the EPA is also finalizing a partial disapproval—rather than limited approval/limited disapproval—for a separable ADEQ NSR program provision that is analogous to a previous federal NSR provision that a federal Court determined is not a permissible component of PSD programs—the $PM_{2.5}$ significant monitoring concentration (SMC). As there is no deficiency related to this issue in the approved plan following our partial disapproval, neither a FIP requirement nor sanctions will result from this partial disapproval action.

The EPA's limited disapproval action is based on program elements in ADEQ's NSR SIP submittal that do not meet CAA requirements and are not satisfied by the existing Arizona SIP provisions that remain in place following our final action.[24] We wish to clarify that all of the bases for our final limited disapproval action on the ADEQ NSR SIP submittal must be adequately addressed in a timely manner in order to avoid a requirement for a FIP or, for Part D deficiencies, the application of sanctions.

Finally, our final limited disapproval also addresses some SIP elements or provisions that are not required (*e.g.,* deficiencies concerning optional PAL provisions), but were not separable from ADEQ's NSR SIP submittal as they were an integrated part of that submittal. Because we are approving these provisions into the SIP, the EPA will be obligated to implement a FIP and/or sanctions will apply (as applicable) for such optional program elements that remain in the SIP if the deficiencies in those elements are not corrected to ensure consistency with CAA requirements.

Comment 7:

SRP states that to proceed using the limited approval, limited disapproval mechanism, The EPA must make an on-the-record determination that the disapproved elements are not severable from the approved elements. The EPA has not made this finding or provided this explanation in its proposed notice.

Response 7:

The EPA disagrees with this comment. The commenter cites no authority for this unsupported proposition. Under CAA sections 110(k)(3) and 301(a) and the EPA's long-standing guidance, limited approval and partial approval are alternatives to full approval or full disapproval of a complete plan submission. Limited approval may be appropriate where a plan submittal contains some provisions that meet applicable CAA requirements and other provisions that do not, and the provisions are not separable. Partial approval may be used where a separable

whether the deficiencies that were disapproved were contained in ''mandatory'' SIP submissions was relevant because if they were ''mandatory'' then disapproval likely would have resulted in TCEQ needing to submit another plan revision to replace the disapproved plan elements. But because the deficiencies were found to be separable and contained in plan elements that were not mandatory, the EPA issued a partial disapproval of those elements, keeping the deficiencies out of the approved SIP and with TCEQ under no obligation to submit another SIP revision because the disapproved plan elements were not ''mandatory.'' In contrast, the provisions including the identified deficiencies in the ADEQ NSR SIP submittal are integrated parts of the submittal and are being approved into the SIP as part of our limited approval/limited disapproval action, so whether the ADEQ plan revisions containing the deficiencies are ''mandatory'' is not relevant and is not a basis to avoid a FIP duty or sanctions.

[23] ADEQ noted in its submittal that its existing SIP-approved program did not include the PM_{10} increments, the NO_2 increments, or updates related to the ''WEPCO'' rule for determining when a project is a modification at an electric generating unit. In addition, ADEQ stated that a basis for its revisions to its minor NSR program was to correct the deficiency that its program lacked explicit procedures designed ''to assure that national ambient air quality standards are achieved,'' as required by section 110(a)(2)(C) of the Act. See Appendix A of ADEQ's October 29, 2012 SIP submittal at 1546 and 1547.

[24] In addition, ADEQ's NSR SIP submittal did not address the regulation of greenhouse gases (GHGs) under the PSD program. As discussed in the notice for our proposed action on ADEQ's NSR SIP submittal, a FIP is currently in place in Arizona to address PSD requirements for GHGs. See 80 FR at 14054 n.17.

portion of a plan submittal meets all applicable CAA requirements. The EPA has discretion under the CAA to choose an appropriate approval or disapproval mechanism for a plan submission, and there is no required ''finding'' that the provisions are not separable for a proposed or final limited approval or limited disapproval SIP action. See Processing of State Implementation Plan (SIP) Revisions, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992 (*www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf*).

Nevertheless, in general, we believe that, with the exception of the partial disapproval of the $PM_{2.5}$ SMC that we are finalizing, the components of ADEQ's NSR SIP submittal are interrelated and not separable from the submittal as a whole and therefore not appropriate for partial disapproval. ADEQ has not provided us with any basis to conclude that particular aspects of its NSR SIP submittal for which we proposed limited disapproval are not integral or interrelated parts of the submittal or are otherwise separable and appropriate for partial disapproval. Further, the commenter has not demonstrated that any portion of the ADEQ NSR SIP submittal for which we proposed limited disapproval is, in fact, separable and appropriate for partial disapproval rather than limited disapproval.

Comment 8:

One commenter states that the EPA's assertion that ADEQ may not exclude certain pollutant-emitting activities from PSD misinterprets the EPA's regulations. The commenter points to 40 CFR 51.160(e) and states that a State may exclude activities that it anticipates will have negligible or insignificant environmental impacts from either the major or minor NSR permit programs. This regulatory approach makes sense because it allows for a practical integration of the multiple preconstruction requirements. There is no basis for requiring a State to regulate activities with the more stringent requirements contained in the PSD or NA NSR program when those activities fall below the levels of concern established for the minor NSR program.

Response 8:

The regulations governing PSD and NA–NSR SIP programs contain the fundamental requirement that such programs adopt a specified definition for ''stationary source.'' 40 CFR 51.165(a)(1)(i), 51.166(b)(5). The regulations require the use of the prescribed definition, and state that deviations from the specified wording will be approved only if ''the State specifically demonstrates that the submitted definition is ''more stringent, or at least as stringent, in all respects'' as the prescribed definition. 40 CFR 51.165(a)(1), 51.166(b). As explained in reference to the NA–NSR program in our March 18, 2015 proposal:

> ADEQ must demonstrate that its definition of stationary source is at least as stringent as the federal definition at 51.165(a)(1)(i) in all respects.

See 80 FR at 14056; see also 80 FR at 14054 for the PSD program. The commenter has not addressed how ADEQ's definition would be at least as stringent as the definitions in 51.165(a)(1)(i) and 51.166(b)(5) in light of the exemption language referenced in our proposal, see 80 FR at 14054, nor has ADEQ provided the necessary demonstration that its definition of stationary source is at least as stringent as the definition of ''stationary source'' under the federal PSD and NA–NSR programs. Indeed, ADEQ's comments did not address this basis of our proposed limited disapproval. We continue to find that this issue provides a basis for limited disapproval of ADEQ's NSR SIP submittal.

We do not interpret 40 CFR 51.160(e) as allowing states to develop less stringent definitions for these programs without the necessary demonstration that the submitted definition is ''more stringent, or at least as stringent, in all respects'' as the prescribed definition as required by 40 CFR 51.165(a)(1) and 51.166(b). Section 51.160(e) does not contain any language giving states the discretion to exclude any type of source from the more specific major source permitting requirements in section 51.165 and 51.166. Section 51.160(e) does not say anything about sources that have ''negligible or insignificant environmental impacts.'' This section simply requires that a state plan identify the types and sizes of stationary sources that are covered by the ''legally enforceable procedures'' required under section 51.160(a) to review construction or modification of stationary sources. Sections 51.165 and 51.166 provide more detailed procedures that must apply to major stationary sources. These more specific provisions in sections 51.165 and 51.166 make clear that those procedures must cover the type and size of source covered by the definitions at 40 CFR 51.165(a)(1)(i) and 51.166(b)(5).

Comment 9:

One commenter takes issue with our proposed limited disapproval of ADEQ's definition of projected actual emissions on the basis that it does not specifically require malfunction emissions to be included in the post-change projection. The EPA has not shown how ADEQ's exclusion of this term from ADEQ's definition makes the definition less stringent than the Federal rules. Malfunctions, by definition, are emissions associated with an unpredictable and not reasonably preventable event. In this respect, it is axiomatic that a source cannot reasonably project emissions that it cannot predict. By excluding malfunctions from its projected actual emissions procedure, ADEQ recognizes the EPA's own interpretation of ''malfunctions'' and is no less stringent than the federal definition. The EPA's proposed action also is inconsistent with other Regional Office SIP approvals that have approved definitions of ''projected actual emissions'' that do not require inclusion of malfunction emissions.[25] Moreover, the comparable paragraph in the Federal definition of ''projected actual emissions'' merely clarifies that projected actual emissions includes all post-change emissions. The EPA could approve ADEQ's ''projected actual emissions'' definition by severing and not acting on paragraph R18–2–401(20)(b)(iii) and the definition would not lose its intended meaning.

Response 9:

The commenter asserts that the EPA has not shown that ADEQ's exclusion of malfunction emissions from the definition of ''projected actual emissions'' makes the definition less stringent. However, ADEQ has the burden of demonstrating that its alternative definitions are not less stringent than the ones in the EPA's regulation. See 40 CFR 51.165(a)(1), 51.166(b). ADEQ's definitions under the PSD and NA–NSR programs warrant a limited disapproval because the EPA cannot reasonably conclude that ADEQ's definition is at least as stringent as the definitions in 40 CFR 51.165(a)(1) and/or 51.166(b). We note that ADEQ's definition for ''baseline actual emissions'' specifically includes startup, shutdown, and malfunction emissions, while ADEQ's definition for ''projected actual emissions'' includes startup and shutdown emissions but does not include malfunction emissions. Further, ADEQ's definition of ''projected actual emissions'' specifically excludes malfunction emissions associated with a shutdown. Based on the exclusion of malfunction emissions from the

[25] See, *e.g.,* The EPA's approval of Georgia's PSD program, Georgia's PSD program at 391–3–1; and the EPA's approval of South Carolina's regulation at Chapter 7 Regulation 62.5.

definition of ''projected actual emissions'', and in the absence of a response from ADEQ on this issue, we conclude that ADEQ has not shown that its definition is as stringent as the federal definition. In addition, without a clearer statement from ADEQ, we cannot determine that R18–2–401(20)(b)(iii) is separable from the rest of the ADEQ definition of projected actual emissions without losing the apparently intended meaning by ADEQ to specifically include startup and shutdown but exclude malfunction emissions. We note that ADEQ's comments did not address this basis for our proposed limited disapproval.

With respect to the claim that the EPA has previously approved PSD or NA–NSR programs that do not include malfunctions emissions under the definition for projected actual emissions, we note that the examples provided by the commenter are not completely analogous. In those programs, the definition of baseline actual emissions also excluded malfunction emissions, whereas ADEQ has included those emissions in its definition of baseline actual emissions. Without further justification from ADEQ, this inconsistency across definitions makes it difficult for the EPA to determine the relative stringency of ADEQ's definitions as compared with those in 40 CFR 51.165 and 51.166. The commenter has not provided any information about the nature of the demonstrations that was supplied by the states that obtained the EPA approval for excluding malfunction emissions from both the definition of baseline actual emissions and projected actual emissions.

Notwithstanding prior action by the EPA in the context of SIPs in the distinct circumstances noted above, the EPA believes the proper interpretation of these definitions is that they require that all emissions, pre- and post-change, including malfunctions, be included in the definitions included in SIPs, consistent with the regulatory text, absent a demonstration that the State's regulation is at least as stringent as the federal definition as required by 40 CFR 51.165(a)(1) and 51.166(b).

We note that in reviewing this comment, we also reviewed our proposed limited disapproval related to the calculation of baseline actual emissions under ADEQ's PALs program at R18–2–412(B)(2). See 80 FR 14053. Upon review, we determined that our proposed limited disapproval related to the calculation of baseline actual emissions under ADEQ's PALs program at R18–2–412(B)(2) was in error because ADEQ's definition for baseline actual emissions at R18–2–401(2)(i) specifically includes startup, shutdown, and malfunction emissions. Therefore, this issue no longer provides a basis for our limited disapproval of ADEQ's NSR SIP submittal.

Comment 10:

One commenter asserts that ADEQ's definition of regulated NSR pollutant is not deficient for not including the final two sentences in 40 CFR 51.166(b)(49)(i)(a). This language addresses issuance of permits before January 1, 2011. Since this SIP revision applies to changes after this date, it is not necessary for the definition to address circumstances that existed before SIP approval. Moreover, absence of the language, in any case, does not affect the stringency of the definition.

Response 10:

We agree with the commenter that while ADEQ may want to add to its definition these two sentences that provide additional clarification, this clarifying language is not necessary for SIP approval. As such, we no longer find this difference to be a deficiency with ADEQ's NSR program, and this issue is not a basis for our final limited disapproval.

Comment 11:

The EPA proposes to disapprove ADEQ's major NSR programs because the SIP submittal does not include a definition for ''subject to regulation.'' Although the Federal regulations contain a definition for ''subject to regulation,'' the EPA made clear, at the time it adopted this definition, that states may adopt (or already have) alternative pathways for defining applicability of the major NSR program—the EPA did not intend for codification of ''subject to regulation'' to be a necessary element for SIP approval. See 75 FR 31514 at 31525. The EPA chose the ''subject to regulation'' pathway because it determined that this would allow other states to adopt the EPA's definition through interpretation without the need for a SIP revision.

ADEQ's major source definition refers to NSR regulated pollutants. ADEQ's definition of NSR regulated pollutant covers all pollutants ADEQ is currently required to regulate under its major NSR programs. ADEQ's program is not currently deficient for failing to include some unknown air pollutant that the EPA may regulate in the future. Should the EPA regulate such an air pollutant in the future, the EPA may follow the pathway it used for GHGs and issue a SIP call at that time. Similarly, ADEQ's definition of regulated NSR pollutant is not currently deficient for failing to include some unidentified air pollutant that the EPA might name in the future.

Response 11:

After further review and consideration of the comment, we are not including the absence of a definition of the term ''subject to regulation'' as a basis for our limited disapproval of the ADEQ NSR SIP submittal. Similarly, we are also not including the omission in ADEQ's PSD rules of language analogous to that in 40 CFR 51.166(b)(49)(iv) as a basis for our final limited disapproval of the ADEQ NSR SIP submittal. We note, however, that contrary to commenters' assertion, the ADEQ SIP is deficient because ADEQ's definition of regulated NSR pollutant does not cover all pollutants ADEQ is currently required to regulate under its major NSR programs, in that ADEQ's program does not regulate GHGs. However, the EPA has separately taken action to address this deficiency. The EPA previously established a FIP for GHGs for Arizona because ADEQ could not apply its PSD program to GHGs due to a State law prohibition.

Comment 12:

One commenter states that we must approve ADEQ's definition of basic design parameter because the D.C. Circuit made no finding in *State of New York* v. *EPA* that the use of the ''basic design parameter'' definition was ''impermissible.'' This issue was not before the court in *State of New York* v. *EPA.* At the time the EPA codified the replacement unit provisions, the EPA relied on a previously codified definition of ''basic design parameter'' to explain how it will interpret the phrase ''basic design parameters'' in implementing the replacement unit provisions. The vacatur of the ''basic design parameters'' definition for purposes of a separate, unrelated rulemaking has no effect on the EPA's stated interpretation of that phrase for purposes of the replacement unit provisions. Accordingly, the EPA's statements in the preamble remain its interpretation for purposes of implementing those provisions. ADEQ's definition is fully consistent with the EPA's interpretation.

Response 12:

The EPA agrees with the commenter that our proposed partial disapproval of the definition for ''basic design parameter'' was erroneous. We note that ADEQ did not adopt any of the other provisions of the Equipment Replacement Provisions, which were the subject of the D.C. Circuit Court's decision in *State of New York* v. *EPA.* We agree with the commenter that ADEQ's adoption of a definition for basic design parameter is acceptable in this case, and consistent with the EPA's past statements related to this term.

Therefore, we are not finalizing a partial disapproval of ADEQ's definition for basic design parameter. Our final action includes this definition as part of ADEQ's NSR SIP submittal for which the EPA is finalizing a limited approval/limited disapproval, but it is not a basis for our limited disapproval.

III. Final Action

Pursuant to section 110(k) of the CAA, the EPA is finalizing a limited approval and limited disapproval of the ADEQ rules listed in Table 1 above. We are also approving into the Arizona SIP the Arizona statutory provision relating to local delegation of state authority identified in Table 1 above. In addition, we are removing from the Arizona SIP certain rules and appendices, which are outdated and mostly being superseded by this action. See Table 2 above. We are also finalizing a partial disapproval of one provision of ADEQ's NSR SIP submittal concerning the $PM_{2.5}$ SMC, as the analogous federal regulatory provision has been vacated by a federal Court.[26] Last, we are finalizing a limited approval (but not a limited disapproval) based on requirements under section 189 of the Act related to PM_{10} and $PM_{2.5}$ precursors for ADEQ's nonattainment NSR program for the Nogales and West Central Pinal $PM_{2.5}$ nonattainment areas and the West Pinal PM_{10} nonattainment area.

Our limited approval and limited disapproval action will approve the updated rules included in the ADEQ NSR SIP submittal into the ADEQ portion of the Arizona SIP.[27] However, ADEQ must correct certain deficiencies in the approved rules in order to obtain full approval for its NSR SIP submittal. Our TSD and proposal for this action described in detail the deficiencies we identified with ADEQ's NSR SIP submittal which we determined were bases for limited approval and limited disapproval. With the exception of the changes we are making from our proposal as described in section II.B of this preamble, we are finalizing our action as proposed. For some of these disapproval issues, no adverse comment was received during the public comment period on our proposed action; where comments were received on these issues, we addressed the comments in our Response to Comments document. See section C of this preamble. A list summarizing the bases for our limited disapproval is included in a memorandum to the file for this action.[28]

Our limited disapproval action will trigger an obligation on the EPA to promulgate a FIP unless Arizona corrects the deficiencies that are the bases for the limited disapproval, and the EPA approves the related plan revisions, within two years of the final action. Additionally, for those deficiencies that are bases for our limited disapproval that relate to NA–NSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the nonattainment areas under ADEQ's jurisdiction 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in these areas six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if Arizona submits, and we approve, prior to the implementation of the sanctions, SIP revisions that correct the deficiencies that we identify in our final action.[29] We intend to work with ADEQ to correct the deficiencies identified in this action in a timely manner.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the ADEQ rules and the statutory provision described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. 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'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is imposing. Therefore, because this action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves or disapproves pre-existing requirements under State or local law, and imposes no new requirements.

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 in the distribution of power and

[26] The EPA's partial disapproval concerning the $PM_{2.5}$ SMC does not require follow-up action by ADEQ. However, for clarity, ADEQ may wish to remove this disapproved provision from its regulations.

[27] This excludes the $PM_{2.5}$ SMC provision for which we issuing a partial disapproval, as discussed elsewhere in this action.

[28] ''List of Bases for Final Limited Disapproval of ADEQ NSR SIP Submittal,'' Lisa Beckham, Air Permits Office, EPA Region 9, June 22, 2015.

[29] In addition, ADEQ must also address our limited approval under section 189 of the Act related to PM_{10} and $PM_{2.5}$ precursors for the Nogales and West Central Pinal $PM_{2.5}$ nonattainment areas and the West Pinal PM_{10} nonattainment area. However, because this issue is not a basis for our limited disapproval action, it does not trigger a FIP clock or the potential for sanctions.

responsibilities among the various levels of government, as specified in Executive Order 13132.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The SIP is not approved to apply on any Indian reservation land or in any other area where the 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. Thus, Executive Order 13175 does not apply to this rule.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves or disapproves State rules intended to implement a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, the EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes application of VCS to this action would be inconsistent with the Clean Air Act.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of environmental protection for any affected populations.

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. The 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**. 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).

L. Petitions for Judicial Review

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 *January 4, 2016.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: June 29, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.120 is amended:
■ a. By revising paragraphs (c)(27)(i)(C), (c)(43)(i)(C), (c)(45)(i)(D).
■ b. By adding paragraph (c)(47)(i)(A)(*1*).
■ c. By revising paragraph (c)(50)(i)(C).
■ d. By revising paragraph (c)(54)(i)(E).
■ e. By adding paragraph (c)(54)(i)(H).
■ f. By revising paragraph (c)(56)(i)(C).
■ g. By adding paragraphs (c)(59)(i)(A)(*2*) and (c)(161)(i)(A)(*6*).
■ h. By revising the introductory text of paragraph (c)(162)
■ i. By adding paragraphs (c)(162)(i)(A)(*3*) and (*4*), and (c)(162)(ii).

The revisions and additions read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(27) * * *

(i) * * *

(C) Previously approved in paragraphs (c)(27)(i)(A) and (B) of this section and now deleted without replacement: R9–3–101 (all paragraphs and nos. listed), paragraph B of R9–3–217, R9–3–301 (all paragraphs listed), R9–3–306 (all paragraphs listed), R9–3–307 (all paragraphs listed), R9–3–308, R9–3–310 (Paragraph C), R9–3–311 (Paragraph A), R9–3–312, R9–3–314, R9–3–315, R9–3–316, R9–3–317, R9–3–318, R9–3–518 (Paragraphs B and C), R9–3–319, R9–3–1101, and Appendix 10 (Sections

A10.1.3.3, A10.1.4 and A10.2.2 to A10.3.4).

* * * * *

(43) * * *

(i) * * *

(C) Previously approved in paragraphs (c)(43)(i)(A) and (B) of this section and now deleted without replacement: R9–3–101 (all paragraphs and nos. listed), R9–3–301 (all paragraphs listed), R9–3–302 (all paragraphs listed), R9–3–303, R9–3–306 (all paragraphs listed), R9–3–307 (all paragraphs listed), and R9–3–518 (Paragraph A.1 to A.5).

* * * * *

(45) * * *

(i) * * *

(D) Previously approved in paragraphs (c)(45)(i)(A) and (B) of this section and now deleted without replacement: R9–3–101 (all paragraphs and nos. listed), R9–3–301 (all paragraphs listed), R9–3–306 (all paragraphs listed), R9–3–311 (all paragraphs listed), R9–3–509, and Appendix 10 (Sections A10.2 and A10.2.1).

* * * * *

(47) * * *

(i) * * *

(A) * * *

(*1*) Previously approved in this paragraph (c)(47)(i)(A) and now deleted without replacement: R9–3–101 (all paragraphs and nos. listed).

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(50) * * *

(i) * * *

(C) Previously approved in paragraph (c)(50)(i)(A) of this section and now deleted without replacement: R9–3–310 (Paragraphs A and B) and Appendix 10 (Sections A10.1–A10.1.3.2).

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(54) * * *

(i) * * *

(E) Previously approved in paragraphs (c)(54)(i)(B) and (c)(54)(i)(C) of this section and now deleted without replacement: R9–3–101 (all nos. listed except no. 20).

* * * * *

(H) Previously approved in paragraphs (c)(54)(i)(B), (C), and (D) of this section and now deleted without replacement: R9–3–301 (all paragraphs except paragraphs I and K), R9–3–302 (all paragraphs listed), R9–3–303 (all paragraphs listed), R9–3–304 (all paragraphs except paragraph H), R9–3–305, R9–3–306 (paragraph A only), and R9–3–1101 (all paragraphs listed).

* * * * *

(56) * * *

(i) * * *

(C) Previously approved in paragraphs (c)(56)(i)(A) and (B) of this section and now deleted without replacement: R9–3–101 (Nos. 135 and 157), R9–3–218, R9–3–310, R9–3–322, R9–3–1101 and Appendix 11.

* * * * *

(59) * * *

(i) * * *

(A) * * *

(*2*) Previously approved in paragraph (c)(59)(i)(A)(*1*) of this section and now deleted without replacement: R9–3–303.

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(161) * * *

(i) * * *

(A) * * *

(*6*) Arizona Administrative Code, Title 18, ''Environmental Quality'', chapter 2,''Department of Environmental Quality—Air Pollution Control'', R18–2–311, ''Test Methods and Procedures,'' and R18–2–312, ''Performance Tests,'' effective November 15, 1993.

(162) The following plan revision was submitted on October 29, 2012, and supplemented on September 6, 2013 and July 2, 2014, by the Governor's designee.

(i) * * *

(A) * * *

(*3*) Arizona Administrative Code, Title 18, ''Environmental Quality,'' chapter 2 ''Department of Environmental Quality—Air Pollution Control,'' R18–2–101, ''Definitions,'' only definition nos. (2), (32), (87), (109), and (122), effective August 7, 2012; R18–2–217, ''Designation and Classification of Attainment Areas,'' effective November 15, 1993; R18–2–218, ''Limitation of Pollutants in Classified Attainment Areas,'' effective August 7, 2012; R18–2–301, ''Definitions,'' effective August 7, 2012; R18–2–302, ''Applicability; Registration; Classes of Permits,'' effective August 7, 2012; R18–2–302.01, ''Source Registration Requirements,'' effective August 7, 2012; R18–2–303, ''Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition,'' effective August 7, 2012; R18–2–304, ''Permit Application Processing Procedures,'' effective August 7, 2012; R18–2–306, ''Permit Contents,'' effective December 20, 1999; R18–2–306.01, ''Permits Containing Voluntarily Accepted Emission Limitations and Standards,'' effective January 1, 2007; R18–2–306.02, ''Establishment of an Emissions Cap,'' effective September 22, 1999; R18–2–315, ''Posting of Permit,'' effective November 15,1993; R18–2–316, ''Notice by Building Permit Agencies,'' effective May 14, 1979; R18–2–319, ''Minor Permit Revisions,'' August 7, 2012; R18–2–320, ''Significant Permit Revisions,'' effective August 7, 2012; R18–2–321, ''Permit Reopenings; Revocation and Reissuance; Termination,'' effective August 7, 2012; R18–2–323, ''Permit Transfers,'' effective February 3, 2007; R18–2–330, ''Public Participation,'' effective August 7, 2012; R18–2–332, ''Stack Height Limitation,'' effective November 15, 1993; R18–2–334, ''Minor New Source Review'' effective August 7, 2012; R18–2–401 ''Definitions,'' effective August 7, 2012; R18–2–402 ''General,'' effective August 7, 2012; R18–2–403 ''Permits for Sources Located in Nonattainment Areas,'' effective August 7, 2012; R18–2–404, ''Offset Standards,'' effective August 7, 2012; R18–2–405, ''Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe,'' effective August 7, 2012; R18–2–406, ''Permit Requirements for Sources Located in Attainment and Unclassifiable Areas,'' effective August 7, 2012; R18–2–407, ''Air Quality Impact Analysis and Monitoring Requirements,'' excluding subsection (H)(1)(c), effective August 7, 2012; R18–2–409, ''Air Quality Models,'' effective November 15, 1993; and R18–2–412, ''PALs'' effective August 7, 2012.

(*4*) Arizona Revised Statutes, title 49, ''Environment,'' chapter 1 ''General Provisions'', section 49–107, ''Local delegation of state authority,'' effective July 1, 1987.

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(*1*) *Setting Applicability Thresholds,* pages 1547–1549 in Appendix A to ''State Implementation Plan Revision: New Source Review'' adopted on October 29, 2012.

(*2*) Memorandum, ''Proposed Final Permits to be Treated as Appealable Agency Actions,'' dated February 10, 2015, from Eric Massey, Air Quality Division Director to Balaji Vaidyanathan, Permit Section Manager, submitted on February 23, 2015.

(*3*) ''State Implementation Plan Revision: New Source Review—Supplement,'' relating to the division of jurisdiction for New Source Review in Arizona, adopted on July 2, 2014.

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[FR Doc. 2015–27785 Filed 10–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0394; FRL–9936–33–Region 7]

Approval of Air Quality State Implementation Plans (SIP); State of Iowa; Infrastructure SIP Requirements for the 2008 Lead National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) submission from the State of Iowa addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2008 National Ambient Air Quality Standards (NAAQS) for Lead (Pb), which requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

EPA is also taking final action to approve a supplemental revision for the SIP to include article 1, section 2 of the Iowa Constitution, and portions of the Iowa Code and the Iowa Administrative Code to codify the relevant state laws as applied to conflict of interest requirements of section 128 of the CAA.

DATES: This final rule is effective December 2, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2015–0394. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551–7039; *email address: Hamilton.heather@epa.gov.*

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

I. Background
II. Summary of SIP Revision
III. Final Action
IV. Statutory and Executive Order Review

I. Background

On August 14, 2015, (80 FR 48791), EPA published a notice of proposed rulemaking (NPR) for the State of Iowa. The NPR proposed approval of Iowa's submission that provides the basic elements specified in section 110(a)(2) of the CAA necessary to implement, maintain, and enforce the 2008 Pb NAAQS. The NPR also proposed approval of a supplemental revision to include article 1, section 2 of the Iowa Constitution, and portions of the Iowa Code and the Iowa Administrative Code to codify the relevant state laws as applied to conflict of interest requirements of Sections 110(a)(2)(E) and 128 of the CAA.

II. Summary of SIP Revision

On November 4, 2011, EPA received a SIP submission from the state of Iowa that addressed the infrastructure elements specified in section 110(a)(2) for the 2008 Pb NAAQS. The submission addressed the following infrastructure elements of section 110(a)(2): (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). On May 11, 2015, EPA received a supplemental SIP submission from the state of Iowa to include article 1, section 2 of the Iowa Constitution, and portions of the Iowa code and the Iowa Administrative Code to codify the relevant state laws as applied to conflict of interest requirements of Section 128 of the CAA. The rationale for EPA's proposed action to approve the SIP submissions for specific requirements of section 110(a)(2) of the CAA, and the submission for conflict of interest provisions are explained in the NPR and will not be restated here.

During the public comment period for the NPR one comment was received. The commenter stated that EPA cannot approve the Prevention of Significant Deterioration provisions unless the Particulate Matter ($PM_{2.5}$) increments have been approved in the SIP. The $PM_{2.5}$ increments, found at 567 Iowa Administrative Code, Chapter 33.3(3), were approved by EPA into the Iowa SIP on March 14, 2014. 79 FR 14402.

III. Final Action

EPA is approving Iowa's November 4, 2011, submission addressing the requirements of the CAA sections 110(a)(1) and (2) as applicable to the 2008 Pb NAAQS. Specifically, EPA approves the following infrastructure elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M) which are necessary to implement, maintain, and enforce the 2008 Pb NAAQS, as a revision to the Iowa SIP. EPA is also approving Iowa's May 11, 2015, submission to include article 1, section 2 of the Iowa Constitution, and portions of the Iowa code and the Iowa Administrative Code to codify the relevant state laws as applied to conflict of interest requirements of Sections 110(a)(2)(E) and 128 of the CAA.

IV. Statutory and Executive Order Review

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 Iowa nonregulatory SIP provision described in the amendments to 40 CFR part 52 set forth below. 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).

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 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 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).

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 January 4, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 29, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

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

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Q—Iowa

■ 2. Amend § 52.820 by adding entries (e)(41) and (42) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic area or nonattainment area	State submittal date	EPA Approval date	Explanation
* *	*	*	*	* *
(40) Sections 110(a)(1) and (2) Infrastructure Requirements 2008 Lead NAAQS.	Statewide	11/4/11	11/2/15 [*Insert* **Federal Register** *citation*].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(I) is not applicable.
(41) Section 128 Declaration: Conflicts of Interest Provisions; Constitution of the State of Iowa, Article 1, Section 2 Iowa Code: 4.4.(5) 7E.4 Chapter 68B Iowa Administrative Code: 351 IAC 6.11 351 IAC 6.14(2) 351 IAC 6.19 351 IAC 7.1–7.2 567 IAC 1.11(1–9)	Statewide	5/11/15	11/2/15 [Insert **Federal Register** citation].	This action addresses the following sections of the Constitution of the State of Iowa, Article 1, section 2; Iowa Code: 4.4.(5), 7E.4, Chapter 68B; Iowa Administrative Code: 351 IAC 6.11 351 IAC 6.14(2) 351 IAC 6.19 351 IAC 7.1–7.2 567 IAC 1.11(1–9).

[FR Doc. 2015–27783 Filed 10–30–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[GN Docket No. 12–268; MB Docket No. 15–137; FCC 15–67]

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission refines the rules it adopted in the Incentive Auction Report and Order and the preceding Channel Sharing Report and Order to provide greater flexibility and certainty regarding channel sharing agreements (''CSAs''). Among other things, we modify our rules to allow broadcasters that relinquish rights in the incentive auction in order to channel share to enter into CSAs after the auction and, whether they enter into CSAs before or after the auction, to determine the length of their agreements.

DATES: Effective December 2, 2015, except for §§ 1.2204(c)(4) and 73.3700(b)(1), which contain new or modified information collection requirements that require approval by OMB under the PRA and will become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Media Bureau, Policy Division, 202–418–2154, or email at *kim.matthews@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Order on Reconsideration,* FCC 15–67, adopted on June 11, 2015 and released on June 12, 2015. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

The *First Order on Reconsideration* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. It will be submitted to the Office of Management and Budget (''OMB'') for review under section 3507(d) of the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in this First Order on Reconsideration as required by the PRA in a separate published **Federal Register** notice.

In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We have assessed the effects of the policies adopted in this First Order on Reconsideration with regard to information collection burdens on small business concerns, and find that these policies will benefit many companies with fewer than 25 employees by providing them with options for voluntarily relinquishing broadcast spectrum usage rights and by streamlining the pre-auction application process. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Supplemental FRFA.

Synopsis of the First Order on Reconsideration

I. Introduction

1. Broadcasters will have the unique financial opportunity in the broadcast television spectrum incentive auction to voluntarily return some or all of their licensed spectrum usage rights in exchange for incentive payments. One of broadcasters' bid options will be to relinquish rights in order to share a channel with another licensee. The Commission established rules governing channel sharing agreements (''CSAs'') in the *Incentive Auction Report & Order,* 79 FR 48442 (August 15, 2014) (''*IA R&O*'') and the preceding *Channel Sharing Report & Order,* 77 FR 30423 (May 23, 2012) (''*Channel Sharing R&O*''). In this First Order on Reconsideration, we refine those rules to provide greater flexibility and certainty regarding CSAs. Among other things, we modify our rules to allow broadcasters that relinquish rights in the incentive auction in order to channel share to enter into CSAs after the auction and, whether they enter into CSAs before or after the auction, to determine the length of their agreements. In the companion Notice of Proposed Rulemaking (''*NPRM*''), 80 FR 40957, July 14, 2015, we tentatively conclude that we should authorize channel sharing by full power and Class A stations outside the incentive auction context, including ''second generation'' agreements in which one or both entities were parties to an auction-related CSA whose term has expired or that has otherwise been terminated. By providing greater flexibility and certainty regarding CSAs, our objective is to encourage voluntary participation by broadcasters in the incentive auction.

II. Background

2. Congress authorized the Commission to conduct the incentive auction to help meet the Nation's growing spectrum needs. Section 1452(a)(2) of the Spectrum Act provides for three bid options that will be available to eligible full power and Class A broadcast television licensees in the auction, including relinquishment of ''usage rights in order to share a television channel with another licensee'' (''channel sharing bid''). Section 1452(a)(4) provides that a licensee that voluntarily relinquishes usage rights in order to channel share and that possessed carriage rights on November 30, 2010 ''shall have, at its shared location, the carriage rights . . . that would apply to such station at such location if it were not sharing a channel.'' In the *Channel Sharing R&O,* the Commission established rules authorizing channel sharing in connection with the incentive auction.

3. The Commission addressed a variety of further issues related to channel sharing in the *IA R&O.* The Commission concluded that applicants that participate in the auction in order to share a channel must provide information concerning their Channel Sharing Agreements (''CSAs'') prior to the auction, as part of their pre-auction applications, and must submit a copy of the executed CSA with their applications. With respect to licensing, the Commission determined that, following the auction, a licensee that

enters into a CSA as the result of a winning reverse auction bid will be issued a new license indicating the station's ''shared'' status and specifying the station's designated shared operating frequency. The Commission also decided that shared channels will be designated permanently as shared in the Table of Allotments, absent a future rulemaking proceeding to redesignate the channel for non-shared use.

4. The Expanding Opportunities for Broadcasters Coalition (''EOBC'') filed a Petition for Reconsideration of our channel sharing decisions in the *IA R&O,* urging the Commission to ''(1) clarify that parties to broadcast CSAs are free to negotiate for common contractual rights; (2) permit broadcasters to enter into CSAs either before or after the incentive auction; (3) ensure that parties to CSAs have the flexibility to choose whether those agreements are permanent or for a fixed term; and (4) clarify that the Commission will never force a broadcaster to accept a channel sharing partner.''

5. The National Cable & Telecommunications Association (''NCTA'') filed an opposition arguing that extending carriage rights to broadcasters that enter into post-auction CSAs would contravene the Spectrum Act. NCTA argues that this would cause uncertainty in the post-auction broadcaster transition process; confer greater cable carriage rights than Congress intended; lead to customer confusion; and might leave MVPDs unreimbursed. CTIA supports all of EOBC's requests, as do Fox, Ion Media, Tribune, and Univision.

III. First Order on Reconsideration

6. We grant the EOBC Petition, with the exceptions noted below. In addition to addressing each of EOBC's above-stated requests for reconsideration below, we modify and clarify the pre- and post-auction CSA filing requirements that apply before and after the auction and address the scope of CSA review by Commission staff.

A. Negotiating for Common Contractual Rights

7. In the *IA R&O,* we noted that channel sharing agreements for contingent rights must not violate the reversionary interest rule, which precludes a seller from retaining an interest in the license it sells, and prohibits a licensee from granting a third party an automatic reversionary interest, such as a security interest, in its license.

8. EOBC asks the Commission to clarify that the act of entering into a CSA, in and of itself, does not trigger the reversionary interest rule and that parties to CSAs may bargain for common contractual rights consistent with existing Commission rules and policies. We received no opposition to EOBC's request. In its ''Opposition and Reply,'' CTIA joins and supports all of EOBC's reconsideration requests regarding channel sharing. Fox, Ion Media, Tribune, and Univision, who filed a reply comment in response to the *Incentive Auction Comment PN,* agree with this position.

9. We grant EOBC's request. We clarify that parties to a CSA may grant each other options, puts, calls, rights of first refusal, and other common contingent interests, subject to all applicable Commission rules and policies, including the media ownership rules, without committing a *per se* violation of the reversionary interest rule. The reversionary interest rule does not necessarily apply to a CSA, because a CSA does not involve the transfer of a license from one sharing partner to another. In addition, CSA provisions for contingent interests in the licenses involved in a CSA would not violate the reversionary interest rule absent grant of a prohibited security interest. We recognize that contracting for these common contingent rights will enable sharing parties to eliminate some of the uncertainty regarding the identity of their sharing partners in the event that one sharing party decides to sell its license. Moreover, we share EOBC's concern that, without the ability to bargain for these rights, broadcasters may not avail themselves of this bid option in the auction.

B. Flexibility To Enter Into CSAs After the Incentive Auction

10. Under the rules adopted in the *IA R&O,* a reverse auction bidder interested in channel sharing must submit an executed copy of the CSA with its pre-auction application, as well as certifications under penalty of perjury that it can meet its community of license requirements from the proposed sharer's site (or that it has identified a new community of license that meets the same, or a higher, allotment priority as its current community; or the next highest priority if no community meets the same or higher priority); that the CSA is consistent with all relevant Commission rules and policies; and that the applicant accepts any risk that the implementation of the CSA may not be feasible for any reason.

11. EOBC requests that the Commission modify its rules to allow a winning license relinquishment bidder to execute a CSA after bidding in the auction is complete. Fox, Ion Media, Tribune, and Univision, who filed a reply comment in response to the *Incentive Auction Comment PN,* agree with this position. EOBC argues that the carriage rights of parties to such post-auction CSAs would be protected under the Spectrum Act. CTIA agrees. NCTA, however, asserts that grant of EOBC's request would (1) introduce additional uncertainty into the post-auction transition process; (2) confer greater cable carriage rights than Congress intended; (3) lead to customer confusion; and (4) risk leaving cable operators unreimbursed for mandatory carriage of sharee stations.

12. We grant EOBC's request, subject to the conditions set forth herein. Specifically, we modify our rules to allow winning bidders that relinquish their spectrum usage rights to enter into CSAs after the completion of the incentive auction, provided that they (1) indicate in their pre-auction applications that they have a present intent to find a channel sharing partner after the auction, and (2) execute and implement their CSAs by the date on which they would otherwise be required to relinquish their licenses. Parties to post-auction CSAs will be entitled to the same carriage rights as parties to pre-auction CSAs. We emphasize, however, that the exception to the rule prohibiting certain communications before and during the incentive auction will apply only to parties to pre-auction CSAs.

13. Subject to these conditions, we agree with EOBC that pre- and post-auction CSAs are the same for purposes of the Spectrum Act. We also agree with EOBC that providing this flexibility will encourage broadcasters to consider the channel sharing bid option by enabling them to participate in the auction even if they do not find a channel sharing partner before the auction begins. Indeed, as EOBC notes, parties may be able to negotiate CSAs more readily after the auction is complete, when fewer variables remain unknown. This action also may help to preserve independent voices by enabling licensees to continue broadcasting after they voluntarily relinquish rights in the incentive auction. As stated above, broadcasters that do not submit executed CSAs with their pre-auction applications will be ineligible for the exception to the prohibited communications rule. Accordingly, there will be no need for the staff to review a CSA prior to the auction to verify that the applicant qualifies for the exception.

14. In order to enter into a post-auction CSA, we will require that a license relinquishment bidder indicate

in its pre-auction application its present intent to find a channel sharing partner after the auction. As we noted in the *Channel Sharing R&O,* ''the Spectrum Act does not set a date restriction on the execution of channel sharing arrangements.'' It guarantees carriage rights, however, only for ''a licensee that voluntarily relinquishes rights in order to channel share.'' To fall within the scope of this guarantee, we conclude that a licensee availing itself of the flexibility we provide here must express a present intent to channel share in its pre-auction application. We recognize that a successful bidder's interest in a post-auction CSA may depend on the outcome of the auction, and that its ability to execute a CSA with a sharing partner will not be entirely within its control. A successful bidder's expression of present intent, therefore, will not bind it to seek out a channel sharing partner or enter into a post-auction CSA.

15. In addition, post-auction CSAs must be executed and implemented (*i.e.,* operations commenced on the shared channel) by the date on which the channel sharee otherwise would be required to relinquish its license. Pursuant to the *IA R&O,* a winning license relinquishment bidder must cease operations within three months after receiving its share of auction proceeds. We conclude that a post-auction CSA must be executed and implemented by the license relinquishment deadline. In this regard, we disagree with EOBC that licensees should have up to twelve months after that relinquishment deadline to enter into a CSA. EOBC's reliance on section 312(g) of the Communications Act, which provides that a broadcast license automatically expires if the station fails to broadcast for a consecutive 12-month period, is misplaced: A broadcaster holds a license during the statutory 12-month period, whereas a winning license relinquishment bidder will no longer hold a license after the license relinquishment deadline.

16. This requirement addresses NCTA's concern that allowing auction participants to enter into post-auction CSAs would introduce additional uncertainty into the post-auction transition process. As NCTA notes, ''[u]nder the current rules, sharing stations must notify the Commission of their intent to share prior to the auction and must file their application for license for the shared channel within three months after receiving auction proceeds.'' Under our ruling here, sharee stations likewise will have to execute and implement their post-auction CSAs by the time they have to relinquish their licenses, and thus they will be on the same notification timeline as those stations that entered into pre-auction CSAs. We believe that this timeframe also will provide adequate time for parties to post-auction CSAs to comply with the consumer and MVPD notice requirements laid out in the *IA R&O.*

17. Finally, we find that the reimbursement process set out in the *IA R&O,* coupled with the requirements we adopt herein, will enable MVPDs to obtain reimbursement for their reasonable costs associated with mandatory carriage of stations that enter into post-auction CSAs. NCTA argues that, if CSAs are not ''in sync'' with the deadline for submitting reimbursement estimates, MVPDs might not have notice of a carriage obligation by the deadline, impacting their ability to recover reasonable expenses related to carrying the sharee stations from their new locations. We direct the Media Bureau, in the Channel Reassignment PN to be released following the completion of the incentive auction, to identify those winning bidders that are eligible to channel share, either because they submitted an executed pre-auction CSA or expressed a present intent to enter into a post-auction CSA. Accordingly, the Channel Reassignment PN will provide MVPDs with notice of the identity of successful bidders who have executed pre-auction CSAs, as well as those who may enter post-auction CSAs, prior to the deadline for submitting estimated reimbursement costs, enabling MVPDs to account for these potential costs in their initial cost estimates. In addition, if necessary, MVPDs may update their estimates after the initial three-month deadline if necessary in order to account for post-auction CSAs.

C. Term-Limited Channel Sharing Agreements

18. Under the rules adopted in the *IA R&O,* CSAs are permanent in nature: CSAs may be amended, and rights under a CSA may be assigned or transferred subject to Commission approval, but ''shared channels permanently will be designated as shared in the Table of Allotments, absent a future rulemaking proceeding to redesignate the channel for non-shared use,'' and ''CSAs may not contain any provision that would seek to dissolve or modify the shared nature of the channel[.]'' EOBC argues that we should ''permit broadcasters to choose the length of their agreements.'' ''Once an agreement is terminated,'' suggests EOBC, ''the host or sharer station could either find another channel sharing partner or notify the agency that it is no longer a shared station and that its license should be modified accordingly. The host station would then have the right to utilize the full capacity of its 6 MHz channel. The sharee station(s), meanwhile, could either relinquish their licenses or find a new partner, subject to the one-year time limit to resume transmissions under section 312(g) of the Communications Act.'' CTIA supports this approach, as do Fox, Ion Media, Tribune, and Univision. EOBC further argues that we should authorize ''second generation'' CSAs subject to the same rights and restrictions as CSAs entered into in connection with the incentive auction.

19. We modify our rules to provide flexibility for broadcasters to determine the length of their CSAs. Specifically, we will permit broadcasters to choose the length of their channel sharing agreements. We agree that allowing term-limited CSAs will encourage channel sharing bids in the incentive auction by allowing parties to end the channel sharing relationship if they choose while still having the opportunity to continue operating. We also agree with EOBC that providing such flexibility is appropriate to meet broadcasters' individualized programming and economic needs. Consistent with our decision, as discussed below, we will not permanently designate channels as ''shared'' in the Table of Allotments. Instead, a channel's shared status will be indicated on a sharing station's license.

20. However, our decision to allow term-limited CSAs raises the question of whether to authorize CSAs by full power and Class A stations outside the incentive auction context. In the companion Notice of Proposed Rulemaking, we tentatively conclude that we should allow future CSAs outside the incentive auction context, and we invite comment on issues attendant to that proposal.

D. Termination of a Sharing Station's Spectrum Usage Rights

21. Under the rules adopted in the *IA R&O,* if a channel sharing station's license is terminated due to voluntary relinquishment, revocation, failure to renew, or any other circumstance, the remaining channel sharing station or stations will continue to have rights to their portion(s) of the shared channel, and the rights to the terminated portion of the shared channel will revert to the Commission for reassignment. The Commission further stated that shared channels ''permanently will be designated as shared in the Table of

Allotments, absent a future rulemaking proceeding to redesignate the channel for non-shared use.''

22. EOBC argues that ''[e]ven the possibility that the FCC could appoint a successor sharing partner will be troublesome to most broadcasters considering the channel sharing option.'' Instead, EOBC argues that channel sharing parties should have ''the option to reclaim the spectrum rights (but not the licenses) previously held by the departing party . . . Thus, if a sharee station relinquishes its spectrum, the host station could either find a new channel sharing partner . . . or resume use of the full six megahertz channel. If the host station relinquishes its spectrum, meanwhile, the sharee station(s) would have the option to assume the previously shared channel, subject to the technical parameters of the existing allotment.'' CTIA agrees that, if a sharing station relinquishes its license, then the right to use the relinquished portion of the shared spectrum should return to the remaining sharing partner(s). Similarly, Fox, Ion Media, Tribute, and Univision agree that ''upon expiration or termination of a CSA sharing stations should have the flexibility either to utilize the full capacity of their shared channel or to enter into a channel sharing arrangement with a new partner (or partners).'' No parties opposed this request.

23. We grant EOBC's request, and modify our rules to allow parties to develop CSA terms that address what happens in the event that a sharing party's license is terminated for any reason, rather than providing that the terminated spectrum usage rights revert to the Commission for reassignment. Our decisions here do not affect the right of a channel sharing party to assign or transfer its license consistent with the *IA R&O.*

24. We agree with EOBC that, as business partners, channel sharers should ''have the ability to choose partners that satisfy their own criteria.'' The Commission will not select a sharing partner. To accommodate this flexibility, we will not permanently designate channels as ''shared'' in the Table of Allotments, and a channel's shared status will be indicated on the station license. In the event that a sharing partner relinquishes its license, its spectrum usage rights (but not its license) may revert to the remaining sharing partners if the partners so agree. Where only one sharing partner remains, it may apply to change its license to non-shared status using FCC Form 2100 Schedule B (formerly FCC Form 302) or F (formerly FCC Form 302–CA). If a full power station that is sharing with a Class A station relinquishes its license, then the Class A station would continue to operate under the rules governing Class A stations.

E. Commission Review of CSAs and Licensing of Channel Sharees

25. In order to provide additional certainty to broadcasters interested in the channel sharing bid option, and in light of our decision to allow post-auction CSAs, we modify and clarify our procedures for submission and review of both pre-auction and post-auction CSAs. At the outset, we emphasize that we will not question parties' business judgment in drafting CSAs.

26. If a licensee submits an executed CSA before the auction along with its auction application, we will accept for purposes of determining eligibility to participate the applicant's certification that the CSA complies with our channel sharing operating rules. We will not review the CSA itself at the pre-auction stage for compliance with our operating rules. We will review the CSA at the pre-auction stage solely to confirm that the parties qualify for the channel sharing exception to the rule prohibiting certain communication adopted in the *IA R&O.*

27. Post-auction, we will review CSAs submitted before or after the auction by successful bidders to determine whether the CSAs meet the requirements the Commission has adopted to ensure compliance with our CSA operating rules and policies. Although in the *IA R&O* we reserved the right to review the CSA and require modification of any CSAs that do not comply with our CSA operating rules and policies, we clarify that such review will occur after the auction. To allow time for such review, we modify our rules to require that, at least 60 days prior to the date by which it must implement the CSA, the channel sharee file a minor change application for a construction permit specifying the same technical facilities as the sharer station, and include a copy of the CSA with its application. This requirement will be the same regardless of whether the parties execute their CSA before or after the auction. Following grant of the construction permit and initiation of shared operations, both the sharee and sharer must file a license application. We emphasize again that the Commission does not involve itself in private contractual agreements, and we do not intend during our review of the CSA to substitute our judgment for that of the parties with respect to the terms of the agreement. Thus, we will limit our post-auction review to confirming that the CSA contains the required provisions and that any terms beyond those related to sharing of bitstream and related technical facilities comport with our general rules and policies regarding licensee agreements. We also reiterate that any application for a construction permit or modified license filed in accordance with the requirements established here or in the *IA R&O* will not trigger the filing of competing applications.

F. Exception to Prohibited Communications for Parties to CSAs

28. Under the rules adopted in the *IA R&O,* all parties to a CSA submitted with a reverse auction application may communicate with each other about their bids and bidding strategies. The Commission adopted this exception to the rule generally prohibiting such communications in order to encourage channel sharing relationships, allowing potential channel sharers to fully engage as various options are presented during the auction process. In light of the risk of agreements to reduce competition in response to auction conditions, however, the exception is limited to CSAs executed prior to the reverse auction application filing deadline and submitted with the reverse auction application. We note that a CSA may have more than two parties (if, for instance, three stations propose to share the same channel), and all parties to a pre-auction CSA may communicate during the auction. Commenters have proposed that we also allow stations to enter into multiple contingent CSAs. We will address this issue in a forthcoming decision.

IV. Procedural Matters

A. Supplemental Final Regulatory Flexibility Act Analysis

29. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice of Proposed Rule Making* (''*Notice*''). The Commission sought written public comment on the proposals in the *Notice,* including comment on the IRFA. The Commission subsequently incorporated a Final Regulatory Flexibility Analysis (''FRFA'') in the Report and Order. This Supplemental FRFA conforms to the RFA and incorporates by reference the FRFA in the *IA R&O.* It reflects changes to the Commission's rules arising from the *First Order on Reconsideration* prepared in response to the Petition for Reconsideration filed by the Expanding Opportunities for Broadcasters Coalition (''EOBC'').

30. This *First Order on Reconsideration* affirms the Commission's commitment to making the channel sharing reverse auction bid option attractive to television broadcasters. In the *Channel Sharing R&O,* the Commission established rules authorizing channel sharing in connection with the incentive auction. The Commission addressed a variety of further issues related to channel sharing in the *IA R&O* in order to complete the framework for incentive auction-related channel sharing. In this First Order on Reconsideration, the Commission generally grants the EOBC Petition, finding that modifying its original determination will increase broadcasters' flexibility to use the channel sharing bid option, will make the option more attractive and will provide an improved ability of the Commission to monitor compliance of CSAs with our rules.

31. Specifically, in the *First Order on Reconsideration,* the Commission grants in part the EOBC petition for reconsideration by: Clarifying that the reversionary interest rule does not apply to CSAs; allowing parties the flexibility to enter into term-limited CSAs and to execute a CSAs post-auction; and modifying the rules to allow the spectrum usage rights of a sharing party whose license is terminated to revert to the remaining sharing parties rather than having the rights revert to the Commission for reassignment. The Order also clarifies that at the pre-auction stage Commission staff will only review CSAs to determine whether the bidder qualifies for the anti-collusion rule exception. To allow review for compliance with Commission rules, the Order requires that a channel sharee file a construction permit application, including a copy of the CSA, after the auction. Most notably, the flexibility granted herein will make it easier for entities such as small businesses and non-commercial education stations to avail themselves of the opportunity to channel share as part of the incentive auction.

32. No commenters directly responded to the IRFA in the *Notice.* Because a number of commenters raised concerns about the impact on small businesses of various auction design issues, the FRFA in the *IA R&O* addressed those concerns. The EOBC Petition addressed herein, and associated pleadings, did not raise any concerns with the FRFA.

33. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the rules adopted in this proceeding.

34. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the adopted rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

35. As noted, we incorporated a FRFA into the *IA R&O.* In that analysis, the Commission described in detail the various small business entities that may be affected by the final rules, including television broadcast entities. This First Order on Reconsideration amends the final rules adopted in the *IA R&O* affecting television broadcasting. This Supplemental FRFA incorporates by reference the description and estimate of the number of television broadcasting small entities from the IRFA in the Notice of Proposed Rulemaking accompanying this First Order on Reconsideration.

36. In section D of the FRFA incorporated into the *IA R&O,* the Commission described in detail the projected recording, recordkeeping, reporting and other compliance requirements for small entities arising from the rules adopted in the *IA R&O.* This Supplemental FRFA incorporates by reference the requirements described in section D of the FRFA. In this *First Order on Reconsideration,* however, the Commission adds and modifies rules adopted in the *IA R&O.* It adds the requirement that in order to take advantage of the flexibility adopted in this *First Order on Reconsideration* to enter into a channel sharing agreement post-auction, a license relinquishment bidder must indicate its intent to enter a post auction channel sharing agreement on its pre-auction application. The First Order on Reconsideration also requires channel sharee stations to file an application for construction permit, including a copy of the executed channel sharing agreement. Commercial stations must pay the fee associated with this filing. (Non-commercial entities are fee exempt.) In addition, it require CSAs to include a provision regarding the reversion of spectrum usage rights to remaining channel sharing partners in the event that one party has its license terminated. Finally, to take advantage of the new rule allowing the last remaining licensee to a channel sharing agreement to have its license revert to non-shared status, that last remaining licensee must file a license application requesting this reversion.

37. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

38. The reporting, recordkeeping, and other compliance requirements resulting from the First Order on Reconsideration will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules, including the payment of a construction permit filing fee by commercial broadcasters who are reverse auction winners and who will channel share, will unduly burden small entities. (Non-commercial broadcasters are exempt from such filing fees.) The construction permit itself will contain the same information included in the construction permit and license information of the channel sharer station and therefore can be copied without additional engineering work. The submission of the executed channel sharing agreement does not add cost as the rules already require execution of a channel sharing agreement between sharing parties.

39. While these new rules require additional filings for those reverse auction winning bidders that channel share, they give bidders, including broadcast television entities meeting the definition of small businesses, the increased flexibility to enter into post auction CSAs, to limit the term of their CSAs rather than make them permanent, and to request reversion of spectrum usage rights in the event of the termination of the license of a

broadcaster with whom they share spectrum. Lastly, the requirement that a channel sharee file a construction permit including a copy of the channel sharing agreement will streamline the pre-auction application process.

Federal Rules That Might Duplicate, Overlap, or Conflict With the Rules

40. None.

Report to Congress

41. The Commission will send a copy of this *First Order on Reconsideration* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Report to Small Business Administration

42. The Commission will send a copy of this First Order on Reconsideration, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Final Paperwork Reduction Act Analysis

43. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. It will be submitted to the Office of Management and Budget (''OMB'') for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding in a separate published **Federal Register** notice. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

44. We have assessed the effects of the policies adopted in this First Order on Reconsideration with regard to information collection burdens on small business concerns, and find that these policies will benefit many companies with fewer than 25 employees by providing them with options for voluntarily relinquishing broadcast spectrum usage rights and by streamlining the pre-auction application process. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Supplemental FRFA in Appendix B.

V. Ordering Clauses

45. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 405 of the Communications Act of 1934, as amended, and sections 6402 and 6403 of Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 405, 1404, and 1452, this FIRST ORDER ON RECONSIDERATION is ADOPTED and parts 1 and 73 of Commission's rules are AMENDED as set forth in the Appendix A of the *First Order on Reconsideration.*

46. IT IS FURTHER ORDERED that the rules adopted herein will become effective December 2, 2015, except for sections 1.2204(c)(4) and 73.3700(b)(1), which contain new or modified information collection requirements that require approval by the OMB under the PRA and WILL BECOME EFFECTIVE after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

47. IT IS FURTHER ORDERED that, that pursuant to sections 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by the Expanding Opportunities for Broadcasters Coalition IS HEREBY GRANTED IN PART AND IS OTHERWISE DISMISSED AS MOOT.

48. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this First Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

49. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this First Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Television.

47 CFR Part 73

Television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends Parts 1 and 73 of Title 47 of the Code of Federal Regulations as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Section 1.2200 is amended by revising paragraph (d) to read as follows:

§ 1.2200 Definitions.

* * * * *

(d) *Channel sharing bid.* The term *channel sharing bid* means a bid to relinquish all spectrum usage rights with respect to a particular television channel in order to share a television channel with another broadcast television licensee by an applicant that submits an executed channel sharing agreement with its application.

* * * * *

■ 3. Section 1.2204 is amended by redesignating paragraphs (c)(4)(i) through (iii) as (c)(4)(ii) through (iv), and adding new paragraph (c)(4)(i) to read as follows:

§ 1.2204 Applications to participate in competitive bidding.

* * * * *

(c) * * *

(4) * * *

(i) Whether it intends to enter into a channel sharing agreement if it becomes a winning bidder;

* * * * *

PART 73—RADIO BROADCAST SERVICES

■ 4. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 5. Section 73.3700 is amended by revising paragraph (a)(3); revising paragraph (b)(1)(i); adding paragraph (b)(1)(vii); revising paragraphs (b)(2)(i) introductory text, (b)(2)(ii), and (b)(3); and revising paragraphs (h)(2) through (5) to read as follows:

§ 73.3700 Post-incentive auction licensing and operation.

(a) * * *

(3) *Channel sharee station.* For purposes of this section, *channel sharee station* means a broadcast television station for which a winning channel sharing bid, as defined in § 1.2200(d) of this chapter, was submitted, or a broadcast television station for which a winning license relinquishment bid, as defined in § 1.2200(g) of this chapter, was submitted where the station licensee executes and implements a post-auction channel sharing agreement.

* * * * *

(b) * * *

(1) * * *

(i) Licensees of reassigned stations, UHF-to-VHF stations, and High-VHF-to-Low-VHF stations must file a minor change application for a construction permit for the channel specified in the Channel Reassignment Public Notice using FCC Form 2100 Schedule A (for a full power station) or E (for a Class A station) within three months of the release date of the Channel Reassignment Public Notice. Licensees that are unable to meet this filing deadline may request a waiver of the deadline no later than 30 days prior to the deadline.

* * * * *

(vii) Channel sharee stations must file a minor change application for a construction permit for the channel on which the channel sharer operates at least sixty (60) days prior to the date by which it must terminate operations on its pre-auction channel pursuant to paragraphs (b)(4)(i) and (ii) of this section. The application must include a copy of the executed channel sharing agreement.

* * * * *

(2) * * *

(i) *Alternate channels.* The licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station, or a broadcast television station described in paragraph (b)(1)(iv)(B) of this section will be permitted to file a major change application for a construction permit for an alternate channel on FCC Form 2100 Schedules A (for a full power station) and E (for a Class A station) during a filing window to be announced by the Media Bureau by public notice, provided that:

* * * * *

(ii) *Expanded facilities.* The licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station, or a broadcast television station described in paragraph (b)(1)(iv)(B) of this section will be permitted to file a minor change application for a construction permit on FCC Form 2100 Schedules A (for a full power station) and E (for a Class A station) during a filing window to be announced by the Media Bureau by public notice, in order to request a change in the technical parameters specified in the Channel Reassignment Public Notice (or, in the case of a broadcast television station described in paragraph (b)(1)(iv)(B) of this section that is not reassigned to a new channel, a change in its authorized technical parameters) with respect to height above average terrain (HAAT), effective radiated power (ERP), or transmitter location that would be considered a minor change under § 73.3572(a)(1) and (2) or § 74.787(b) of this chapter.

* * * * *

(3) *License applications for channel sharing stations.* The licensee of each channel sharee station and channel sharer station must file an application for a license for the shared channel using FCC Form 2100 Schedule B (for a full power station) or F (for a Class A station) within three months of the date that the channel sharee station licensee receives its incentive payment pursuant to section 6403(a)(1) of the *Spectrum Act.*

* * * * *

(h) * * *

(2) Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (h)(5)(i)(E) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application to change its license to non-shared status using FCC Form 2100, Schedule B (for a full power licensee) or F (for a Class A licensee).

(3) *Channel sharing between full power television and Class A television stations.* (i) A CSA may be executed between licensees of full power television stations, between licensees of Class A television stations, and between licensees of full power and Class A television stations.

(ii) A Class A channel sharee station licensee that is a party to a CSA with a full power channel sharer station licensee must comply with the rules of part 73 governing power levels and interference, and must comply in all other respects with the rules and policies applicable to Class A television stations, as set forth in §§ 73.6000 *et seq.*

(iii) A full power channel sharee station licensee that is a party to a CSA with a Class A channel sharer station licensee must comply with the rules of part 74 of this chapter governing power levels and interference.

(iv) A Class A channel sharee station may qualify only for the cable carriage rights afforded to ''qualified low power television stations'' in § 76.56(b)(3) of this chapter.

(4) *Channel sharing between commercial and noncommercial educational television stations.* (i) A CSA may be executed between commercial and NCE broadcast television station licensees.

(ii) The licensee of an NCE station operating on a reserved channel under § 73.621 that becomes a party to a CSA, either as a channel sharee station or as a channel sharer station, will retain its NCE status and must continue to comply with § 73.621.

(iii) If the licensee of an NCE station operating on a reserved channel under § 73.621 becomes a party to a CSA, either as a channel sharee station or as a channel sharer station, the portion of the shared television channel on which the NCE station operates shall be reserved for NCE-only use.

(iv) The licensee of an NCE station operating on a reserved channel under § 73.621 that becomes a party to a CSA may assign or transfer its shared license only to an entity qualified under § 73.621 as an NCE television licensee.

(5) *Required CSA provisions.* (i) CSAs must contain provisions outlining each licensee's rights and responsibilities regarding:

(A) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(B) Allocation of bandwidth within the shared channel;

(C) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions;

(D) Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and

(E) Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.

(ii) CSAs must include provisions:

(A) Affirming compliance with the requirements in paragraph (h)(5) of this section and all relevant Commission rules and policies; and

(B) Requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least

one Standard Definition (SD) program stream at all times.

* * * * *

[FR Doc. 2015–27738 Filed 10–30–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GN Docket No. 12–268 and MB Docket No. 15–137; FCC 15–139]

Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Second Order on Reconsideration, the Federal Communications Commission (Commission) provides more flexibility to broadcasters interested in the channel sharing option in the broadcast incentive auction by clarifying that back-up channel sharing agreements (''CSAs'') are permitted under its rules and providing more time for successful bidders to transition to shared facilities after the auction. The Commission also provides guidance regarding how the CSA exception to the prohibited communications rule applies with respect to back-up CSAs.

DATES: Effective December 2, 2015.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, *Shaun.Maher@fcc.gov* of the Media Bureau, Video Division, (202) 418–2324.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration, FCC 15–139, adopted October 21, 2015, in MB Docket No. 15–137. The full text of the Second Order on Reconsideration is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Paperwork Reduction Act of 1995 Analysis: This Second Order on Reconsideration does not contain any additional new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13, beyond those that were already in the Commission's Incentive Auction Report and Order, 79 FR 48442–01 (Aug. 15, 2014) (''Incentive Auction R&O''). In addition, therefore, it does not contain any additional new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, beyond those that were already in the Incentive Auction R&O.

The Commission is seeking separate OMB approval for FCC Form 2100, Schedule B (for a full power station) and F (for a Class A station) and FCC Form 177.

Synopsis

1. The Commission adopted rules for the broadcast incentive auction in the Incentive Auction R&O including rules for parties interested in entering into CSAs. The Commission recently modified those channel sharing rules to provide greater flexibility to stations considering that option. In this Second Order on Reconsideration, the Commission announces that the availability of back-up channel sharing arrangements would provide additional flexibility for stations considering channel sharing. In particular, it would enable both parties to a CSA to participate in the auction while mitigating the risk that the auction system could freeze both stations in the same round and thus deprive both stations of a post-auction host or ''sharer'' station. For some, the risk of being left without any spectrum on which to share may be too great and foreclose that kind of participation. The Commission concludes that a back-up CSA could mitigate that risk and encourage greater participation.

2. The Commission clarifies that, if both parties to a CSA participate in the auction, the rules allow either or both parties to also enter into a back-up CSA with one other station in the same DMA to act as the back-up host or sharer station. By allowing the parties to secure a fallback arrangement in the event that both parties relinquish their spectrum usage rights in the auction, this clarification will help promote wider participation in the auction by broadcasters that require assurance that they will remain on the air in the DMA. The Commission reminds parties that all of their auction-related activity and communications, including with respect to back-up CSAs, must adhere to the antitrust laws as well as the rules.

3. In the Second Order on Reconsideration, the Commission rejects the Broadcaster Representatives' request to allow ''contingent multi-party CSAs across multiple markets.'' The Commission concludes that multi-market back-up CSAs are not necessary to address the uncertainty created if multiple parties to a particular CSA participate in the auction. Such a result would undermine the general goal of the rules prohibiting certain communications, which are intended to reinforce existing antitrust laws, facilitate the detection of collusive conduct, and assure incentive auction participants that the auction process will be fair and objective. The Commission restated that it crafted the CSA exception to apply on an agreement-by-agreement basis in order to encourage channel sharing relationships without undermining these objectives.

4. The Commission also clarifies that, consistent with the foregoing, the CSA exception to the reverse auction rule prohibiting certain communications applies only to communications between parties to a single CSA at any given time. Further, the CSA exception only applies to a CSA, including back-up CSAs, if the CSA was entered into and filed with the Commission by the application deadline. If both stations pursuant to the primary CSA have a bidding status of ''frozen—provisional winner,'' *i.e.*, the auction system determines that the station can never be assigned a feasible channel in its pre-auction band in the current stage, then parties to a back-up CSA may communicate regarding bids and bidding strategy and must cease communication of this type with the party to the original CSA. Prior to that point, the rationale for the CSA exception—that parties to a CSA should be able to ''fully engage as various options are presented during the auction process''—is inapplicable with respect to the back-up CSA. Once the relinquishment bid of the prospective host of the CSA is provisionally accepted by the auction system in a given stage of the auction, the CSA exception may be utilized for otherwise prohibited communications involving the parties to the back-up agreement, and can no longer be utilized for parties to the primary agreement in that stage.

5. The Commission notes that under the reverse auction bidding procedures, the bidding status of a ''frozen—provisional winner'' may change to ''bidding in the current round'' if the auction enters a subsequent stage. Accordingly, if the host in the primary CSA, which was no longer operative because its bidding status became ''frozen—provisional winner'' in the

previous stage, is designated as ''bidding in the current round'' in a subsequent stage of the auction, and that CSA expressly provides that it becomes the operative sharing agreement under such circumstances, the host may notify the sharee in the primary CSA of that change in status and the CSA exception will again apply to communications between the parties to the primary agreement rather than with the back-up host.

6. The Commission also finds that the attractiveness of the channel sharing option would be enhanced if sharees were given additional time to plan and execute their transition to the host's facilities. Currently, the rules require that all winning go off-air bidders in the reverse auction, including winning channel sharees, must terminate operations on their pre-auction channels within three months of when they receive auction proceeds. While three months for termination of operations is sufficient for go off-air winners who intend to relinquish their licenses and cease broadcasting altogether, the Commission recognizes that winning bidders that plan to share a channel will remain in operation and may therefore need more time to implement the move to the sharer's facility. For instance, a channel sharee may need time to deal with technical issues associated with transitioning to its shared location. If it is changing its community of license, it may also need to negotiate modifications to carriage agreements or finalize new must-carry arrangements with multichannel video programming distributors.

7. For these reasons, the Commission modifies section 73.3700(b)(4)(ii) of the rules to extend the amount of time a sharee in a pre- or post-auction CSA will have to relinquish its pre-auction channel to six months after receipt of its reverse auction proceeds. As the Commission decided in the Incentive Auction R&O, winning channel sharing bidders may request a waiver of up to an additional three months to cease operations on their pre-auction channel, pursuant to section 1.3 of the rules, and the Commission will view these requests most favorably. Further, winning channel sharing bidders may request an additional three-months, and the Commission will view the additional requests favorably as well so long as it determines that grant of the extension will not delay the post-auction transition. The Commission finds that this extension of the transition period to six months, and the availability of waivers of up to an additional six months, is unlikely to adversely affect the Commission's post-auction transition timeline.

Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA).

In 2012, Congress mandated that the Commission conduct an incentive auction of broadcast television spectrum as set forth in the Middle Class Tax Relief and Job Creation Act of 2012 (''Spectrum Act''). The incentive auction will have three major pieces: (1) A ''reverse auction'' in which full power and Class A broadcast television licensees submit bids to voluntarily relinquish certain broadcast rights in exchange for payments; (2) a reorganization or ''repacking'' of the broadcast television bands in order to free up a portion of the ultra-high frequency (''UHF'') band for other uses; and (3) a ''forward auction'' of licenses for flexible use of the newly available spectrum. In the Incentive Auction R&O, the Commission adopted rules to implement the broadcast television spectrum incentive auction. Among other things, the Commission adopted rules for broadcast stations that choose to channel share. Pursuant to the RFA, a Final Regulatory Flexibility Analysis (''FRFA'') was incorporated into the Incentive Auction R&O.

This Second Order on Reconsideration reflects clarifications and modifications to the Commission's rules arising in response to comments filed by Fox, ION, Tribune, and Univision (the ''Broadcaster Representatives''). The Commission generally responds favorably to the Broadcaster Representatives' requests, finding that providing these clarifications will increase broadcasters' flexibility to use the channel sharing bid option and will make the option more attractive. Specifically, this Second Order on Reconsideration clarifies the Commission's rules to permit broadcasters to enter into back-up channel sharing agreements (''CSAs'') with an additional partner to mitigate the risk that stations that intend to channel share could be left without spectrum after the auction, if both partners receive a status of ''frozen-provisionally winning'' in the same round of the reverse auction. The Commission also clarified that the CSA exception to the general prohibition on communications regarding bids and bidding strategy will apply to that back-up CSA, so long as the back-up CSA was filed before the application deadline, is the requirement for all CSAs. This Second Order on Reconsideration also permits back-up agreements based on price or other contingencies, but declines to extend the CSA exception to them as introducing unacceptable risk of becoming a vehicle for collusion. Finally, this Second Order on Reconsideration extends the transition period for channel sharing winning bidders from three months to six months, and extends the possibility for additional waivers from three months to six months, barring any delay this would cause other transitioning broadcasters.

Neither of these changes adopted in this Second Order on Reconsideration will impose additional costs. The changes provide greater flexibility for both stations that wish to pursue channel sharing agreements pre-auction and those that become channel sharing stations post-auction. Therefore, the Commission certifies that the changes adopted in this Second Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of the Second Order on Reconsideration, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Second Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

None.

List of Subjects in 47 CFR Part 73

Television and reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Section 73.3700 is amended by revising paragraphs (b)(3) and (b)(4)(ii) to read as follows:

§ 73.3700 Post-incentive auction licensing and operation.

* * * * **

(b) * * *

(3) *License applications for channel sharing stations.* The licensee of each channel sharee station and channel sharer station must file an application for a license for the shared channel using FCC Form 2100 Schedule B (for a full power station) or F (for a Class A station) within six months of the date that the channel sharee station licensee receives its incentive payment pursuant to section 6403(a)(1) of the *Spectrum Act.*

(4) * * *

(ii) The licensee of a channel sharee station and a licensee of a license relinquishment station that has indicated in its Form 177 an intent to enter into a post-auction channel sharing agreement must comply with the notification and cancellation procedures in § 73.1750 and terminate operations on its pre-auction channel within six months of the date that the licensee receives its incentive payment pursuant to section 6403(a)(1) of the Spectrum Act.

* * * * *

[FR Doc. 2015–27632 Filed 10–30–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XE293

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2015 Gulf of Alaska Pollock Seasonal Apportionments

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

ACTION: Temporary rule; inseason adjustment

SUMMARY: NMFS is adjusting the 2015 seasonal apportionments of the total allowable catch (TAC) for pollock in the Gulf of Alaska (GOA) by re-apportioning unharvested pollock TAC in Statistical Areas 610, 620, and 630 of the GOA. This action is necessary to provide opportunity for harvest of the 2015 pollock TAC, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 28, 2015, until 2400 hours A.l.t., December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The annual pollock TACs in Statistical Areas 610, 620, and 630 of the GOA are apportioned among four seasons, in accordance with § 679.23(d)(2). Regulations at § 679.20(a)(5)(iv)(B) allow the underharvest of a seasonal apportionment to be added to subsequent seasonal apportionments, provided that any revised seasonal apportionment does not exceed 20 percent of the seasonal apportionment for a given statistical area. Therefore, NMFS is increasing the D season apportionment of pollock in Statistical Areas 610, 620, and 630 of the GOA to reflect the underharvest of pollock in those areas during the C season. In addition, any underharvest remaining beyond 20 percent of the originally specified seasonal apportionment in a particular area may be further apportioned to other statistical areas. Therefore, NMFS also is increasing the D season apportionment of pollock to Statistical Areas 610 and 630 based on the underharvest of pollock in Statistical Areas 620 of the GOA. These adjustments are described below.

The D seasonal apportionment of the 2015 pollock TAC in Statistical Area 610 of the GOA is 12,185 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the D season apportionment for Statistical Area 610 by 2,437 mt to account for the underharvest of the TAC in Statistical Areas 610 and 620 in the C season. This increase is in proportion to the estimated pollock biomass and is not greater than 20 percent of the D seasonal apportionment of the TAC in Statistical Area 610. Therefore, the revised D seasonal apportionment of the pollock TAC in Statistical Area 610 is 14,622 mt (12,185 mt plus 2,437 mt).

The D seasonal apportionment of the pollock TAC in Statistical Area 620 of the GOA is 14,628 mt as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the D seasonal apportionment for Statistical Area 620 by 2,926 mt to account for the underharvest of the TAC in Statistical Areas 620 in the C season. This increase is not greater than 20 percent of the D seasonal apportionment of the TAC in Statistical Area 620. Therefore, the revised D seasonal apportionment of the pollock TAC in Statistical Area 620 is 17,554 mt (14,628 mt plus 2,926 mt).

The D seasonal apportionment of pollock TAC in Statistical Area 630 of the GOA is 18,639 mt as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the D seasonal apportionment for Statistical Area 630 by 3,728 mt to account for the underharvest of the TAC in Statistical Areas 620 and 630 in the C season. This increase is in proportion

to the estimated pollock biomass and is not greater than 20 percent of the D seasonal apportionment of the TAC in Statistical Area 630. Therefore, the revised D seasonal apportionment of pollock TAC in Statistical Area 630 is 22,367 mt (18,639 mt plus 3,728mt).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would provide opportunity to harvest increased pollock seasonal apportionments. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 27, 2015.

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

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

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

Dated: October 28, 2015

Emily H. Menashes,

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

[FR Doc. 2015–27864 Filed 10–28–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 211
Monday, November 2, 2015

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 39

[Docket No. FAA–2015–4808; Directorate Identifier 2014–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus 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 Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. This proposed AD was prompted by reports that cracks were found on an adjacent hole of certain frames of the center wing box (CWB). This proposed AD would require removing fasteners, a rototest inspection of fastener holes, installing new fasteners; and if necessary, oversizing the holes and doing rototest inspections for cracks, and repairing any cracking that is found. We are proposing this AD to detect and correct cracking on certain holes of certain frames of the CWB, which could affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by December 17, 2015.

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

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

For service information identified in this proposed 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 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–2015–4808; 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–2015–4808; Directorate Identifier 2014–NM–134–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0149, dated June 13, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. The MCAI states:

> During accomplishment of A330 Airworthiness Limitation Item (ALI) task 57–11–04 on the rear fitting of the Frame (FR) 40 between stringers 38 and 39 on both [left-hand] LH/[right-hand] RH sides, cracks were found on an adjacent hole. After reaming at second oversize of the subject hole, the crack was still present.
>
> Other crack findings on this adjacent hole have been reported on A330 and A340–200/–300 aeroplanes as a result of sampling inspections.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires removal of the fasteners and repetitive rototest inspections of fastener holes at FR40 vertical web located above Center Wing Box (CWB) lower panel reference and/or below CWB lower panel reference on both sides and, depending on findings, accomplishment of the applicable corrective actions.
>
> Note: These holes affected by this [EASA] AD are different from the ones affected by EASA AD 2009–0001 [*http://ad.easa.europa.eu/blob/easa_ad_2009_0001.pdf/AD_2009-0001_1*].

Required actions also include oversizing certain holes, installing new fasteners, and repairing any cracking that is found. The initial compliance times range from 13,500 to 30,900 flight cycles, or 57,000 to 162,000 flight hours, depending on operation and utilization. The repetitive compliance times are 7,400 flight cycles/24,300 flight hours or 5,950 flight cycles/40,400 flight hours from ALI embodiment. 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–2015–4808.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information. The service information describes procedures for removing the fasteners and doing a repetitive rototest inspection of fastener holes at frame (FR) 40 vertical web on both sides, installing new fasteners in transition fit, and oversizing the holes.

- Airbus Service Bulletin A330–57–3114, dated March 12, 2013.
- Airbus Service Bulletin A330–57–3115, dated April 4, 2013.
- Airbus Service Bulletin A330–57–3116, dated March 12, 2013.
- Airbus Service Bulletin A340–57–4123, dated March 12, 2013.
- Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.
- Airbus Service Bulletin A340–57–4125, dated March 12, 2013.

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 of this NPRM.

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.

Costs of Compliance

We estimate that this proposed AD affects 35 airplanes of U.S. registry.

We also estimate that it would take about 78 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $232,050, or $6,630 per product, per inspection cycle.

In addition, we estimate that any necessary follow-on actions would take up to 98 work-hours and require parts costing $136,400, for a cost of up to $144,730 per product. We have no way of determining the number of aircraft that might need this action.

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):

Airbus: Docket No. FAA–2015–4808; Directorate Identifier 2014–NM–134–AD.

(a) Comments Due Date

We must receive comments by December 17, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification (Mod) 55792 or Mod 55306 has been embodied in production, and except those on which Airbus Repair Instruction R57115092 has been embodied in service on both right-hand (RH) and left-hand (LH) sides.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243 –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports that cracks were found on an adjacent hole of certain frames of the center wing box (CWB). We are issuing this AD to detect and correct cracking on certain holes of the CWB, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Inspection

Do a rototest inspection of the fastener holes at the frame (FR) 40 vertical web, on both sides, as specified in table 1 to paragraph (g) of this AD, except as required by paragraph (k) of this AD.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—COMPLIANCE LOCATION, METHOD, AND TIME

For model	In configuration	Inspect	In accordance with the accomplishment instructions of	At the later of—	
				The applicable time specified in paragraph 1.E., ''Compliance,'' of	And the earlier of
A330–300 series airplanes.	Pre-mod 44360 ..	Below the CWB lower panel reference.	Airbus Service Bulletin A330–57–3114, dated March 12, 2013.	Airbus Service Bulletin A330–57–3114, dated March 12, 2013.	Within 2,400 flight cycles or 24 months after the effective date of this AD.
A330–200 and –300 series airplanes.	Post-mod 44360 and pre-mod 49202.	Below the CWB lower panel reference.	Airbus Service Bulletin A330–57–3116, dated March 12, 2013.	Airbus Service Bulletin A330–57–3116, dated March 12, 2013.	Within 2,400 flight cycles or 24 months after the effective date of this AD.
A330–200 and –300 series airplanes.	Pre-mod 55306 and pre-mod 55792.	Above the CWB lower panel reference.	Airbus Service Bulletin A330–57–3115, dated April 4, 2013.	Airbus Service Bulletin A330–57–3115, dated April 4, 2013.	Within 2,400 flight cycles or 24 months after the effective date of this AD.
A340–200 and –300 series airplanes.	Pre-mod 44360 ..	Below the CWB lower panel reference.	Airbus Service Bulletin A340–57–4123, dated March 12, 2013.	Airbus Service Bulletin A340–57–4123, dated March 12, 2013.	Within 1,300 flight cycles or 24 months after the effective date of this AD.
A340–200 and –300 series airplanes.	Pre-mod 55306 and pre-mod 55792.	Above the CWB lower panel reference.	Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.	Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.	Within 1,300 flight cycles or 24 months after the effective date of this AD.
A340–200 and –300 series airplanes.	Post-mod 44360 and pre-mod 4902.	Below the CWB lower panel reference.	Airbus Service Bulletin A340–57–4125, dated March 12, 2013.	Airbus Service Bulletin A340–57–4125, dated March 12, 2013.	Within 1,300 flight cycles or 24 months after the effective date of this AD.

(h) Follow-On Actions: No Cracking

If no crack is found during any inspection required by paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Before further flight, install new fasteners in the transition fit, in accordance with the Accomplishment Instructions of the service information identified in table 1 to paragraph (g) of this AD; as applicable.

(2) Repeat the inspection required by paragraph (g) of this AD thereafter at the applicable time identified in paragraph 1.E., ''COMPLIANCE,'' of the service information identified in table 1 to paragraph (g) of this AD; as applicable.

(i) Follow-On Actions for Crack Findings

If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, oversize the holes to the first oversize in comparison with the current hole diameter, and do a rototest inspection for cracks, in accordance with the Accomplishment Instructions of the service information identified in table 1 to paragraph (g) of this AD; as applicable.

(1) If no cracking is found during the rototest inspection required by paragraph (i) of this AD, do the actions specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(i) Before further flight: Install new fasteners in the transition fit, in accordance with the Accomplishment Instructions of the service information identified in table 1 to paragraph (g) of this AD; as applicable.

(ii) Repeat the inspection required by paragraph (g) of this AD thereafter at the applicable time identified in paragraph 1.E., ''COMPLIANCE,'' of the service information identified in table 1 to paragraph (g) of this AD; as applicable.

(2) If cracking is found during the rototest inspection required by paragraph (i) of this AD, before further flight, repair 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).

(j) Terminating Action Specifications

Accomplishment of the initial and repetitive inspections required by this AD terminates accomplishment of Airworthiness Limitation Items Tasks 57–11–04 and 57–11–02 of the Airworthiness Limitation Section (ALS) Part 2, Damage Tolerant Airworthiness Limitation Items (DT ALI).

(1) Installation of new fasteners as specified in paragraph (h)(1) of this AD does not terminate the repetitive inspections required by paragraph (g) of this AD.

(2) Accomplishment of the corrective actions specified in paragraphs (i) and (i)(1) of this AD does not terminate the repetitive inspections required by paragraph (g) of this AD.

(3) Accomplishment of the repair specified in paragraph (i)(2) of this AD does not terminate repetitive inspections required by paragraph (g) of this AD, unless the approved repair method specified otherwise.

(k) Exceptions to Service Information

(1) If the service information identified in table 1 to paragraph (g) of this AD specifies contacting Airbus for appropriate action: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(2) Where paragraph 1.E., ''Compliance,'' of the service information specified in table 1 to paragraph (g) of this AD specifies a Compliance Time in terms of a ''Threshold'' and ''Grace Period,'' this AD requires compliance at the later of the applicable Threshold and Grace Period.

(3) Where paragraph 1.E., ''Compliance,'' of the service information specified in table 1 to paragraph (g) of this AD specifies a Threshold as ''before next flight,'' this AD requires compliance before the next flight after the applicable finding.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (i) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (l)(1), (l)(2), (l)(3), (l)(4), (l)(5), (l)(6), (l)(7), (l)(8), or (l)(9) of this AD. This service information is not incorporated by reference in this AD.

(1) Airbus Technical Disposition Reference LR57D11023270, Issue B, dated July 12, 2011.

(2) Airbus Technical Disposition Reference LR57D11029171, Issue B, dated September 6, 2011.

(3) Airbus Technical Disposition Reference LR57D11029173, Issue B, dated September 6, 2011.

(4) Airbus Technical Disposition Reference LR57D11030741, Issue B, dated September 22, 2011.

(5) Airbus Technical Disposition Reference LR57D11029170, Issue C, dated September 6, 2011.

(6) Airbus Technical Disposition Reference LR57D11023714, Issue B, dated July 12, 2011.

(7) Airbus Technical Disposition Reference LR57D11029172, Issue B, dated September 6, 2011.

(8) Airbus Technical Disposition Reference LR57D11030740, Issue C, dated September 22, 2011.

(9) Airbus Service Bulletin A340–57–4124, dated April 4, 2013.

(m) 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.* 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.

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

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0149, dated June 13, 2014, 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–2015–4808.

(2) 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 October 21, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27725 Filed 10–30–15; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB15

Energy Labeling

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes amendments to the Energy Labeling Rule to create requirements related to a new label database on the Department of Energy's (DOE's) Web site, redesign ceiling fan labels, improve and update the comparability ranges for refrigerator labels, revise central air conditioner labels in response to new DOE enforcement requirements, improve water heater labels, and update current plumbing disclosures.

DATES: Written comments must be received on or before January 11, 2016.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Energy Labeling Amendments (16 CFR part 305) (Project No. R611004)'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/energylabeling,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex E), 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 E), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Energy Labeling Rule (''Rule'') in 1979,[1] pursuant to the Energy Policy and Conservation Act of 1975 (EPCA).[2] The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare competing models. It also contains labeling requirement for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels for many of the covered products and prohibits retailers from removing the labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on Web sites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three key disclosures: estimated annual energy cost; a product's energy consumption or energy efficiency rating as determined from Department of Energy (DOE) test procedures; and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. For energy cost calculations, the Rule specifies national average costs for applicable energy sources (*e.g.,* electricity, natural gas, oil) as calculated by DOE. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule's reporting requirements.[3]

II. Proposed Amendments to the Energy Labeling Rule

This Notice seeks comment on several proposed changes to the Energy Labeling Rule, including requirements related to a new label database on DOE's Web site, revised ceiling fan labels, new refrigerator comparability range information, portable air conditioner labeling, labeling for dual-mode refrigerators, revised central air conditioner labels in response to proposed changes to DOE's enforcement rules, water heater labels, and plumbing disclosures. The Commission sought comment on a few of these issues during its regulatory review of the Energy Labeling Rule.[4] Other issues discussed in this Notice reflect recent developments from DOE rulemakings and the consumer product marketplace.

A. Online Label Database

Background: In a June 18, 2014 Supplemental Notice of Proposed

[1] 44 FR 66466 (Nov. 19, 1979) (Rule's initial promulgation).

[2] 42 U.S.C. 6294. EPCA also requires DOE to develop test procedures that measure how much energy appliances use, and to determine the representative average cost a consumer pays for different types of energy.

[3] 16 CFR 305.10.

[4] *See* 77 FR 15298 (Mar. 15, 2012); and 79 FR 34642 (June 18, 2014).

Rulemaking (SNPRM) (79 FR 34642), the Commission sought comments on the development of a centralized label database to provide retailers and consumers with convenient access to energy labels.[5] To populate the database, the FTC proposed requiring manufacturers to submit URL links for labels to the DOE Compliance and Certification Management System (CCMS) database. The current rule already requires manufacturers to post product labels on their own sites.[6] The Commission explained that a new label repository at the DOE site would benefit consumers and retailers. Consumers would have access to a single comprehensive database at the DOE Web site containing label images for covered products. Online retailers would have access to digital labels for advertising or label replacement, without having to obtain the labels from individual manufacturers.[7]

The Commission predicted that the proposal would not create undue burdens because the DOE and FTC rules already require manufacturers of most covered products to submit annual reports through CCMS.[8] Additionally, manufacturers must display their labels online under the FTC rules. Accordingly, a manufacturer could simply add a link on CCMS to its Web page displaying the label.[9]

Comments: The comments submitted in response to the SNPRM offered different views on the proposed database.[10] Several, including the Joint Commenters, the California Utilities, online retailers, and heating and cooling manufacturers supported the concept but offered several implementation suggestions. Other industry members opposed the proposal.

In supporting the proposal, the Joint Commenters explained that a centralized database will likely reduce the time manufacturers spend fielding requests about label information and retailers spend complying with online label requirements. The California Utilities added that the central database will benefit many different market actors, including consumers, distributors, retailers, and organizations running energy efficiency incentive programs. According to the California Utilities, it would also help state agencies and efficiency organizations track compliance with various efficiency performance and labeling requirements. Amazon and the Direct Marketing Association (DMA) further explained that the proposal would increase overall industry efficiency by reducing the time retailers spend identifying and obtaining the correct EnergyGuide labels. This would allow retailers to make new products available to consumers and to complete internal compliance audits of their catalogues faster and at lower cost. Amazon and DMA also expect the database to encourage general compliance with the Rule, decrease instances of mislabeling, minimize retailer burdens, and increase label availability. DMA noted that manufacturers must already publish EnergyGuide labels on publicly accessible Web sites. Amazon agreed, explaining that the proposal would not place an undue burden on manufacturers who already publish EnergyGuide labels on publicly accessible Web sites and have open lines of electronic communication with CCMS.

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) and Goodman, from the heating and cooling equipment industry, also supported an online database. AHRI already includes label images on its own online directory for the heating and cooling equipment of its members. However, because its database displays labels in PDF format, it recommended that DOE or the FTC allow PDF files, in addition to URL links. Goodman recommended that the FTC rely on the EnergyGuide labels already generated by the AHRI database rather than requiring manufacturers to submit this information.

The Association of Home Appliance Manufacturers (AHAM) and the National Electrical Manufacturers Association (NEMA) opposed the proposal, identifying several concerns. First, according to AHAM, because manufacturers often certify new models to DOE before they design and post labels on their Web sites, a new submission requirement could complicate existing reporting. Specifically, AHAM suggested that posting labels to the DOE Web site prior to certification may run afoul of DOE and EPA restrictions on marketing prior to government certification. AHAM further argued that the proposal would yield little benefit because neither consumers nor retailers use CCMS to shop for products and existing FTC requirements already require the labels on manufacturer Web sites. According to AHAM, a URL link would also increase burdens by forcing some manufacturers to redesign their Web pages, which may not currently use separate links to display products. It may also require burdensome coordination with private labelers. Finally, AHAM argued that the frequent need to report information could lead to errors on the DOE Web site that could subject manufacturers to civil penalties. NEMA echoed AHAM's concerns, stating the database requirement would make it difficult for manufacturers to ensure they update the links over time. NEMA asserted that the average consumer will not view the CCMS database for label information but rather will look to a company Web site first. Likewise, manufacturers already maintain their own databases, so the CCMS database is not necessarily useful.

Discussion: To create a comprehensive label database, the Commission proposes to require manufacturers and private labelers to submit links to their EnergyGuide and Lighting Facts labels through their routine report to the DOE's CCMS pursuant to § 305.8.[11]

As discussed in the 2014 SNPRM and indicated by commenters, such a repository should benefit consumers and retailers by providing access to a single comprehensive database that contains all the covered labels. Retailers

[5] The comments received in response to the 2014 SNPRM are here: *https://www.ftc.gov/policy/public-comments/initiative-569.* The comments included: Air-Conditioning, Heating, and Refrigeration Institute (#00016); Alliance Laundry Systems LLC (#00010); Amazon (#00005); American Lighting Association (#00009); American Gas Association (#00013); American Public Gas Association (#00012); Association of Home Appliance Manufacturers (#00014); Direct Marketing Association (#00007); Earthjustice (''Joint Commenters'') (#00017); Energy Solutions (#00018); Glickman (#00002); Goodman Global, Inc. (#00008); Laclede Gas (#00011); National Electrical Manufacturers Association (#00006); Nicholas (#00003); Plumbing Manufacturers International (#00004); Republic of Korea (#00019); and Whirlpool Corporation (#00015).

[6] As explained in an earlier Notice, this requirement would not apply to private labelers, but manufacturers would be allowed to arrange with third parties, including private labelers, to display the labels and to submit the required links to CCMS. *See* 78 FR 2200, 2205 (Jan. 10, 2013).

[7] In January 2013, the Commission amended the Rule to require manufacturers to make copies of their EnergyGuide and Lighting Facts labels available on a publicly accessible Web site. *See* 78 FR at 2205. In doing so, the Commission aimed to improve the availability of online labels for retailers that sell covered products online.

[8] 10 CFR 429.12.

[9] Because the proposed CCMS database would link to manufacturers' label Web pages, the Commission did not propose eliminating requirements related to such Web pages. Doing so would likely impose greater technical maintenance and coordination burdens on both DOE and manufacturers.

[10] The comments are available at *https://www.ftc.gov/policy/public-comments/initiative-569.*

[11] The proposed requirement stems from EPCA's mandate that manufacturers ''provide'' a label, the Commission's general authority to require manufacturers to submit information, and the Commission's authority to specify the manner in which labels are displayed. 42 U.S.C. 6296(a) and (b); 42 U.S.C. 6294(c)(3).

can use the data for advertising and to replace missing labels for their display models. Consumers will be able to easily research comparative efficiency. Although consumers and retailers may not currently use CCMS extensively, the presence of label links should significantly increase consumer and retailer use of this resource.

The proposal is unlikely to create undue burdens on manufacturers. The Rule already requires manufacturers of most covered products to submit annual reports. DOE likewise requires manufacturers to make detailed electronic submissions through CCMS.[12] Additionally, manufacturers must display their labels online. The inclusion of URL links in those reports should not add significant burden to those existing requirements because a manufacturer could simply add a link on CCMS to its Web page displaying the label. In other words, the only additional burden upon manufacturers would be to add URL links to existing Web pages and to delete links when removing or replacing the corresponding Web pages. Finally, although AHRI requested that the Web site accommodate pdf file submissions, the Commission expects that AHRI, with adequate notice, can easily generate web links to those pdf files.

In addition, manufacturers will be able to incorporate the link submissions into their current reporting. The proposed rule requires that manufacturers submit the label links prior to distributing the products in commerce, consistent with current labeling requirements. Thus, the proposal is unlikely to require manufacturers to submit such information earlier. Although AHAM and NEMA suggested such an approach may run afoul of DOE and EPA certification requirements, it is not clear how this would occur. Nevertheless, the Commission seeks further comment on this issue. In addition, though some manufacturers may have to make modest changes to their Web sites to create links for their labels, any final rule would give them ample time to do so and thus minimize any burden associated with the change. Finally, it is not clear how the proposal would create submission errors beyond those that already occur with current submission requirements. The possibility of submission errors should be low because manufacturers will include their label links as part of the model certification reports they already submit to CCMS.

[12] 10 CFR 429.12.

The Commission seeks comments on this proposal. Among other things, comments should address whether manufacturers should provide label links for specialty consumer lamps and LED (light-emitting diode) general service lamps, which are not currently subject to FTC or DOE reporting requirements.

B. Improved Ceiling Fan Labels

Background: In the 2014 SNPRM (79 FR 34642, June 18, 2014), the Commission proposed changing the ceiling fan label to include estimated annual energy cost information as the primary disclosure and to otherwise make the label consistent with other EnergyGuide labels. The current label, which appears on product boxes and bears the title ''Energy Information,'' discloses airflow (cubic feet per minute), energy use (watts), and energy efficiency (cubic feet per minute per watt) at high speed. However, as the Commission previously stated, consumer research suggests energy cost information best serves consumers because it ''provides a clear, understandable tool to allow consumers to compare the energy performance of different models.'' [13]

The proposed label follows the EnergyGuide label format, consistent with other products displayed in showrooms, such as refrigerators and clothes washers. The proposed yellow label features the familiar ''EnergyGuide'' logo and includes a daily use assumption of six hours, an energy rate of 12 cents per kWh, and operation at high speed.[14] As with existing EnergyGuide labels for appliances, the proposed label would also contain the statement ''Your cost depends on rates and use.'' The Commission sought further comment on the proposed label, including its content, and the necessary compliance time.

After the 2014 SNPRM, DOE proposed revisions to the ceiling fan test procedure (79 FR 62521 (Oct. 17, 2014)) and new efficiency standards (79 FR 58290 (Sept. 29, 2014)). As part of that proceeding, DOE is considering setting the hours of operation to be used on the label, a representative or average speed, and a revised scope of products covered by the test procedure. Such new DOE requirements would govern much of the label's content.[15]

Comments: The comments generally supported the proposed changes. For example, the Joint Commenters explained that a new design will increase the label's effectiveness by aligning its appearance with the familiar EnergyGuide labels. However, many commenters also urged the Commission to coordinate the timing of any revised labels with ongoing DOE efforts to change the underlying test procedure.

The American Lighting Association (ALA), an industry group representing many fan manufacturers, did not oppose label changes but offered several suggestions. First, it urged the FTC to coordinate labeling changes with DOE to avoid duplication of time, energy, and compliance costs. Second, to reduce the burden associated with relabeling thousands of models, ALA recommended a 12-month compliance period for new models and a five-year compliance period for current products, instead of the proposed blanket two-year period. ALA reasoned that, because the approximate life cycle of most models is five years or less, an extended compliance period will greatly reduce industry burden.

Finally, the ALA comments urged the Commission to reconsider the usage assumptions behind the proposed label (*i.e.,* hours per day, operating speed, and utility rates). According to ALA, recent consumer research sponsored by industry members indicates that consumers typically run fans at medium speed (50% of consumers run fans at medium; 20% at high; and 30% at low). Given these results, ALA argued that ''high-speed'' cost disclosures are ''grossly misleading'' to consumers and significantly exaggerate actual consumer energy costs, placing an unfair and damaging perception on ceiling fan industry members compared to other heating and cooling-related products. Accordingly, ALA recommended that the label disclose costs at three speeds: low, medium and high. ALA also raised concerns about the proposed yearly cost disclosure given the wide variability in typical daily usage among consumers. Instead, ALA recommended that the label disclose an hourly cost. Alternatively, ALA indicated that a yearly cost based on the proposed six hour per day use would be acceptable. Consistent with ALA's comment, the Joint Commenters pointed to a DOE study estimating a 6.3 hours per day

[13] 72 FR 49948, 49959 (Aug. 29, 2007) (appliance labels); *see also* 75 FR 41696 (July 19, 2010) (light bulb labels); 76 FR 1038 (Jan. 6, 2011) (television labels).

[14] 78 FR 17648 (Mar. 22, 2013). In limiting the current label's disclosures to high speed operation, the Commission explained that ''inclusion of information for other speed settings would clutter the label with few additional benefits'' and noted comments indicating high-speed measurements reflect ''the true unregulated performance of the fan.'' 71 FR 78057, 78059 (Dec. 28, 2006).

[15] DOE issued a supplemental notice for the test procedure on June 3, 2015 (80 FR 31487).

national average daily ceiling fan use.[16] Finally, ALA urged the Commission to maintain the current small label size.

Discussion: The Commission plans to update the ceiling fan label as proposed. However, it will not issue final requirements until DOE completes its test procedures.[17] To ensure consistency with the DOE testing requirements, the Commission proposes to adopt final DOE use and operating assumptions for the amended label, including representative hours of operation, a representative or average speed, and a revised scope of products covered by the test procedure. Once a final rule is issued, the Commission plans to allow a two-year compliance period. The five-year period suggested by commenters for some models is simply too long because it would create a prolonged period during which inconsistent labels would appear in the marketplace. The Commission seeks comment on these proposals.[18]

C. Consolidated Refrigerator Ranges

Background: The current Rule organizes refrigerator comparability ranges by configuration (*e.g.,* models with top-mounted freezers), designating eight separate categories for refrigerators and three for freezers.[19] Five of those categories (or styles) apply to automatic-defrost refrigerator-freezers, which populate the bulk of showroom floors: side-by-side door models with and without through-the-door ice service; top-mounted freezer models with and without through-the-door ice service; and bottom-mounted freezer models.[20] The comparability ranges, which disclose the energy costs of the most and least efficient model in each category, allow consumers to easily compare the energy use of similarly configured units.

In the 2014 SNPRM (79 FR 34642, June 18, 2014), the Commission proposed consolidating the ranges for various refrigerator model types, based on comments suggesting that a substantial number of consumers consider several different configurations when shopping. The consolidation of ranges would facilitate such comparison shopping, simplify the range categories, and alert consumers to the relative energy efficiency of various refrigerator types. 79 FR at 34651, June 18, 2014. To effectuate this goal, the Commission proposed to consolidate ranges for automatic defrost models purchased by the vast majority of residential consumers, while maintaining separate categories for less common models.[21] Specifically, the Commission proposed to consolidate refrigerator ranges into three categories: automatic defrost refrigerator-freezers (currently Appendices A4–A8), manual or partial manual refrigerators and refrigerator-freezers (currently Appendices A2–A3, which cover mostly small-sized models), and refrigerators with no freezer (currently Appendix A1). The proposal maintained separate size classifications within the three categories because shoppers are unlikely to compare models of widely different sizes. The proposal also maintained the three freezer categories: upright manual defrost models (Appendix B1), upright automatic defrost models (Appendix B2), and chest freezers (Appendix B3) because there is no evidence that consumers typically shop for models across these categories.

Comments: These comments fell into three groups. As discussed below, efficiency groups continued to recommend refrigerator range consolidation while industry representatives continued to oppose it. In addition, some commenters suggested a hybrid approach, one which provided range data both for all models as well as specific model categories.

The Joint Commenters repeated their strong support for consolidating ranges. However, in contrast to the Commission's proposal, they recommended that the amendments consolidate all refrigerator-freezers into a single range, regardless of defrost features. They noted that some of the existing categories contain few, if any, models, and thus provide no meaningful comparison information at all.[22] They also argued that consolidation will provide range information relevant to most U.S. consumers. According to these commenters, available data demonstrates that many consumers already consider refrigerators with different configurations (and likely different features) when shopping.[23] In addition, new DOE standards have reduced the maximum allowable energy consumption by 20 to 25 percent and diminished differences between the high and low ends of the current ranges. Under these circumstances, the commenters argued that consolidated ranges would provide a more useful comparison.[24]

Alternatively, both the Joint Commenters and the California Utilities recommended a hybrid approach, which would display two ranges on the label—one with comparative information for a specific model configuration (*e.g.,* side-by-side door with ice service) and another with information about all models, regardless of configuration or features. The California Utilities explained that such a dual range would provide more informed consumer decisions. The Joint Commenters recommended that the FTC consider this approach should it maintain separate range categories for various refrigerator types.

AHAM opposed consolidation.[25] It argued that the existing categories provide valuable comparison

[16] Joint Commenters (citing *American Lighting Association, The Ceiling Fan Industry Response To The Department of Energy: Energy Conservation Standards Rulemaking Framework Document For Ceiling Fans and Ceiling Fan Light Kits* (June 13, 2013) at 14 (Docket No. ERE–2012–BT–STD–0045–0039)).

[17] Specifically, as indicated in its proposed notices last fall, DOE may establish the daily use hours for calculating label information, a representative (or average) speed for measuring energy use, and a revised scope of products covered by the test procedure. *See, e.g.,* 79 FR 62521 (Oct 17, 2014).

[18] In its test procedure Notice (79 FR at 62524 (Oct. 17, 2014)), DOE proposed a special testing approach for ''multi-mount'' fan models under the Rule's coverage. Such models can be installed in two configurations: extended from the ceiling or flush with the ceiling (*i.e.,* a ''hugger'' configuration). DOE proposed to require testing for these models at two separate configurations. Should DOE adopt such an approach, the Commission proposes that the EnergyGuide label for these models reflect the lowest efficiency (cubic feet per watt) configuration, with the option of providing a second label depicting the performance at the other configuration.

[19] The Rule further divides each model category into several size classes (*e.g.,* 19.5 to 21.4 cubic feet), each with its own comparability range.

[20] *See* 16 CFR part 305, appendices A and B. The Rule also has other range categories for less common models, including those with manual and partial defrost, and refrigerator-only models. In addition, the freezer categories include upright models with automatic defrost, upright models with manual defrost, and chest freezers.

[21] Given the different characteristics of the less common models, the Commission reasoned that typical consumers are not likely to consider such models alongside automatic defrost refrigerator-freezers. For automatic defrost refrigerator freezers, the label would state, ''Cost range based on all automatic-defrost refrigerator-freezers regardless of features or configuration.'' 78 FR at 34651 (June 18, 2014).

[22] They also mentioned new DOE categories and the need to avoid creating new ranges for such products. However, the Commission has no plans to expand the labeling categories to match those DOE changes. Indeed, in recent years, the Commission has not expanded existing labeling categories to match DOE changes.

[23] 79 FR at 34651 (June 18, 2014).

[24] The Joint Commenters noted that the Energy Star program continues to use criteria that vary by feature and configuration. However, in their view, consolidated groupings on the FTC label are unlikely to create confusion as long as the range clearly states the model types being compared. In addition, the comments suggested the Commission consider special language to clarify that any Energy Star designation reflects a comparison with similarly-equipped and configured models.

[25] AHAM also criticized the lack of regulatory text associated with the proposal, arguing it is impossible to fully evaluate or comment on the Commission's proposal.

information and help streamline the information consumers see. In its view, the proposed range consolidation could obscure this information, complicate consumers' efforts to compare products within specific categories, and mislead consumers into buying products solely based on an annual energy cost rather than other important considerations, such as configuration. It also argued that the current approach allows consumers to use the label's primary cost disclosure to compare models across product categories, even in the absence of a consolidated range.

Additionally, AHAM took issue with the data presented by commenters to support range consolidation. First, AHAM discounted data from Consumer Reports demonstrating that 40 percent of visitors to Consumer Reports' online refrigerator/freezer ratings reviewed multiple configurations. AHAM argued that, because Consumer Reports focuses on informative editorial reviews, including features beyond energy, consumers likely visit their site to narrow their choices prior to shopping. Second, AHAM disagreed with the Joint Commenters' interpretation of AHAM data indicating that more than half of side-by-side refrigerator-freezer owners buy replacement units with a different configuration. AHAM argued that these results do not necessarily support the proposal to consolidate the ranges.[26] In AHAM's view, the data simply demonstrate that consumers are about as likely to replace an existing model with one of the same type as they are to select a different configuration.[27] Accordingly, it argued that the Commission should not base its decision on this information. Similarly, AHAM recommended that the Commission disregard a survey of Earthjustice members offered in previous comments, stating that it comes from a biased sample of respondents who may have a better understanding of energy consumption than the average consumer. AHAM noted plans to provide updated data on this point.

The comments also offered different views on whether the proposal meets the Congressional intent of EPCA. AHAM asserted that the proposal conflicts with DOE's designated specific refrigerator-freezer product categories, which represent significant specific consumer benefits, preferences, and utilities. In contrast, the Joint Commenters argued that nothing in EPCA suggests the Commission must adhere to DOE's feature-protecting approach.[28] According to the Joint Commenters, the proposed category consolidation reflects differing purposes behind the FTC labeling and DOE standards programs, as reflected in EPCA. The Joint Commenters argued that EPCA authorizes DOE to group covered products into different classes each with unique standards. In doing so, DOE can tailor its standards for different categories that provide special features to consumers, while the FTC carries out its role to provide consumers with information that will assist them in making purchasing decisions.

Discussion: The Commission proposes to amend the refrigerator label to include two range groups: One grouped by applicable model subcategory (*e.g.*, side-by-side door configuration) and the other covering all refrigerators. Consistent with the current Rule, both range groups would include separate ranges organized by capacity. As discussed above, and in the SNPRM, information submitted by commenters, including AHAM, strongly suggests that a substantial number of consumers consider models with different features when shopping. However, as AHAM explained in its comments, not all shoppers do so. The proposal addresses both contingencies by allowing consumers to compare the labeled product to similar models as well as to all other refrigerators.

In addition to proposed Rule language to effect this change to the label, this Notice includes proposed updated ranges based on new model data from the DOE database, including a new range reflecting consolidated range data for all refrigerators. These consolidated ranges will appear on the labels along with those applicable to the particular product class. Before issuing final refrigerator ranges, the Commission will consider updating the numbers based on the most recent data.[29]

The proposal also amends the range tables to cover bottom-mounted freezers with through-the-door ice, a popular product subcategory currently not covered by the various tables. To accomplish this, the proposed amendments redesignate Appendix A7, which currently covers an obsolete category (top-mounted freezer with through-the-door ice models). In addition, the proposal modifies the size categories in each table to ensure consistency in all the ranges across all sizes. Consistent with past range changes, the Commission plans to provide manufacturers with 90 days after final amendments to comply with the updated labels. The Commission seeks comment on the proposal.[30] Finally, the Commission notes that nothing in EPCA requires the label ranges to match the categories set out by DOE in its standards regulations. EPCA's labeling section provides the Commission with flexibility to determine the content and format of the EnergyGuide labels, as long as the information provided reflects the results of the DOE test procedures.[31] DOE's product categories allow that agency to tailor the efficiency standards to different model types, which may exhibit variations in energy consumption depending on features and configuration. However, the DOE categories do not necessarily reflect the best model groupings for consumers when they comparison shop. Accordingly, the FTC range categories for consumer labels do not necessarily correspond to the DOE categories established for the standards program.

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[26] Specifically, AHAM noted that the current label already allows consumers to compare the energy cost of different features. In its view, these results do not necessarily indicate that a consumer who replaces a unit with a different configuration necessarily considered more than one configuration. For instance, a consumer may have already chosen to pursue a different configuration before they started shopping.

[27] AHAM argued that data simply show that 46 percent of the time, consumers shop for one configuration (side-by-side) and the other 54 percent of the time they consider something else, which could be limited to one configuration or could be an array of configurations. AHAM had no information about whether consumers replacing side-by-side configuration models with other configurations shop with a particular configuration in mind.

[28] The Joint Commenters noted that the FTC made similar changes when it consolidated categories for top-loading and front-loading clothes washers. The EnergyGuide label ranges group these machines together, offering separate ranges only for standard and compact models. 65 FR 16132, 16139 n. 91 (Mar. 27, 2000).

[29] As indicated in a previous Notice, the Commission will publish updated ranges for the clothes washer label based on new DOE data. *See* 79 FR 34642, 34657, n. 114 (June 18, 2014).

[30] The Commission also proposes to eliminate an obsolete reference to adjusted volume for refrigerators and freezers in the Rule's capacity section (section 305.7(a)(b)).

[31] *See* 42 U.S.C. 6294. *See also* 65 FR 16132, 16139 n. 91 (Mar. 27, 2000) ("The Commission is not constrained by any statutory provisions from establishing the product classes in the Appendices for purposes of the ranges of comparability in whatever form it believes to be most appropriate").

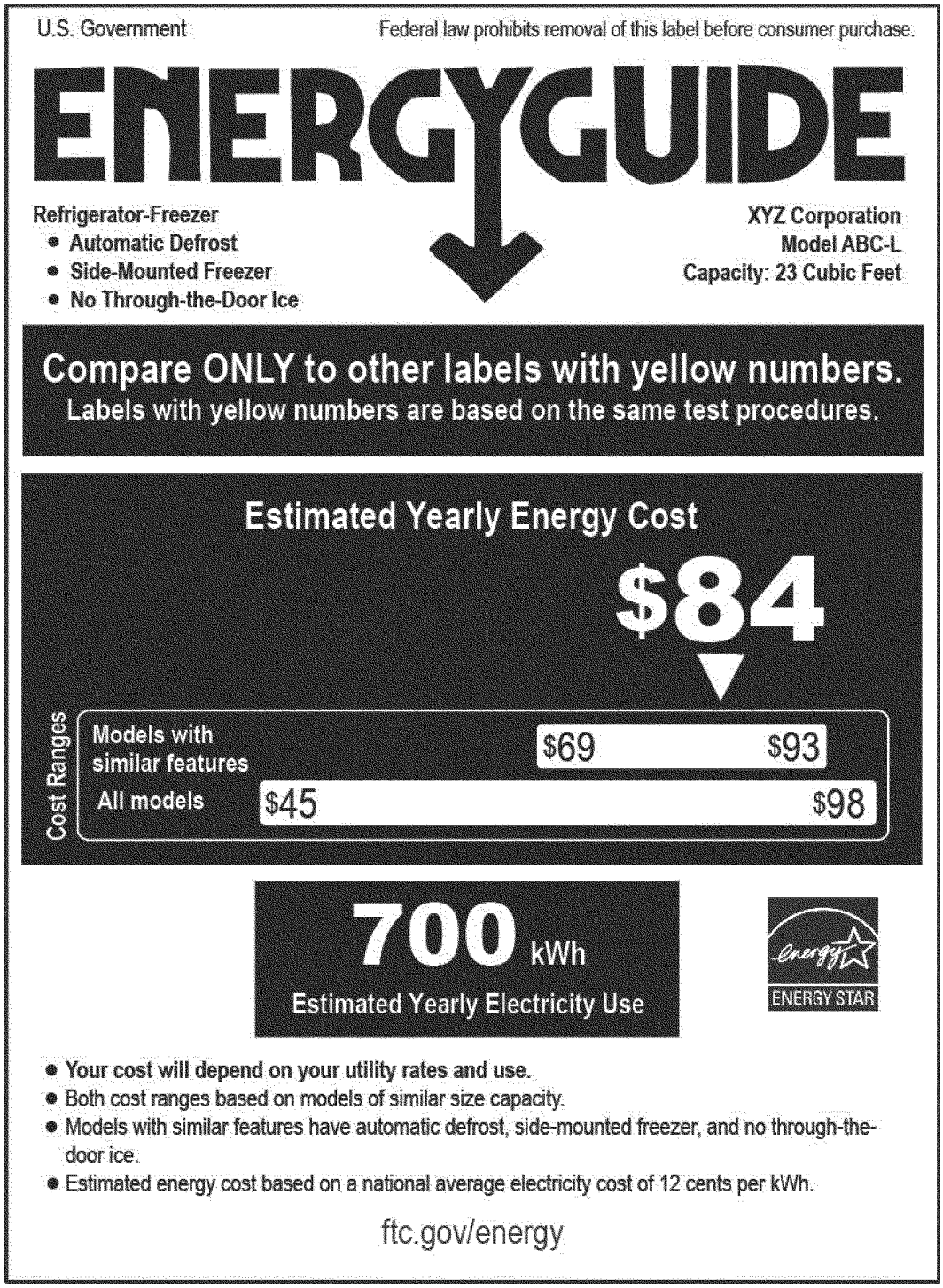

Figure 1 - Proposed Refrigerator-Freezer Label

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D. Dual Mode Refrigerator-Freezers

The Commission proposes to add a new Rule provision addressing covered refrigerator models that can operate as a refrigerator or a freezer under the DOE rules, depending on user settings. In 2014, DOE announced that such convertible refrigerator-freezers must be tested and certified to meet efficiency standards applicable to both refrigerators and freezers.[32] AHAM then sought clarification on labeling these products. Specifically, it suggested that, consistent with manufacturers' labeling practices, convertible products be labeled with the most energy intensive configuration. The Commission agrees. AHAM's proposal would ensure that labels for these products do not underestimate the energy cost of the product. The proposed rule contains language in § 305.11(f)(5) and (8)

[32] 79 FR 22320 (Apr. 21, 2014).

addressing this issue. The Commission seeks comment on this proposal.

E. Portable Air Conditioners

Background: In the 2014 SNPRM, the Commission proposed requiring EnergyGuide labels for portable air conditioners because DOE had proposed designating portable air conditioners as covered products under EPCA.[33] Given the similarity of portable air conditioners to room air conditioners, the Commission proposed to require the same or similar labeling for the two products. The proposal did not require labeling until DOE completes a test procedure.

Comments: In response, the comments supported, or at least did not oppose, labels for portable air conditioners. However, as discussed below, various comments urged the Commission to wait until DOE completes its rulemaking, requested more information about the proposed labeling, recommended labeling consistent with room air conditioners, and suggested the Commission consider using existing industry test procedures until DOE completes its rulemaking.

AHAM, which did not oppose the proposal, emphasized that the FTC should not require EnergyGuide labels for these products until DOE finalizes a regulation designating them as covered products and completes a test procedure. In addition, AHAM indicated that the FTC should provide more information about the label's benefits to consumers and a more detailed proposal. AHAM also noted that, as with room air conditioners, retail display practices for portable air conditioners are mixed (*i.e.,* models displayed both in and out of the box). Thus, AHAM suggested requiring the labels in the same location as the room air conditioner label.

The California Utilities supported labels on portable air conditioners and recommended that the Commission immediately require such labels based on an existing test procedure (ANSI/AHAM PAC–1–2009). It argued that doing so would provide consumer benefits while DOE finalizes its own test procedure.[34] According to these comments, the benefits from labeling these products outweigh potential costs associated with switching tests in the future. Additionally, the DOE rulemaking process often takes several years to complete, and the compliance date for these rulemakings is often three to five years beyond publication of the final DOE test procedure. To avoid this long delay, the California Utilities recommended that the Commission require procedures in ANSI/AHAM PAC–1 and develop EnergyGuide labeling requirements as soon as feasible.

Discussion: The Commission plans to require portable air conditioner labels after DOE completes its test procedure rulemaking. As discussed below, the Commission finds that labeling this product category is appropriate under EPCA because it is likely to assist consumers in their purchasing decisions and to be economically and technologically feasible.[35]

Portable air conditioners are common in the marketplace, use energy equivalent to already-covered room air conditioners, and vary in their energy use. Specifically, DOE has reported that the aggregate energy use of portable ACs has been increasing as these units have become popular in recent years.[36] According to DOE, sellers shipped an estimated 0.76 million units in the United States, with a projected growth to 0.98 million units by 2019, when DOE standards are scheduled to take effect. DOE also estimated that these products have a large efficiency rating range (approximately 8.2–14.3 EER). In addition, DOE estimated average per-household annual electricity consumption for these products at approximately 650 kWh/yr (750 kWh/yr for EER 8.2, and 400 kWh/yr for EER 14.3). Thus, given this energy information, the Commission finds that energy labeling for these products is likely to assist consumers with their purchasing decisions by allowing them to compare the energy costs of competing models. In addition, because these portable air conditioner models closely resemble room air conditioners, which are currently labeled under the Rule, the burdens and benefits of labeling these products should not differ significantly from those already applicable to room air conditioners. Therefore, the Commission finds that labeling for these products is economically and technologically feasible.

The Commission proposes to require labels for portable air conditioners identical to the current room air conditioner label in content and format. The proposed amendments include the DOE's proposed definition of ''portable air conditioner'' at section 305.3.[37] The amendments would include separate ranges for portable air conditioners in the Rule's appendices, which the Commission would publish after data becomes available. The Commission does not propose to combine the ranges with room air conditioners because it is not clear whether consumers routinely compare portable air conditioners to room air conditioners when shopping. In addition, consistent with requirements applicable to room air conditioners, the Commission proposes to establish reporting requirements identical to those created by DOE for these products.

At this time, DOE has not issued a final test procedure or language for the definition of ''portable air conditioner.'' [38] Once DOE issues a final test procedure, the Commission will make a final determination on labeling based on the comments received. If the Commission decides to require labels, the Commission will provide manufacturers adequate time to test their products and report energy data before they begin labeling their products. After such data is available, the Commission will publish ranges of comparability as well as a compliance date for the new labels. In the meantime, the Commission does not propose to require labeling based on existing industry test procedures in the short term. The Commission is concerned that, if the eventual DOE test results differ significantly from the existing industry tests, the EnergyGuide labels generated before and after the compliance date for the DOE test may not be comparable and thus could create

[33] 78 FR 40403 (July 5, 2013) and 42 U.S.C. 6292. Portable air conditioners are movable units, unlike room air conditioners, which are permanently installed on the wall or in a window. DOE has proposed to establish testing and standards for portable air conditioners pursuant to its authority in EPCA to add new product categories. If DOE decides to include portable air conditioners and if the Commission decides to require labels for these products, it will amend the Rule's coverage (and associated language) in a manner consistent with any final DOE determination.

[34] According to the comment, the metrics incorporated in the ANSI/AHAM test procedure include: Single duct energy efficiency ratio (SD-EER); dual duct energy efficiency ratio (DD–EER); and spot cooling energy efficiency ratio (SC-EER).

[35] *See* 42 U.S.C. 6294(a)(3).

[36] *See* 78 FR 40403, 40404–05 (July 5, 2013); *Technical Support Document: Energy Efficiency; Program for Consumer Products and Commercial and Industrial Equipment: Portable Air Conditioners.* U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy (Feb. 18, 2015), *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0033-0007.*

[37] To effect new labeling requirements, the proposed amendments insert the term ''portable air conditioner'' next to ''room air conditioner'' into appropriate paragraphs of §§ 305.2 (definitions), 305.3 (description of covered products), 305.7 (determinations of capacity), 305.8 (submission of data), 305.11 (labeling for appliances), and 305.20 (catalog requirements).

[38] DOE published a proposed test procedure on February 25, 2015 (80 FR 10212).

potential confusion.[39] The Commission invites further comments on labeling these products.

F. Heating and Cooling Equipment Requirements

The Commission proposes several amendments to the heating and cooling equipment label requirements related to new issues not discussed in the 2014 SNPRM. As detailed below, these proposed changes involve revised central air conditioner labels to reflect upcoming changes to DOE rules, new labels for rooftop furnace-air conditioner systems, manufacturer name disclosures on the label, and a clarification for disclosures of multiple model numbers on the label.

Revised Central Air Conditioner Labels—Regional Standards: On February 6, 2013, the Commission published new labeling requirements for heating and cooling equipment.[40] The new labels, directed by Congress, provide industry members and consumers with information about regional efficiency standards recently issued by DOE.[41] These DOE requirements impose regional efficiency standards for split-system air conditioners and single-package air conditioners. For all other covered heating and cooling equipment (*e.g.*, furnaces and boilers), the updated standards remain nationally uniform. Since publication of the regional standards related labels in 2013, the Commission has issued several notices updating ranges and labels to reflect a court-approved settlement that vacated DOE's regional standards for furnaces.[42]

During the fall of 2014, DOE conducted a negotiated rulemaking to establish enforcement rules for current regional standards applicable to central air conditioners.[43] The current standards set a minimum 14.0 Seasonal Energy Efficiency Ratio (SEER) for the southern and southwestern regions, a 13.0 SEER for all other areas, and separate Energy Efficiency Rating (EER) levels for the southwest region. For a particular condenser model, efficiency ratings vary (*e.g.*, 13.0 to 14.2 SEER) depending on the system (*i.e.*, the condenser-coil combination) installed in the consumer's home. Because such variability complicates efforts to enforce the regional standards, the consensus recommendation from the negotiated rulemaking advised DOE to determine regional compliance based on the condenser's lowest certified rating alone, not on the system rating as installed in the home.[44] For instance, if a condenser's efficiency rating ranges from 13.0 to 14.2 SEER (depending on the coil ultimately matched with it), DOE will consider the rating to be 13.0 SEER for regional standards compliance, regardless of which coil it is ultimately installed with.

The recommended change, if implemented by DOE, will require revisions to the EnergyGuide label for central air conditioners because the current label advises installers to ensure the rating for the system (*i.e.*, the specific condenser-coil combination) they install in a consumer's home meets the DOE regional standards. To conform the FTC label to these potential DOE requirements, the Commission, as detailed below, proposes new labels for central air conditioners that simply identify the states in which the labeled model may be installed.[45]

Specifically, the FTC proposes three types of labels for split systems. First, labels for models that may be installed anywhere (*i.e.*, those that meet all applicable SEER and EER thresholds) would contain the statement: ''Notice: Federal law allows this unit to be installed in all U.S. states and territories.'' Second, labels for models that do not meet the 14.0 SEER threshold for southern states and southwestern states would contain a map identifying the states in which the unit may be legally installed. For instance, a model with a minimum rated efficiency of 13.8 SEER would contain a map indicating that that model can be legally installed only in northern states along with a statement that ''Federal law prohibits installation of this unit in other states.'' Finally, labels for a model with a minimum 14.0 SEER rating that does not meet EER minimum ratings for the southwest region would contain a map indicating that it can be legally installed only in northern and southern states (excluding southwestern states) as well as a statement that installation elsewhere is prohibited. These new label disclosures will simplify compliance by eliminating the need for installers to compare specific system ratings against the DOE standards.

In addition, consistent with the recommended approach, the proposed label would disclose only the efficiency rating for lowest rated coil-condenser combination (*e.g.*, 14.4 SEER), eliminating the range of ratings currently on the label (*e.g.*, 13.9–15.0 SEER). The range of ratings on the current label alerts installers and consumers that a model's compliance with regional standards could vary depending on the installed coil-condenser combination. Given the enforcement approach developed during DOE's negotiated rulemaking, such information is no longer necessary for the label. A single, minimum efficiency rating will provide a simpler, more direct way to communicate the model's performance to consumers. If a system, as actually installed, has a higher efficiency rating than the minimum rating displayed on the label, that installer may communicate that fact to consumers. The Commission seeks comment on this and all other aspects of the proposal.

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[39] Under EPCA, any energy representations on the label must reflect the DOE test results. 42 U.S.C. 6293(c).

[40] 78 FR 8362.

[41] 16 CFR 305.12 & App. L, Prototype Label 3, Sample Labels 7A, 7B, 9.

[42] *See* 79 FR 46985 (Aug. 12, 2014); 79 FR 52549 (Sept. 4, 2014); 79 FR 77868 (Dec. 29, 2014). On April 24, 2014, the Court of Appeals for the D.C. Circuit approved a settlement in the DOE litigation, which vacates and remands DOE's regional standards for non-weatherized natural gas and mobile home furnaces and sets a two-year time table for DOE to propose new standards. *American Public Gas Ass'n* v. *DOE*, No. 11–1485 (D.C. Cir. filed Dec. 23, 2011) (DE.#1433580, May 1, 2013).

[43] *See, e.g.*, 79 FR 45731 (Aug. 6, 2014).

[44] *See* ''2014–10–24 Presentation Hand Out: Regional Standards Enforcement Working Group, Enforcement Plan,'' Oct. 24, 2014, Energy Efficiency and Renewable Energy Office, Department of Energy, *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-CE-0077-0070.*

[45] Such an approach is consistent with the current regional standards labels for single package units. *See, e.g.*, 78 FR at 8384 (sample label).

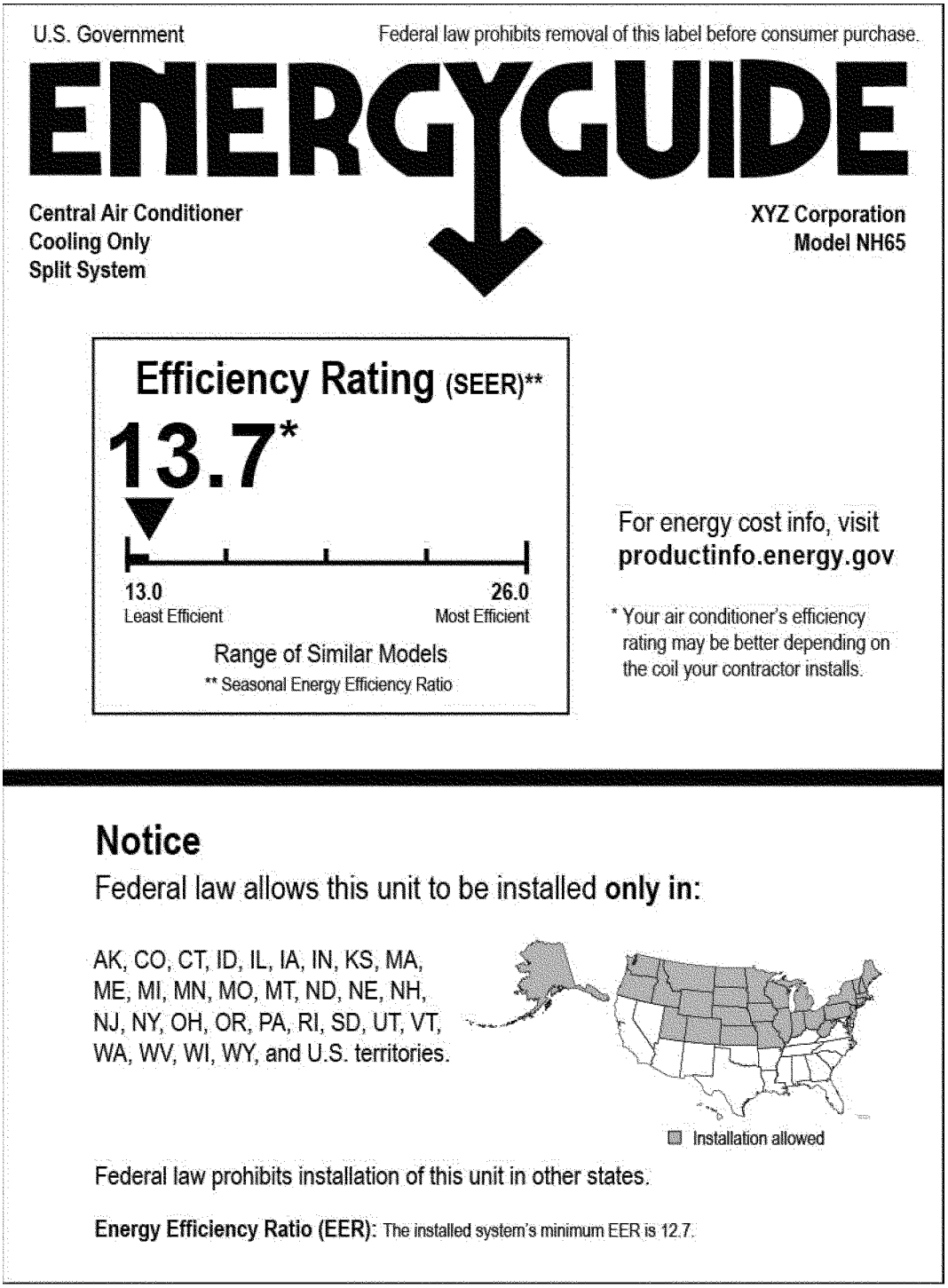

Figure 2 – Sample Proposed Central Air Conditioner Label

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Rooftop Systems: In its 2014 SNPRM comments, AHRI recommended that the Commission create new labels for packaged rooftop systems, a relatively new product consisting of a combination gas furnace and air conditioner (or heat pump). AHRI requested that the Commission amend the Rule to allow manufacturers to combine the gas furnace information and the air conditioner or heat pump information, as applicable, on a single EnergyGuide label. Such an approach would be consistent with residential heat pump labels, which already provide both cooling and heating efficiency information.

In response, the Commission proposes amending section 305.12 to allow a single label for these products reflecting the ratings for furnace and air conditioner (or heat pump) combinations as long as the unit meets all applicable air conditioner regional standards. For models that do not meet the air conditioner standards,

manufacturers would have to use two labels because a single label would not have space to accommodate all necessary disclosures (*i.e.,* the annual fuel utilization efficiency AFUE, SEER, and regional standards map). The Commission seeks comment on this proposal.

Manufacturer Name: The Commission also seeks comments on whether the Rule should continue to require the manufacturer or private labeler name on the label. In 2013, the FTC amended the heating and cooling equipment labels to require the manufacturer or private labeler's name on EnergyGuide labels for covered equipment. This change occurred as part of the larger effort to create new labels consistent with new DOE regional efficiency standards.[46] However, the Rule's current requirements for labels on refrigerators, clothes washers, and other appliances (§ 305.11) continue to give manufacturers or private labelers the option to put their names on labels. To ensure the heating and cooling labels are consistent with other EnergyGuide labels, the Commission proposes to restore the option in § 305.12(f)(2) and (g)(2) of including the manufacturer or private labeler name on the label. The Commission does not expect this will have any significant negative impact on consumers. For instance, the manufacturer or private labeler name is not necessary to use the DOE database, including the cost calculator, because the model number is adequate for that purpose. In addition, because the labels are generally affixed to the products themselves or appear on Web sites describing the product, consumers are likely to know the identity of the equipment's manufacturer or private labeler. The Commission seeks comments on this proposal.

Model Numbers: The Commission also proposes to clarify in § 305.12(f)(3) and (g)(3) that manufacturers or private labelers may print multiple model numbers on a single label as long as the models share the same efficiency ratings and capacities. In the original 1979 rulemaking notice, the Commission explained that manufacturers and private labelers may include multiple model numbers for models sharing the same rating and capacity; however, associated language did not appear in the rule itself.[47] By ensuring that all model numbers listed in a single label share the same capacity as well as efficiency rating, the proposed clarification would ensure all model numbers listed on a single label will generate the same cost calculations when entered into the DOE online database. The Commission seeks comment on this proposal.

Updating Retailer Disclosure Requirements (§ 305.14): The Commission plans to revise the effective date for the disclosure requirements in § 305.14 related to efficiency information that furnace and air conditioner installers must provide to customers.[48] In the Rule language (published in 2013), the Commission tied the effective date for the new provision to the compliance date for DOE regional furnace standards. However, because those DOE standards were subsequently vacated,[49] the Commission must set a new effective date. Accordingly, the Commission proposes to update that provision to clarify that the amendment published in 2013 now applies.

G. Water Heater Labels

The Commission seeks comment on whether it should modify water heater labels in response to a new DOE test procedure (79 FR 40541 (July 11, 2014)).[50] Among other things, the new test procedure creates four categories or ''bins,'' which group models by their ''first hour rating,'' DOE's standard measure of hot water output for these products. The first hour rating appears on current EnergyGuide labels and displays the number of gallons of hot water the heater can supply per hour. Currently, the Rule groups water heater ranges by the first hour rating in roughly five gallon increments (*e.g.,* 25–29, 30–34, 35–39 gallons, etc.). The four new DOE first hour rating bins are: very small (first hour rating less than 18 gallons), low (first hour rating between 18 and 51 gallons), medium (first hour rating between 51 and 75 gallons), and high (first hour rating greater than 75 gallons).

In anticipation of these changes, the Commission seeks comment on amendments to the water heater label ranges to provide both: (1) Tank capacity information; and (2) first hour rating information consistent with the four new DOE categories. Because water heaters are commonly marketed by tank size (*i.e.,* storage volume) and not first hour rating, comments should also discuss whether the Rule should group the ranges by tank size, and then further by first hour rating, placing the four DOE water usage bins within such tank size categories. Specifically, for storage water heaters, the proposed ranges contain three overall categories for tank capacity, which generally reflect the range of sizes in the market as well as size categories set by DOE in its standards: Fewer than 40 gallons, 40 to 55 gallons, and greater than 55 gallons. Within each of these three categories, the ranges group the models by DOE's four water usage categories (very small, small, medium, and large). For clarity, the proposed label would employ the term ''hourly hot water output'' instead of the more technical term ''first hour rating.'' The label would also contain text explaining the term ''hourly hot water output.''

[46] *See* 78 FR 8362 (Feb. 6, 2013). Though the proposed rule language contained this change (77 FR 33337 (June 6, 2012)), the proposed rule Notice did not discuss this issue. In issuing the original labeling rule in the 1970's, the Commission noted that the manufacturer and private labeler name was optional on EnergyGuide labels to ''minimize the printing burden on manufacturers who produce covered products for private labelers . . . .'' 44 FR 66466, 66470, 66479 (November 19, 1979).

[47] *See* 44 FR at 66479 (Nov. 19, 1979) (''a manufacturer or private labeler may include multiple model numbers on the label if the models have the same capacity and consume the same amount of energy'').

[48] In 2013, as part of the regional standards label rulemaking (78 FR 8362 (Feb. 6, 2013)), the Commission updated disclosure requirements in § 305.14 for manufacturers and retailers, including installers. The 2013 changes required sellers to ensure that consumers have pre-purchase access to the EnergyGuide labels for heating and cooling equipment. Previously, the Rule required sellers to disclose a list of information contained on the labels. The updated Rule simplified the disclosure by requiring retailers to provide access to the labels themselves.

[49] *See* 77 FR at 77868 (Dec. 29, 2014). *American Public Gas Ass'n* v. *DOE,* No. 11–1485 (D.C. Cir. filed Dec. 23, 2011) (DE.#1433580, May 1, 2013); (DE.# 1489805, Apr. 24, 2014).

[50] DOE also published a proposed rule in April 2015 related to a ''conversion factor'' for use under the new test procedure (77 FR 20116 (April 14, 2015)). In that Notice, DOE proposed to continue to allow manufacturers to determine costs under existing testing requirements and thus create ''a transition period for FTC to pursue a rulemaking to determine whether changes are needed to the water heater EnergyGuide label due to changes in the water heater test procedure.'' 77 FR at 20138 (April 14, 2015).

FIGURE 3—PROPOSED RANGES FOR STORAGE WATER HEATER

[Example—electric water heaters]

Tank capacity (gallons) and first hour rating (FHR) (gallons)	Range of estimated annual energy costs (dollars/year)	
	Low	High
Tank Capacity—Less than 40:		
FHR—"Very Small"—less than 18	$XX	$XX
FHR—"Low"—18 to 50.9	$XX	$XX
FHR—"Medium"—51 to 74.9	$XX	$XX
FHR—"High"—over 75	$XX	$XX
Tank Capacity—40 to 55:		
FHR—"Very Small"—less than 18	$XX	$XX
FHR—"Low"—18 to 50.9	$XX	$XX
FHR—"Medium"—51 to 74.9	$XX	$XX
FHR—"High"—over 75	$XX	$XX
Tank Capacity—Over 55		
FHR—"Very Small"—less than 18	$XX	$XX
FHR—"Low"—18 to 50.9	$XX	$XX
FHR—"Medium"—51 to 74.9	$XX	$XX
FHR—"High"—over 75	$XX	$XX

FIGURE 4—PROPOSED RANGES FOR INSTANTANEOUS GAS WATER HEATER

Gallons per minute (GPM)	Range of estimated annual energy costs (dollars/year)	
	Low	High
GPM—"Very Small"—less than 1.6	$XX	$XX
GPM—"Low"—1.7 to 2.7	$XX	$XX
GPM—"Medium"—2.8 to 3.9	$XX	$XX
GPM—"High"—over 4.0	$XX	$XX

The Commission also plans to update the comparability range for water heaters to reflect the results of the new test procedure and significant efficiency increases driven by the new DOE standards (see Figures 3 and 4).[51] Indeed, as a result of the new DOE standards, most if not all electric water heaters will include heat pump technology. The Commission, therefore, proposes revising the existing water heater categories to eliminate the separate category for heat pump water heaters, and combining such models into a general category for all electric water heaters. This change should simplify the tables and help consumers compare all electric water heaters.[52] The Commission seeks comments on various aspects of these proposals, including whether the label should contain any other information for consumers related to the transition to the recent DOE changes and whether the new label ranges for storage models should be organized by tank size and first hour rating (as proposed), or by some other approach.

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[51] Given the absence of model energy data from the new test procedure, the amendatory language in this Notice does not include proposed tables for revised cost ranges.

[52] The Commission also plans to update the definition of "water heater" so that it is consistent with clarifying changes to that term recently proposed by DOE. 79 FR 40541 (July 11, 2014).

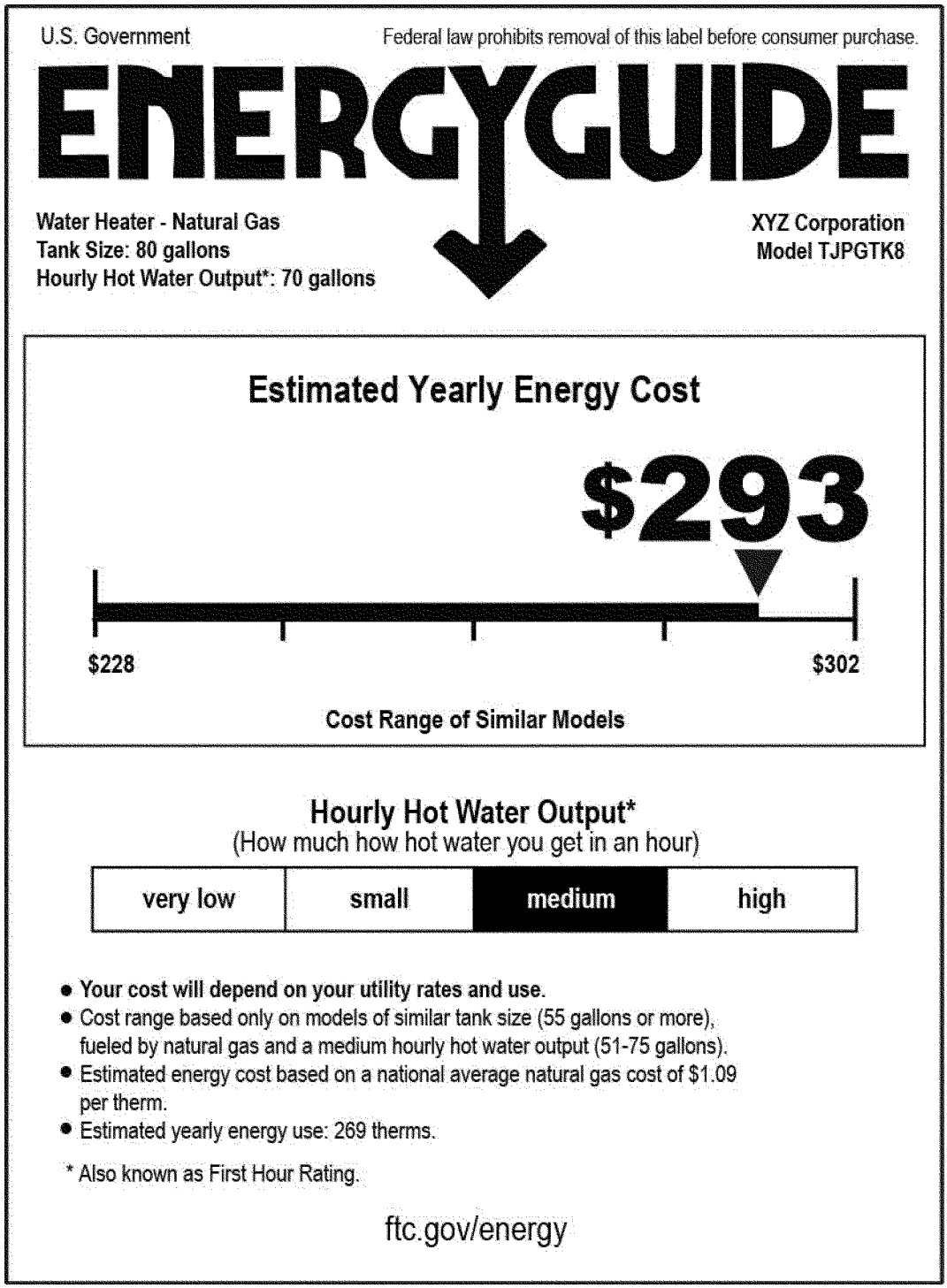

Figure 5 - Proposed Water Heater Label

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H. Plumbing ASME Reference Update

The Commission proposes to update the marking and labeling requirements in section 305.16 to reference the current ASME standards for showerheads and faucets (''A112.18.1''), as well as water closets and urinals (''A112.19.2''). The proposed change updates these references by removing the letter ''M,'' which appeared in obsolete versions of the standards' titles (*e.g.,* ''A112.18.1M''), so that they read ''A112.18.1'' and ''A112.19.2'' respectively, making them consistent with the current designations for these standards referenced in existing DOE water efficiency standards (10 CFR part 430). EPCA directs the Commission to amend the labeling requirements to be consistent with any revisions to these ASME standards, unless the Commission finds such amendments would be inconsistent with EPCA's purposes and labeling requirements. 42 U.S.C. 6294(a)(2)(E). The Commission

finds no such inconsistency with the proposed change. Given the routine nature of this change, the minimal impact it will have on consumers, the Commission proposes to provide manufacturers with two years to change the marking on their affected plumbing products with the updated reference. The Commission seeks comment on this proposal.

I. Miscellaneous Refrigerator Products

The Commission recently sought comments on labeling for several refrigeration products not covered by existing labeling requirements (79 FR 78736 (Dec. 31, 2014)) in response to recent DOE efforts to set standards and establish test procedures for such products, which include cooled cabinets, non-compressor refrigerators, hybrid refrigerators, compact hybrid refrigerators, hybrid freezers, and residential ice makers.[53] Until DOE completes these efforts, the FTC plans to refrain from proposing any specific labeling requirements.

III. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 11, 2016. Write ''Energy Labeling Amendments (16 CFR part 305) (Project No. R611004)'' 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, such as 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, such as medical records or other individually identifiable health information. In addition, do not include any trade 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). 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/energylabeling,* by following the instruction on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex E), 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 E), 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 NPRM 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 January 11, 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.*

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the **Federal Register** stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before November 30, 2015, in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

IV. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through May 31, 2017 (OMB Control No. 3084–0069). The proposed amendments make changes in the Rule's labeling requirements that will increase the PRA burden as detailed below.[54] Accordingly, the Commission will submit this notice of proposed rulemaking and associated Supporting Statement to OMB for review under the PRA.[55]

Labeling (portable air conditioners): The proposed amendments require manufacturers to create and affix labels on these portable products. The amendments specify the content, format, and specifications of the required labels. Manufacturers would add only the energy consumption figures derived from testing and other product-specific information. Consistent with past assumptions regarding appliances, FTC staff estimates that it will take approximately six seconds per unit to affix labels. Staff also estimates

[53] *See* 78 FR 65223 (Oct. 31, 2013) (proposed coverage determination); 79 FR 74894 (Dec. 16, 2014) (proposed test procedures).

[54] Several proposed labeling changes, including changes to dual mode refrigerators, plumbing fixtures, heating and cooling equipment, consolidated comparability ranges for refrigerators, URL links for labels, ceiling fan labels, room air conditioners, and water heaters should impose no additional burden beyond existing estimates because such changes either impose no or *de minimis* additional burdens, or manufacturers should be able to incorporate the proposed changes into their normally scheduled package or label revisions without incurring additional burdens beyond those already accounted for.

[55] The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions have previously been accounted for in past FTC analyses under the Rule and are covered by the current PRA clearance from OMB.

that there are 1,000,000 portable air conditioner units distributed in the U.S. per year. Accordingly, the total disclosure burden per year for refrigeration products would be 1,667 hours (1,000,000 × 6 seconds). Assuming that product labels will be affixed by electronic equipment installers at an hourly wage of $23.81 [56] per hour, cumulative associated labor costs would total $39,691 per year.

Testing (portable air conditioners): Manufacturers need not test each basic model annually; they must retest only if the product design changes in such a way as to affect energy consumption. Staff believes that the frequency with which models will be tested every year ranges roughly between 10% and 50%. It is likely that only a small portion of the tests conducted will be attributable to the proposed Rule's requirements. Nonetheless, given the lack of specific data on this point, FTC staff conservatively assumes that all of the tests conducted would be attributable to the Rule's requirements and will apply to that assumption the high-end of the range noted above for frequency of testing. Based on an informal review of products offered on Web sites as well as consultation with DOE staff, staff estimates that there are approximately 150 basic models, that manufacturers will test two units per model, and that testing would require one hour per unit tested. Given these estimates and the above-noted assumption that 50% of these basic models would be tested annually, testing would require 150 hours per year. Assuming further that this testing will be implemented by electrical engineers, and applying an associated hourly wage rate of $46.05 per hour, labor costs for testing would total $6,908. The Commission does not expect that the proposed amendments for portable air conditioners will create any capital or other non-labor costs for such testing.

Recordkeeping (portable air conditioners): Pursuant to Section 305.21 of the proposed amended Rule, manufacturers must keep test data on file for a period of two years after the production of a covered product model has been terminated. Assuming one minute per model and 150 basic models, the recordkeeping burden would total 3 hours, rounded upward. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of $15.48 per hour, the associated labor cost for recordkeeping would be approximately $46 per year.

Reporting Requirements (online database and portable air conditioners): The proposed amendments would require manufacturers to furnish links to images of their EnergyGuide and Lighting Facts labels. Given approximately 15,000 total models at an estimated 1 minute per model, this requirement will entail a burden of 250 hours. In addition, the proposed labeling for these products would increase the Rule's reporting requirements by adding portable air conditioners. Staff estimates that the average reporting burden for these manufacturers is approximately two minutes per basic model to enter information into DOE's online database. Based on this estimate, multiplied by an estimated total of 150 basic portable air conditioner models, the annual reporting burden for manufacturers is an estimated 5 hours (2 minutes × 150 models ÷ 60 minutes per hour). Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of $15.48 per hour, the associated labor cost for reporting would be approximately $3,947 per year. Any non-labor costs associated with the reporting amendments are likely to be minimal.

Catalog Disclosures (portable air conditioners): The proposed amendments would require sellers offering covered products through catalogs (both online and print) to disclose energy use for each portable air conditioner model offered for sale. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation. FTC staff estimates that there are 200 online and paper catalogs for these products that would be subject to the Rule's catalog disclosure requirements. Staff additionally estimates that the average catalog contains approximately 50 such products and that entry of the required information takes one minute per covered product. The cumulative disclosure burden for catalog sellers is thus 167 hours (200 retailer catalogs × 50 products per catalog × 1 minute each per product shown). Assuming that the additional disclosure requirement will be implemented by data entry workers at an hourly wage rate of $15.48, associated labor costs would approximate $2,585 per year.

Estimated annual non-labor cost burden (portable air conditioners): Manufacturers are not likely to require any significant capital costs to comply with the proposed portable air conditioner amendments. Industry members, however, will incur the cost of printing labels for each covered unit. The estimated label cost, based on estimates of 1,000,000 units and $.03 per label, is $30,000 (1,000,000 × $.03).

Total Estimate: Accordingly, the estimated total hour burden of the proposed amendments is 2,242 with associated labor costs of $53,177 and annualized capital or other non-labor costs totaling $30,000.

Pursuant to section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the proposed information collection is necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before January 11, 2016. Comments on the proposed recordkeeping, disclosure, and reporting requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5806.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603 through 605.

The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some

[56] The mean hourly wage cited above and those that follow are drawn from Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages—May 2014, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2014), available at: *http://www.bls.gov/news.release/ocwage.t01.htm.*

of the affected manufacturers may qualify as small businesses under the relevant thresholds. However, the Commission does not expect that the economic impact of the proposed amendments will be significant.

The Commission estimates that the amendments will apply to 150 online and paper catalog sellers of covered products and about 50 portable air conditioner manufacturers. The Commission expects that approximately 150 qualify as small businesses.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are small entities, and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission is proposing expanded product coverage and additional improvements to the Rule to help consumers in their purchasing decisions for high efficiency products.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the rule is to improve the effectiveness of the current labeling program. The legal basis for the Rule is the Energy Policy and Conservation Act (42 U.S.C. 6292 *et seq.*).

C. Small Entities To Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, appliance manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Catalog sellers qualify as small businesses if their sales are less than $8.0 million annually. The Commission estimates that there are approximately 150 entities subject to the proposed rule's requirements that qualify as small businesses.[57] The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed rule would have a significant economic impact.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The changes under consideration would slightly increase reporting or recordkeeping requirements associated with the Commission's labeling rules as discussed above. The amendments likely will increase compliance burdens by extending the labeling requirements to portable air conditioners and creating an online database. The Commission assumes that the label design change will be implemented by graphic designers.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on small entities. For example, the Commission is currently unaware of the need to adopt any special provisions for small entities. In addition, the database requirement requires only electronic compliance methods, and does not impose any additional or more burdensome paper-based requirements. However, if such issues are identified, the Commission could consider alternative approaches such as extending the effective date of these amendments for catalog sellers to allow them additional time to comply beyond the labeling deadline set for manufacturers. Nonetheless, if the comments filed in response to this notice identify small entities that are affected by the proposed rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

[57] *See* 75 FR at 41712 (July 19, 2010).

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

VII. Proposed Rule

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons discussed above, the Commission proposes to amend part 305 of title 16, Code of Federal Regulations, as follows:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (''ENERGY LABELING RULE'')

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.3, add paragraph (z) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(z) *Portable air conditioner* means an encased assembly, other than a ''packaged terminal air conditioner,'' ''room air conditioner,'' or ''dehumidifier,'' designed as a portable unit for delivering cooled, conditioned air to an enclosed space, that is powered by single-phase electric current, which may rest on the floor or other elevated surface. It includes a source of refrigeration and may include additional means for air circulation and heating.

■ 3. Revise § 305.6 to read as follows:

§ 305.6 Duty to provide labels.

(a) For each covered product that a manufacturer distributes in commerce after July 15, 2013, which is required by this part to bear an EnergyGuide or Lighting Facts label, the manufacturer must make a copy of the label available on a publicly accessible Web site in a manner that allows catalog sellers to hyperlink to the label or download it for use in Web sites or paper catalogs. The label for each specific model must remain on the Web site for six months after production of that model ceases.

(b) Manufacturers must submit the Web site address for the online labels covered by paragraph (c) In lieu of submitting the required information to

the Commission, manufacturers may submit such information to the Department of Energy via the CCMS at *https://regulations.doe.gov/ccms* as provided by 10 CFR 429.12.

■ 4. Amend § 305.7 by revising paragraphs (a), (b), and (d) to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(a) *Refrigerators and refrigerator-freezers.* The capacity shall be the total refrigerated volume (VT) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix A to 10 CFR part 430, subpart B.

(b) *Freezers.* The capacity shall be the total refrigerated volume (VT) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix B to 10 CFR part 430, subpart B.

* * * * *

(d) *Water heaters.* The capacity shall be the tank capacity and first hour rating, as determined according to appendix E to 10 CFR part 430, subpart B.

* * * * *

■ 5. Amend § 305.11 by revising the title and paragraph (f) to read as follows:

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, portable air conditioners, and pool heaters.

* * * * *

(f) *Label content.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) Model number(s) will be the designation given by the manufacturer or private labeler.

(4) Capacity or size is that determined in accordance with § 305.7. For refrigerators, refrigerator-freezers, and freezers, the capacity provided on the label shall be the model's total refrigerated volume (VT) as determined in accordance with § 305.7.

(5) Unless otherwise indicated in this paragraph, estimated annual operating costs for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, portable air conditioners, and water heaters are as determined in accordance with §§ 305.5 and 305.10. Thermal efficiencies for pool heaters are as determined in accordance with § 305.5. Labels for clothes washers and dishwashers must disclose estimated annual operating cost for both electricity and natural gas as illustrated in the sample labels in appendix L to this part. Labels for dual-mode refrigerator-freezers that can operate as either a refrigerator or a freezer must reflect the estimated energy cost of the model's most energy intensive configuration.

(6) Unless otherwise indicated in this paragraph, ranges of comparability for estimated annual operating costs or thermal efficiencies, as applicable, are found in the appropriate appendices accompanying this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual operating costs or thermal efficiencies, as applicable.

(8) Labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, and water heaters must contain the model's estimated annual energy consumption as determined in accordance with § 305.5 and as indicated on the sample labels in appendix L to this part. Labels for room air conditioners, portable air conditioners, and pool heaters must contain the model's energy efficiency rating or thermal efficiency, as applicable, as determined in accordance with § 305.5 and as indicated on the sample labels in appendix L to this part. Labels for dual-mode refrigerator-freezers that can operate as either a refrigerator or a freezer must reflect the estimated energy cost of the model's most energy intensive configuration.

(9) Labels must contain a statement as illustrated in the prototype labels in appendix L to this part and specified as follows by product type:

(i) Labels for refrigerators and refrigerator-freezers must contain a statement as illustrated in the prototype labels in appendix L to this part and specified as follows (fill in the blanks with the appropriate year and energy cost figures):

Your cost will depend on your utility rates and use.

Both cost ranges based on models of similar size capacity.

[Insert statement required by § 305.11(f)(9)(iii)].

Estimated energy cost is based on a national average electricity cost of __cents per kWh. ftc.gov/energy.

(ii) For refrigerators, refrigerator-freezers, and freezers manufactured on or after September 15, 2014 and clothes washers manufactured after March 7, 2015, the label shall contain the text and graphics illustrated in sample labels 1 and 2 of appendix L to this part, including the statement:

Compare only to other labels with yellow numbers.

Labels with yellow numbers are based on the same test procedures.

(iii) For refrigerators and refrigerator-freezers, the following sentence shall be included as part of the statement required by § 305.11(f)(9)(i):

(A) For models covered under appendix A1 to this part, the sentence shall read:

Models with similar features have no freezer and automatic defrost.

(B) For models covered under appendix A2 to this part, the sentence shall read:

Models with similar features have manual defrost.

(C) For models covered under appendix A3 to this part, the sentence shall read:

Models with similar features have partial automatic defrost.

(D) For models covered under appendix A4 to this part, the sentence shall read:

Models with similar features have automatic defrost, top-mounted freezer, and no through-the-door ice.

(E) For models covered under appendix A5 to this part, the sentence shall read:

Models with similar features have automatic defrost, side-mounted freezer, and no through-the-door ice.

(F) For models covered under appendix A6 to this part, the sentence shall read:

Models with similar features have automatic defrost, bottom-mounted freezer, and no through-the-door ice.

(G) For models covered under appendix A7 to this part, the sentence shall read:

Models with similar features have automatic defrost, bottom-mounted freezer through-the-door ice.

(H) For models covered under appendix A8 to this part, the sentence shall read:

Models with similar features have automatic defrost, side-mounted freezer, and through-the-door ice.

(iv) Labels for freezers must contain a statement as illustrated in the prototype labels in appendix L to this part and specified as follows (fill in the blanks with the appropriate year and energy cost figures):

Your cost will depend on your utility rates and use.

[Insert statement required by § 305.11(f)(10)(v).]

Estimated energy cost is based on a national average electricity cost of __ cents per kWh.ftc.gov/energy.

(v) For freezers, the following sentence shall be included as part of the statement required by § 305.11(f)(9)(iv):

(A) For models covered under appendix B1 to this part, the sentence shall read:

Cost range based only on upright freezer models of similar capacity with manual defrost.

(B) For models covered under appendix B2 to this part, the sentence shall read:

Cost range based only on upright freezer models of similar capacity with automatic defrost.

(C) For models covered under appendix B3 to this part, the sentence shall read:

Cost range based only on chest and other freezer models of similar capacity.

(vi) For room air conditioners covered under appendix E to this part, the statement will read as follows (fill in the blanks with the appropriate model type, year, energy type, and energy cost figure):

Your costs will depend on your utility rates and use.

Cost range based only on models [of similar capacity without reverse cycle and with louvered sides; of similar capacity without reverse cycle and without louvered sides; with reverse cycle and with louvered sides; or with reverse cycle and without louvered sides]. Estimated annual energy cost is based on a national average electricity cost of __ cents per kWh and a seasonal use of 8 hours use per day over a 3 month period.

For more information, visit *www.ftc.gov/energy.*

(vii) For water heaters covered by appendices D1, D2, and D3 to this part, the statement will read as follows (fill in the blanks with the appropriate fuel type, year, and energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on models of similar tank size ([40 gallons or less, between 40 and 55 gallons, or 55 gallons or more]), fueled by [natural gas, oil, propane, or electricity], and a [very small, low, medium, or large] hourly hot water output ([__-__] gallons).

Estimated energy cost is based on a national average [electricity, natural gas, propane, or oil] cost of [__ cents per kWh or $__ per therm or gallon].

Estimated yearly energy use: _____ [kWh or therms]

* Also known as First Hour Rating.

ftc.gov/energy.

(viii) For instantaneous water heaters (appendix D4 to this part), the statement will read as follows (fill in the blanks with the appropriate model type, the operating cost, the year, and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on instantaneous gas water heater models with a [very small, low, medium, or large] gallons per minute ([__-__] gallons).

Estimated energy cost is based on a national average [electricity, natural gas, or propane] cost of [__ cents per kWh or $__ per therm or gallon].

For more information, visit *www.ftc.gov/energy.*

(ix) For dishwashers covered by appendices C1 and C2 to this part, the statement will read as follows (fill in the blanks with the appropriate appliance type, the energy cost, the number of loads per week, the year, and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [compact/standard] capacity models.

Estimated energy cost is based on 4 washloads a week, and a national average electricity cost of __ cents per kWh and natural gas cost of $__ per therm.

For more information, visit *www.ftc.gov/energy.*

(x) For clothes washers covered by appendices F1 and F2 to this part, the statement will read as follows (fill in the blanks with the appropriate appliance type, the energy cost, the number of loads per week, the year, and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [compact/standard] capacity models.

Estimated energy cost is based on 8 washloads a week and a national average electricity cost of __ cents per kWh and natural gas cost of $__ per therm.

For more information, visit *www.ftc.gov/energy.*

(xi) For pool heaters covered under appendices J1 and J2 to this part, the statement will read as follows:

Efficiency range based only on models fueled by [natural gas or oil].

For more information, visit *www.ftc.gov/energy.*

■ 6. Amend § 305.12 by revising paragraphs (f)(2), (f)(3), (f)(14), and (g) to read as follows:

§ 305.12 Labeling for central air conditioners, heat pumps, and furnaces.

* * * * *

(f) * * *

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) The model's basic model number. The label may include multiple model numbers on a single label for models as long as the models share the same efficiency ratings and capacities.

* * * * *

(14) Manufacturers of models that qualify as both furnaces and central air conditioners or heat pumps under DOE requirements may combine the disclosures required by this section on one label for models that meet all applicable DOE regional efficiency standards.

(g) *Content of central air conditioner labels: Content of labels for central air conditioners and heat pumps.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) The model's basic model number. The label may include multiple model numbers on a single label for models as long as the models share the same efficiency ratings and capacities.

(4) The model's capacity. Inclusion of capacity is optional at the discretion of the manufacturer or private labeler for all models except split-system labels, which may not disclose capacity.

(5) The seasonal energy efficiency ratio (SEER) for the cooling function of central air conditioners as determined in accordance with § 305.5. For the heating function, the heating seasonal performance factor (HSPF) shall be calculated for heating Region IV for the standardized design heating requirement nearest the capacity measured in the High Temperature Test in accordance with § 305.5. In addition,

as illustrated in the sample labels 7 and 8 in appendix L to this part, the ratings for any split-system condenser evaporator coil combinations shall be the minimum rating of all condenser-evaporator coil combinations certified to the Department of Energy pursuant to 10 CFR part 430.

(6)(i) Each cooling-only central air conditioner label shall contain a range of comparability consisting of the lowest and highest SEER for all cooling-only central air conditioners consistent with sample label 7A in appendix L to this part.

(ii) Each heat pump label, except as noted in paragraph (g)(6)(iii) of this section, shall contain two ranges of comparability. The first range shall consist of the lowest and highest seasonal energy efficiency ratios for the cooling side of all heat pumps consistent with sample label 8 in appendix L to this part. The second range shall consist of the lowest and highest heating seasonal performance factors for the heating side of all heat pumps consistent with sample label 8 in appendix L to this part.

(iii) Each heating-only heat pump label shall contain a range of comparability consisting of the lowest and highest heating seasonal performance factors for all heating-only heat pumps following the format of sample label 8 in appendix L to this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest efficiency ratings forming the scale.

(8) The following statement shall appear on the label in bold print as indicated in the sample labels in appendix L to this part.

For energy cost info, visit *productinfo.energy.gov.*

(9) All labels on split-system condenser units must contain one of the following three statements:

(i) For labels disclosing only the seasonal energy efficiency ratio for cooling, the statement should read:

This system's efficiency rating depends on the coil your contractor installs with this unit. Ask for details.

(ii) For labels disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This system's efficiency ratings depend on the coil your contractor installs with this unit. The heating efficiency rating will vary slightly in different geographic regions. Ask your contractor for details.

(iii) For labels disclosing only the heating seasonal performance factor for heating, the statement should read:

This system's efficiency rating depends on the coil your contractor installs with this unit. The efficiency rating will vary slightly in different geographic regions. Ask your contractor for details.

(10) The following statement shall appear at the top of the label as illustrated in the sample labels in appendix L to this part:

Federal law prohibits removal of this label before consumer purchase.

(11) For any single-package air conditioner with a minimum Energy Efficiency Ratio (EER) of at least 11.0, any split system central air conditioner with a rated cooling capacity of at least 45,000 Btu/h and minimum efficiency ratings of at least 14 SEER and 11.7 EER, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and minimum efficiency ratings of at least 14 SEER and 12.2 EER, the label must contain the following regional standards information:

(i) A statement that reads: Notice Federal law allows this unit to be installed in all U.S. states and territories.

(ii) For split systems, a statement that reads:

Energy Efficiency Ratio (EER): The installed system's minimum EER is __.

(iii) For single-package air conditioners, a statement that reads:

Energy Efficiency Ratio (EER): This model's EER is [__].

(12) For any split system central air conditioner with a rated cooling capacity of at least 45,000 Btu/h and minimum efficiency ratings of at least 14 SEER but lower than 11.7 EER, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and minimum efficiency ratings of at least 14 SEER but lower than 12.2 EER.

(i) A statement that reads:

Notice Federal law allows this unit to be installed only in: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE., NH, NJ, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY and U.S. territories. Federal law prohibits installation of this unit in other states.

(ii) A map and accompanying text as illustrated in the sample label 7A in appendix L.

(iii) For split-system air conditioner systems, a statement that reads Energy Efficiency Ratio (EER): The installed system's minimum EER is __.

(13) For any split system central air conditioner with a minimum rated efficiency rating less than 14 SEER:

(i) A statement that reads:

Notice Federal law allows this unit to be installed only in: AK, CO, CT, ID, IL, IA, IN, KS, MA, ME, MI, MN, MO, MT, ND, NE., NH, NJ, NY, OH, OR, PA, RI, SD, UT, VT, WA, WV, WI, WY, and U.S. Territories. Federal law prohibits installation of this unit in other states.

(ii) A map and accompanying text as illustrated in the sample label 8 in appendix L.

(iii) For split-system air conditioner systems, a statement that reads:

Energy Efficiency Ratio (EER): The installed system's minimum EER is __.

(14) For any single-package air conditioner with a minimum EER below 11.0, the label must contain the following regional standards information consistent with sample label 7A in appendix L to this part:

(i) A statement that reads:

Notice Federal law allows this unit to be installed only in: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE., NH, NJ, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY and U.S. territories. Federal law prohibits installation of this unit in other states.

(ii) A map and accompanying text as illustrated in the sample label 7A in appendix L to this part.

(15) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(ii) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(iii) The manufacturer may include the ENERGY STAR logo on the label for certified products in a location consistent with the sample labels in appendix L to this part. The logo must be no larger than 1 inch by 3 inches in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are

contemplated by the Memorandum of Understanding.

■ 7. Revise § 305.13(a) to read as follows:

§ 305.13 Labeling for ceiling fans.

(a) *Ceiling fans*—(1) *Content.* Any covered product that is a ceiling fan shall be labeled clearly and conspicuously on the package's principal display panel with the following information on the label consistent with the sample label in appendix L to this part:

(i) Headlines, including the title ''EnergyGuide,'' and text as illustrated in the sample labels in appendix L to this part;

(ii) The product's estimated yearly energy cost based on 6 hours use per day and 12 cents per kWh;

(iii) The product's airflow at high speed expressed in cubic feet per minute and determined pursuant to § 305.5;

(iv) The product's energy use at high speed expressed in watts and determined pursuant to § 305.5 of this part as indicated in the sample label in appendix L of this part;

(v) The statement ''Your cost depends on rates and use'';

(vi) The statement ''All estimates at high speed, excluding lights'';

(vii) The statement ''the higher the airflow, the more air the fan will move;''

(viii) The statement ''Airflow Efficiency: ____C Cubic Feet Per Minute Per Watt'';

(ix) The address *ftc.gov/energy*;

(x) For fans fewer than 49 inches in diameter, the label shall display a cost range for 36'' to 48'' ceiling fans of $2 to $53;

(xi) For fans 49 inches or more in diameter, the label shall display a cost range for 49'' to 60'' ceiling fans of $3 to $29; and

(xii) The ENERGY STAR logo as illustrated on the ceiling fan label illustration in Appendix L for qualified products, if desired by the manufacturer. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those products that are covered by the Memorandum of Understanding;

(2) *Label size, color, and text font.* The label shall be four inches wide and three inches high. The label colors shall be process black text on a process yellow background. The text font shall be Arial or another equivalent font. The label's text size, format, content, and the order of the required disclosures shall be consistent with the ceiling fan label illustration of appendix L to this part.

(3) *Placement.* The ceiling fan label shall be printed on or affixed to the principal display panel of the product's packaging.

(4) *Additional information.* No marks or information other than that specified in this part shall appear on this label, except a model name, number, or similar identifying information.

■ 8. Revise § 305.14 to read as follows:

§ 305.14 Energy information disclosures for heating and cooling equipment.

(a) The following provisions apply to any covered central air conditioner, heat pump, or furnace.

(1) *Manufacturer duty to provide labels.* For any covered central air conditioner, heat pump, or furnace model that a manufacturer distributes in commerce, the manufacturer must make a copy of the EnergyGuide label available on a publicly accessible Web site in a manner that allows catalog sellers and consumers to hyperlink to the label or download it for their use. The labels must remain on the Web site for six months after the manufacturer ceases the model's production.

(2) *Distribution.* (i) Manufacturers and private labelers must provide to distributors and retailers, including assemblers, EnergyGuide labels for covered central air conditioners, heat pumps, and furnaces (including boilers) they sell to them. The label may be provided in paper or electronic form (including Internet-based access). Distributors must give this information to retailers, including assemblers, they supply.

(ii) Retailers, including assemblers, who sell covered central air conditioners, heat pumps, and furnaces (including boilers) to consumers must show the labels for the products they offer to customers and let them read the labels before the customers agree to purchase the product. For example, the retailer may display labeled units in their store or direct consumers to the labels in a binder or computer at a counter or service desk.

(iii) Retailers, including installers and assemblers, who negotiate or make sales at a place other than their regular places of business, including sales over the telephone or through electronic communications, must show the labels for the products they offer to customers and let them read the labels before the customers agree to purchase the product. If the labels are on a Web site, retailers, including assemblers, who negotiate or make sales at a place other than their regular places of business, may choose to provide customers with instructions to access such labels in lieu of showing them a paper version of the information. Retailers who choose to use the Internet for the required label disclosures must provide customers the opportunity to read such information prior to sale of the product.

(3) *Oil furnace labels.* If an installer installs an oil furnace with an input capacity different from that set by the manufacturer and the manufacturer identifies alternative capacities on the label, the installer must permanently mark the appropriate box on the EnergyGuide label displaying the installed input capacity and the associated AFUE as illustrated in sample label 9B in appendix L to this part.

§ 305.16 [Amended]

■ 9. In § 305.16, revise all references to ''A112.18.1M'' and ''A112.19.2M'' to read ''A112.18.1'' and ''A112.19.2'' respectively wherever they appear.

■ 10. Revise appendix A1 to part 305 to read as follows:

Appendix A1 to Part 305—Refrigerators With Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$32	$35
10.5 to 12.4	35	35
12.5 to 14.4	33	33
14.5 to 16.4	46	46
16.5 to 18.4	34	40

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
18.5 to 20.4	39	40
20.5 to 22.4	37	44
22.5 to 24.4	45	50
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

* No data submitted.

■ 11. Revise appendix A2 to part 305 to read as follows:

Appendix A2 to Part 305—Refrigerators and Refrigerator-Freezers With Manual Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$24	$32
10.5 to 12.4	38	38
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

* No data submitted.

■ 12. Revise appendix A3 to part 305 to read as follows:

Appendix A3 to Part 305—Refrigerator-Freezers With Partial Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$26	
10.5 to 12.4	(*)	$44
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

* No data submitted.

■ 13. Revise appendix A4 to part 305 to read as follows:

Appendix A4 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$36	$43
10.5 to 12.4	30	51
12.5 to 14.4	40	55
14.5 to 16.4	40	57
16.5 to 18.4	43	59
18.5 to 20.4	40	62
20.5 to 22.4	46	63
22.5 to 24.4	56	66
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

* No data submitted.

■ 14. Revise appendix A5 to part 305 to read as follows:

Appendix A5 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$41	$69
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	63	86
20.5 to 22.4	82	90
22.5 to 24.4	69	93
24.5 to 26.4	96	96
26.5 to 28.4	71	71
28.5 and over	89	101

* No data submitted.

■ 15. Revise appendix A6 to part 305 to read as follows:

Appendix A6 to Part 305—Refrigerator-Freezers With Automatic Defrost With Bottom-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$41	$62
10.5 to 12.4	43	53
12.5 to 14.4	45	65
14.5 to 16.4	49	72
16.5 to 18.4	53	73
18.5 to 20.4	54	75
20.5 to 22.4	58	79
22.5 to 24.4	63	83
24.5 to 26.4	64	81
26.5 to 28.4	77	84
28.5 and over	65	81

■ 16. Revise appendix A7 to part 305 to read as follows:

Appendix A7 to Part 305—Refrigerator-Freezers With Automatic Defrost With Bottom-Mounted Freezer With Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$27	$30
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	83	83
20.5 to 22.4	77	87
22.5 to 24.4	80	90
24.5 to 26.4	76	93
26.5 to 28.4	74	95
28.5 and over	78	95

(*) No data submitted.

■ 17. Revise appendix A8 to part 305 to read as follows:

Appendix A8 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer With Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$65	$65
10.5 to 12.4	(*)	(*)
12.5 to 14.4	65	65
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	78	94
20.5 to 22.4	72	93
22.5 to 24.4	81	98
24.5 to 26.4	76	99
26.5 to 28.4	85	104
28.5 and over	82	107

* No data submitted.

■ 18. Revise appendix A9 to part 305 to read as follows:

Appendix A9 to Part 305—All Refrigerators And Refrigerator-Freezers

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5	$24	69
10.5 to 12.4	30	53
12.5 to 14.4	33	65
14.5 to 16.4	40	72
16.5 to 18.4	34	73
18.5 to 20.4	39	94
20.5 to 22.4	37	93
22.5 to 24.4	45	98
24.5 to 26.4	71	99

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
26.5 to 28.4	71	104
28.5 and over	65	107

■ 19. Revise appendix B1 to part 305 to read as follows:

Appendix B1 to Part 305—Upright Freezers With Manual Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5	$26	$36
5.5 to 7.4	38	38
7.5 to 9.4	30	30
9.5 to 11.4	31	31
11.5 to 13.4	38	38
13.5 to 15.4	40	40
15.5 to 17.4	43	43
17.5 to 19.4	(*)	(*)
19.5 to 21.4	48	48
21.5 to 23.4	(*)	(*)
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

* No data submitted.

■ 20. Revise appendix B2 to part 305 to read as follows:

Appendix B2 to Part 305—Upright Freezers With Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5	$36	$53
5.5 to 7.4	(*)	(*)
7.5 to 9.4	53	56
9.5 to 11.4	(*)	(*)
11.5 to 13.4	67	67
13.5 to 15.4	47	73
15.5 to 17.4	52	68
17.5 to 19.4	54	81
19.5 to 21.4	57	73
21.5 to 23.4	81	87
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

* No data submitted.

■ 21. Revise appendix B3 to part 305 to read as follows:

Appendix B3 to Part 305—Chest Freezers and All Other Freezers

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5	$20	$26
5.5 to 7.4	25	37
7.5 to 9.4	31	38
9.5 to 11.4	30	33
11.5 to 13.4	35	39
13.5 to 15.4	38	57
15.5 to 17.4	38	38
17.5 to 19.4	(*)	(*)
19.5 to 21.4	46	51
21.5 to 23.4	49	55
23.5 to 25.4	55	61
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

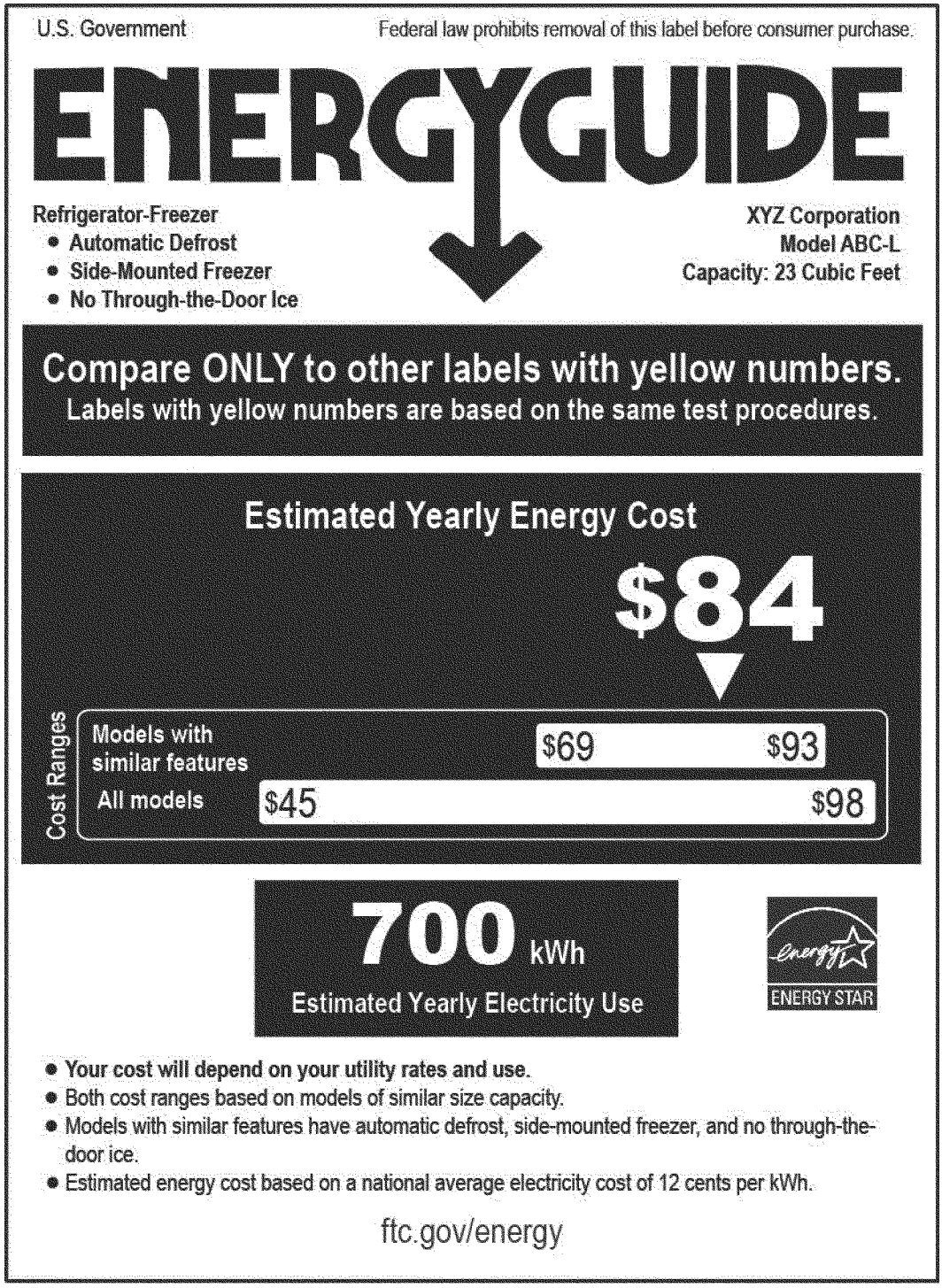
(*) No data submitted.

■ 22. Amend appendix L by revising sample labels 1A, 5, and 17 to read as follows:

Appendix L to Part 305—Sample Labels

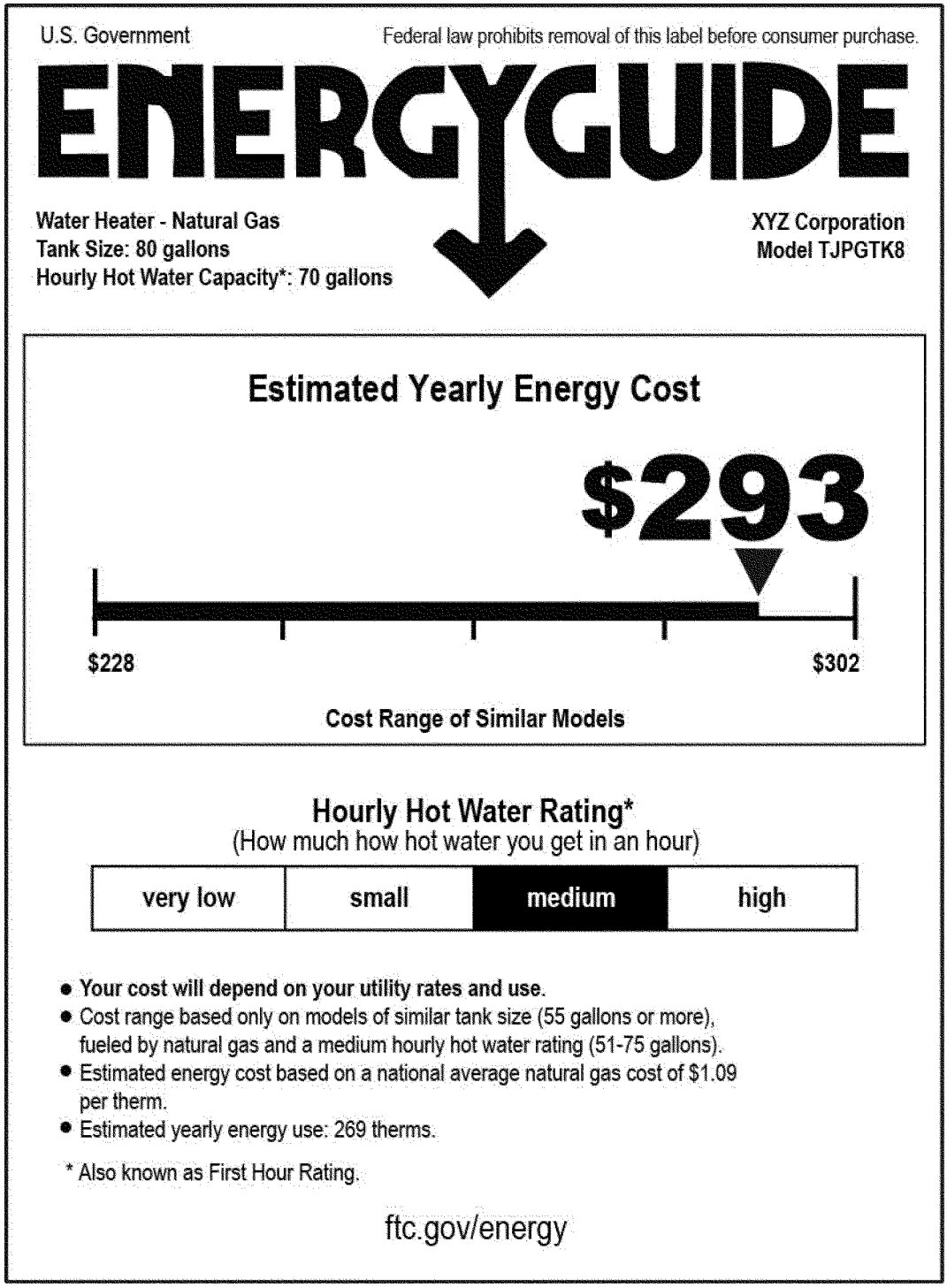
* * * * *

BILLING CODE 6750–01–P



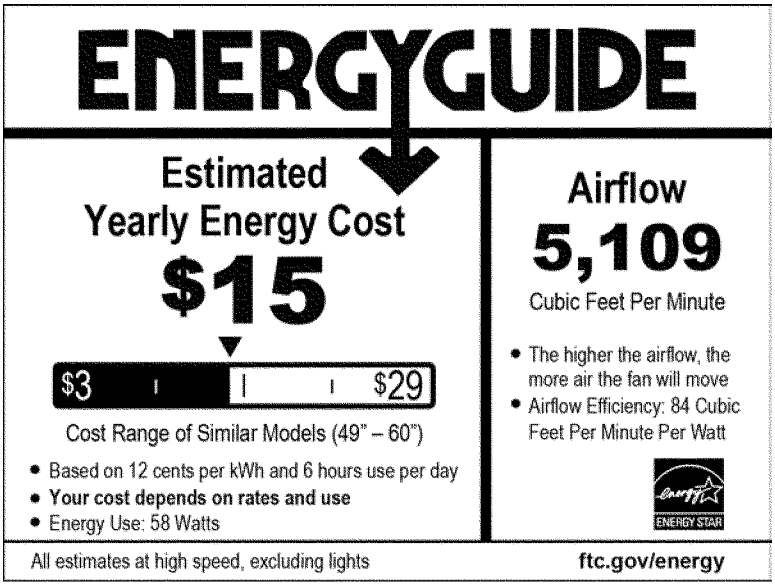
Sample Label 1A – Refrigerator-Freezers

* * * * *



Sample Label 5 – Water Heater

* * * * *



Sample Label 17 – Ceiling Fan

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–27773 Filed 10–30–15; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2328–NC]

Medicaid Program; Request for Information (RFI)—Data Metrics and Alternative Processes for Access to Care in the Medicaid Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: In this request for information (RFI), we seek public input to inform the potential development of standards with regard to Medicaid beneficiaries' access to covered services under the Medicaid program. Specifically, we are interested in obtaining information on core access to care measures and metrics that could be used to measure access to care for beneficiaries in the Medicaid program (including in fee-for-service and managed care delivery systems) and used to develop local, state and national thresholds and goals to inform and improve access in the program. We are also interested in feedback on approaches to using the metrics, which could include setting access goals and thresholds and formal processes for beneficiaries to raise access concerns.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 4, 2016.

ADDRESSES: In commenting, refer to file code CMS–2328–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2328–NC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2328–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jeremy Silanskis, (410) 786–1592.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of

the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

CMS and states have the responsibility under section 1902(a)(30)(A) of the Social Security Act (the Act) to assure that Medicaid payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the state plan at least to the extent that such care and services are available to the general population in the geographic area. We interpret this provision to mean rates and payments for Medicaid services are set at levels that ensure value, quality and provider participation. In the past, our oversight of this provision has primarily focused on ensuring that payment methodologies are economic and efficient, as well as consistent with upper payment limits for certain services. During the recent economic downturn, and in light of state proposals to dramatically reduce provider payments, we began requesting that states provide information to document that services are available and access remains after payment reductions go into effect. We found that state processes for documenting access were generally inconsistent and in many cases did not adequately document access.

To address this, on May 6, 2011, we published the proposed rule entitled ''Medicaid Program; Methods for Assuring Access to Covered Medicaid Services'' (hereafter referred to as the ''Access to Care'' proposed rule) (76 FR 26342). In that rule, we proposed a specific process through which states would document that their payment rates provide access to care. The proposed rule, which applies to services that states cover through the Medicaid state plan, is being finalized with comment period concurrent with the issuance of this request for information (RFI). Among other new processes, the rule requires states describe access monitoring review plans that address: The extent to which enrollee needs are fully met, the availability of care and qualified service providers, changes in service utilization and comparisons between Medicaid payments and payments made by other health payers for equivalent services. At a minimum, the access monitoring review plans apply to the following service categories: Primary care (including pediatric care), physician specialists, behavioral health (including substance use disorder services), pre- and post-natal obstetric services, and home health. If states reduce or restructure payments, or receive complaints about access to care for other services, they must add those services to the review plans and monitor access to those services over the ensuing 3 years. States, with public input from stakeholders, would determine measures and thresholds used to monitor access as the final rule does not require a core set of measures or describe national thresholds for Medicaid access to care.

We also recently proposed changes that promote access to care for beneficiaries who receive services through Medicaid managed care. On June 1, 2015, we issued a proposed rule entitled ''Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, Medicaid and CHIP Comprehensive Quality Strategies, and Revisions Related to Third Party Liability (80 FR 31098), which proposed to modernize Medicaid and Children's Health Insurance Program (CHIP) managed care regulations to update the programs' rules and strengthen the delivery of quality care for beneficiaries. In that rule, we proposed: Minimum requirements for states when setting and monitoring network adequacy standards, certification of managed care plan networks at least on an annual basis, and annual reporting on the accessibility and availability of services. Similar to the ''Access to Care'' final rule with comment period that appears elsewhere in this issue of the **Federal Register**, the managed care proposed rule proposes to allow states the discretion to set the standards and measures for network adequacy and does not propose to require specific measures or thresholds for access to care. The access requirements for managed care plans are not directly governed by section 1902(a)(30)(A) of the Act, but instead are governed by access requirements under sections 1903(m) and 1932 of the Act. The proposed managed care rule, however, would apply the same principles in determining access in the managed care environment as are contained in the fee-for-service environment.

We believe that, to the extent there are similarities in the methods and measures used to review and analyze network adequacy for managed care networks and access to care in fee-for-service, aligning such methods and measures would ease the administrative burden on states and ensure that all Medicaid beneficiaries receive the care that they need regardless of whether they are in fee-for-service, are enrolled with a managed care organization, or receive services through a Medicaid waiver program. We are undertaking this effort to review access to care across the entire program for all individuals enrolled in Medicaid regardless of the delivery system mechanism.

Importantly, earlier this year, the Supreme Court decided in *Armstrong* v. *Exceptional Child Center, Inc.,* 135 S. Ct. 1378 (2015) that Medicaid providers and beneficiaries do not have a private right of action to challenge state-determined Medicaid payment rates in federal courts, placing greater importance on CMS review to ensure that such rates are ''consistent with efficiency, economy and quality of care'' and ensure sufficient beneficiary access to care under the program. The Court concluded that federal administrative agencies are better suited than federal courts to make these determinations. Options for Medicaid providers and beneficiaries to pursue Medicaid rate-related issues in federal courts are now limited. As we note in the final rule with comment period, we are therefore working to strengthen the framework for CMS review to ensure that rates meet the requirements of section 1902(a)(30)(A) of the Act, including requiring access improvement strategies to improve care delivery where there are shortcomings. In this request for information, we are asking for public input on what additional data sources and approaches could be used to determine whether access to care is sufficient.

We recognize that many factors affect access to Medicaid services, including: Level of payment, geographic location, time and distance to the closest provider, workforce, numbers of specialists and other types of providers within the state, lack of knowledge of

available resources by beneficiaries, insufficient provider outreach, scope of practice approaches, and other economic and policy factors. Within state Medicaid programs, there are also considerable diversities in delivery system designs, populations served, and provider networks. We seek public input on what additional approaches we and states can take to understand, measure and improve Medicaid access more uniformly and in ways that account for these unique program features. This RFI solicits input from states, providers, beneficiaries and other members of the public on the feasibility of and methodologies related to the following four specific approaches:

- Developing a core set of measures of access that all states would monitor and publicly report on;
- Measuring access to long term care and home and community based services;
- Setting national access to care thresholds; and
- Establishing a process for access to care that would allow beneficiaries experiencing access issues to raise and seek resolution of their concerns.

We also invite input on additional actions that we or states may take to further measure and promote access to care in the Medicaid program.

In seeking this input, we recognize that we have not yet identified a clear, defined set of access measures that demonstrates whether access to care is sufficient. We are seeking input to identify a feasible set of measures and metrics that meaningfully demonstrate whether access to care is sufficient. We requested comments on potential core metrics and thresholds through the ''Access to Care'' proposed rule and received many suggestions. Generally, the responses suggested set levels of payment or access to providers consistent with Medicare or private insurance, without corresponding metrics and data sources to conduct a comparative analysis. Other health payers, such as Medicare, may be further along in measuring access through data collection tools. As any new data collection requirements would impose administrative burden on states and providers, we are particularly interested in how existing efforts, like the Medicare Current Beneficiary Survey and the Consumer Assessment of Healthcare Providers and Systems (and approved supplemental data sets), may be modified to apply to the Medicaid program.

We note that through this RFI, we are seeking comments on areas of measurement and metrics that may indicate sufficient access in Medicaid programs regardless of delivery system. We are not attempting to develop areas of measurement that indicate causes of access deficiency, such as information on social determinants of health. While we appreciate the importance of understanding the reasons behind access problems and identifying those issues through data, our initial goal is to develop indicators of sufficient access that can be affected by Medicaid policy levers.

II. Provisions of the Request for Information

We are inviting states, beneficiaries, advocacy organizations, providers, managed care organizations, research and measurement communities, professional associations and other members of the public to share analyses and opinions related to the following topics: (1) Access to care data collection and methodology; (2) access to care thresholds and goals; (3) alternative processes for access concerns; and (4) access to care measures.

The terms: Measures, metrics, and thresholds, are used throughout this RFI. By measures, we mean concrete, quantifiable indicators that can be used to assess access to care in Medicaid. Measures have both a numerator and a denominator (for example, 500 Medicaid participating physicians in the state this year divided by the number of Medicaid enrollees this year, or the state received 50 beneficiary complaints this month divided by the number of beneficiaries enrolled). Metrics are used to examine measures relative to a baseline assessment (for example, there 10 percent more physicians participating in Medicaid this year than last year, or the state received 20 percent fewer complaints this month than last month). A threshold would be a minimum acceptable value for access to care that is based on the measures and metrics.

A. Access to Care Data Collection and Methodology

To better inform us on the nature and scope of access to care measures and metrics, we are requesting comments on how to focus our efforts to determine the best indicators of access in Medicaid across services and delivery systems. Consideration of the following questions may be helpful in providing us your ideas and suggestions.

- What do you perceive to be the advantages and disadvantages to requiring a national core set of access to care measures and metrics? Who do you believe should collect and analyze the national core set data?
- Do you believe there are specific access to care measures that could be universally applied across services? If so, please describe such measures.
- What information and methods do you believe large health care programs use to measure access to care that could be used by the Medicaid program? What role can health information technology lay in measuring access to care?
- What do you believe are the primary indicators of access to care in the Medicaid program? Is measured variance in these indicators based on differences in things such as: Provider participation and location, appointment times, waiting room times, call center times, prescription fill times, other?
- Do you believe a national core set of access measures or metrics should apply across all services, or is it more appropriate to target a core set of access measures by service?
- Do you believe questions in provider and beneficiary surveys should be consistent for Medicaid and Medicare beneficiaries? If not, what differences do you believe should be accommodated for the Medicaid program, including differences in covered services?
- What do you believe we should consider in undertaking access to care data collection in areas related to: Differences between fee-for-service (FFS) and managed care delivery, variations in services such as acute and long-term care, community and institutional settings for long-term care delivery, behavioral health, variations in access for pediatric and adult populations and individuals with disabilities, and variations in access for rural and urban areas? Consider also individuals with chronic conditions who may have limited functional support needs related to activities of daily living but nonetheless require more intensive care than other Medicaid beneficiaries, such as persons living with HIV/AIDS.
- Specific to long-term services and supports, including home and community based services, what factors do you believe we should consider in measuring access to care? Do you believe we should incorporate into reviews of access to care for these services economic factors and significant policy factors such as: Minimum wage and overtime requirements, direct service worker shortages, training and professional development costs, or other factors?
- Do you believe measuring access to Home and Community Based Services (HCBS) differs from measuring access to acute medical care? Please describe.

• Do you believe access to HCBS should be tracked in FFS and in managed care delivery systems? Do you perceive any differences between tracking HCBS in each system?

• Do you believe there are additional metrics that need to be tracked related to HCBS?

B. Access to Care Thresholds/Goals

To better inform us on how to interpret and use access to care metrics, we are requesting comments on setting access thresholds and how we might use the thresholds to improve access in the Medicaid program. Consideration of the following questions may be helpful in providing us your ideas and suggestions.

• Do you believe we should set thresholds for Medicaid access to care? If so, do you believe such thresholds should be set at the national, state or local levels? Why?

• If we set Medicaid access thresholds, how do you believe they should be used? For instance: For issuing compliance actions to states that do not meet the thresholds, as benchmarks for state improvement, for use in appeals processes for beneficiaries that have trouble accessing services, or in other ways?

C. Alternative Processes for Access Concerns

We are considering requiring standard access to care complaint driven processes to better ensure access and are interested in how data gathered and analyzed through a core set of measures might aid in resolving complaints, please consider the following questions:

• Do you believe there are existing and effective processes to resolve consumers' concerns regarding health care access issues that might be useful for all state Medicaid programs?

• What do you believe are the advantages and disadvantages of either a complaint resolution process or a formal appeals hearing for access to care concerns?

• Who do you believe should be the responsible party (for example, the state or federal government, an independent third party, a civil servant, an administrative law judge, etc.) to hear beneficiary access to care complaints and/or appeals?

• For an access to care appeal, what criteria do you believe should be used to help determine:

++Whether an appeal should be heard?

++Whether an appeal merits recommendations to the state Medicaid agency?

• Which access to care areas of measurement or specific metrics may be useful in setting thresholds that would help hearings officers assess appeals and determine access to care remedies?

• Lack of timeliness of an appeal could undermine the time sensitive efforts associated with remediating an individual's access to medical services. You may want to consider providing information on the following:

++How could appeals be expedited?

++What outcomes could an appeals officer offer if services are unavailable to Medicaid beneficiaries?

++Are there other non-appeal based processes that could be used instead?

D. Access to Care Measures

In conjunction with this RFI, you may want to consider each of the topics listed below, and suggest what you believe we should prioritize. You are also welcome to provide additional metrics that are associated with measurement areas that are relevant indicators of access to care in the Medicaid program and feasible to collect and analyze.

For each suggested metric, you may consider describing the following:

• Suggested relevant data metrics,

• whether the metric is currently reported for Medicaid services,

• the feasibility of collecting the metric,

• the associated data sources/set(s) where the metrics are available,

• the financial cost (if any) of collecting the proposed metric,

• should including the metric in a more robust (or updated) Medicaid access policy be given priority;

• the party responsible/steward(s) of the metric data source,

• the metric validation process,

• whether the metric is relevant to all Medicaid populations or specific to particular groups, (for example, adults or pediatric populations, including children with special health care needs, or to people with disabilities or to dually eligible beneficiaries),

• whether the metric is applicable to FFS, managed care or both delivery systems,

• whether the metric is relevant for various subpopulations such as eligibility category, institutional status, or geographic region,

• whether the metric should be measured at the local, state or national level,

• as appropriate for Medicaid, thresholds associated with the metric,

• the challenges and advantages of the proposed metric, and how the metric is indicative to Medicaid access to care.

1. Measures for Availability of Care and Providers

We are soliciting public comment on the following availability of care and providers measurement areas within geographic areas. In addition to feedback on the proposed metrics below, we are also interested in your thoughts on how ''geographic areas'' should be defined.

• Primary care physicians (including pediatricians) and clinicians accepting any/new patients.

• Physician specialists accepting any/new patients.

• Specialty care (for example, addiction and psychiatric services,, home and community based services, specialty pharmacy) accepting any/new patients.

• Availability of direct support workforce for home health and home and community-based services.

• Dentists accepting any/new patients.

• Psychiatric and substance abuse clinicians such as psychiatrists, child psychiatrists, psychologists, and psychiatric social workers and mental health counselors accepting any/new patients.

• Physicians and clinicians experiencing difficulties referring patients to specialty care.

• Psychiatrists experiencing difficulties referring patients with serious mental illness to primary care.

• Available primary care clinics, federally qualified health centers or rural health clinics.

• Available retail community pharmacies.

• Available behavioral health clinics or community mental health centers.

• Available inpatient care.

• Other.

2. Measures for Beneficiary Reported Access

We are soliciting public comment on the following beneficiary reported access measurement areas:

• Beneficiaries reporting a usual source of primary care.

• Beneficiaries reporting difficulty finding a specialist/general clinician, not taking any new patients and/or the beneficiary's insurance.

• Beneficiaries able to access specialists or behavioral health care if they have: Chronic conditions, heart disease, behavioral health issues, etc.

• Beneficiaries able to access long-term services and supports in institutional settings.

• Beneficiaries able to access home and community based services.

• Women able to access: Pap smears, mammograms.

- Children and adults able to access appropriate immunizations and/or seasonal vaccines.
- Beneficiaries reporting delayed care and reason for delay.
- Unmet need for specialty, primary, follow-up, dental, prescriptions, and mental health and substance abuse treatment due to cost concerns.
- Beneficiaries getting needed care quickly.
- Wait times for appointments (for example, to primary care, urgent care, physician specialists, pre-natal care, behavioral health providers, and long-term services and supports in community settings).
- Length of delays in accessing long term services and supports in community setting due to direct service worker shortages and/or lack of adequate training.
- Call-center capability standards to support providing beneficiaries with information that can improve their access, and produce useful metrics for monitoring.
- Call-center metrics that reveal issues with beneficiary access and their resolution.
- Other.

3. Measures regarding Service Utilization—

We are soliciting public comment on the following service utilization measurement areas:

- Trends in service utilization by geographic regions within the state.
- Trends in emergency room utilization relative to primary and mental health and substance abuse treatment care utilization.
- Rates of utilization (for example, At least one of the following visits in the prior six months/year: Physician (including nurse practitioners and physician assistants), dental, specialty, behavioral health, and primary care/well-child.)
- Other.

4. Comparison of Payments

We are soliciting public comment on the following comparison of payment measurement areas:

- Payment rates for services set at a specific percentage of Medicare.
- Medicaid payment rates compared to surrounding states, Medicare, commercial payers.
- Acquisition costs compared to Medicaid payments for pharmaceuticals.
- Comparisons or measures that would inform managed care rate adequacy (the payment managed care plans make to providers).
- Other.

We will evaluate the responses to this RFI, in addition to the findings from research that we are currently conducting, to inform whether it is advisable to collect and analyze core national measures at this time and the methods to conduct the collection. We may also use this information to help determine which measures could best inform understanding of access to care and to support the design of national or state and local thresholds.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, if and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: October 20, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–27696 Filed 10–29–15; 11:15 am]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 80, No. 211

Monday, November 2, 2015

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

Food Safety and Inspection Service

[Docket No. FSIS–2015–0029]

Export Verification Program: Microbiological Testing of Ready-To-Eat Products Destined for Canada

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the establishment of an FSIS and Agricultural Marketing Service (AMS) Export Verification (EV) Program. The program is designed to verify establishments' control of closed-faced sandwiches destined for Canada. Among other things, Canada is requiring that closed-faced sandwiches be produced under a Hazard Analysis and Critical Control Point (HACCP) plan. Under the program, the sandwiches will be produced in establishments that are under FSIS' voluntary reimbursable inspection service and that are operating under conditions that are as consistent as practical with those under which other post-lethality exposed meat and poultry products are produced under 9 CFR part 430. Closed-faced sandwiches are under jurisdiction of the Food and Drug Administration (FDA), but FDA does not require that the sandwiches be produced under a HACCP plan. It also does not verify that the requirements of 9 CFR part 430 are met. Consequently, FSIS and AMS are establishing this voluntary program. Once the program is implemented, only establishments participating in this program will be able to export closed-faced sandwiches to Canada.

DATES: Submit comments on or before *http://www.ams.usda.gov/services/imports-exports/rte-canada.* The program will be implemented February 1, 2016.

ADDRESSES: FSIS invites interested persons to submit comments on the issues described below. Comments may be submitted by one of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov/.* Follow the on-line instructions at that site for submitting comments.

Mail, CD–ROMs: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 355 E Street SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.

Hand- or courier-delivered submittals: Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2015–0029. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 164–A, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Telephone: (202) 205–0495, or by Fax: (202) 720–2025.

Establishments seeking to participate in this program should contact FSIS by phone at (202) 720–0082, or by email at *importexport@fsis.usda.gov.*

Background

In February 2013, the Canadian Food Inspection Agency (CFIA) audited the United States' food safety system for meat and poultry products intended for export to Canada.[1] CFIA's final audit report found that HACCP plans and *Listeria monocytogenes* (*Lm*) controls for ready-to-eat (RTE) meat products were not required when establishments prepared the products under FSIS's voluntary reimbursable inspection service. CFIA notified FSIS that CFIA requires that these products be produced according to HACCP plans and *Lm* controls consistent with 9 CFR part 430.

Meat and poultry products prepared in official establishments are subject to mandatory inspection by FSIS under the Federal Meat Inspection Act (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451, *et seq.*). FSIS considers RTE meat and poultry products to be adulterated if they test positive or come into direct contact with a food-contact surface that tests positive for *Lm, Salmonella,* or other pathogens. FSIS uses microbiological testing in its mandatory inspection programs to verify that establishments have adequate food safety systems, including measures to control *Lm* (9 CFR part 430).

However, not all RTE products containing meat or poultry fall under FSIS's regulatory jurisdiction. Closed-faced sandwiches are not considered traditional products of the meat or poultry industries, and therefore they fall under the regulatory jurisdiction of FDA.

Establishments producing these RTE products may receive FSIS reimbursable voluntary inspection, but this inspection does not include microbiological testing for pathogen control or verification of HACCP plans or sanitation standard operating procedures (Sanitation SOP). FSIS conducts this reimbursable voluntary inspection to certify products for export under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.*). The inspection is intended to meet the importing country's requirements for U.S.-produced meat and poultry products (9 CFR 350.3(b); 9 CFR 381.104–.107). Canada's requirements identified in the FSIS Export Library do not require *Lm* testing, HACCP, or Sanitation SOPs for RTE products. The FSIS Export Library is available at: *http://www.fsis.usda.gov/wps/portal/*

[1] *Final Report Of An Audit Conducted In The United States February 5th, through February 22nd, 2013 Evaluating The Food Safety Systems Governing The Production Of Meat And Poultry Products Intended For Export To Canada,* available at: *http://www.inspection.gc.ca/food/meat-and-poultry-products/imports/audits-of-meat-inspection-programs/final-report-of-an-audit-us-/eng/1404919271012/1404921262798?chap=8#s5c8.*

fsis/topics/international-affairs/exporting-products/export-library-requirements-by-country.

AMS Testing Program

AMS and FSIS have developed a collaborative testing program to verify pathogen control for closed-face sandwiches produced under FSIS voluntary inspection and intended for export to Canada. This program, which AMS will administer, may eventually include other RTE products. The program will include two types of testing, routine and intensified, to ensure that participating establishments are controlling *Lm* and *Salmonella.*

For routine testing, AMS will randomly select dates once per year when product samples will be collected. FSIS will collect the product samples and pack them for shipment to the USDA National Science Laboratories in Gastonia, North Carolina. FSIS will collect six samples regardless of plant size, production volume, or process design. If an establishment produces both post-lethality-exposed and non-post-lethality-exposed products, six product samples will be taken from the former and two from the latter. AMS will analyze the samples for *Lm* and *Salmonella* and will require that establishments hold or maintain control of the product until acceptable results become available. If the product is positive, the establishment will have to properly dispose of the affected product in accordance with FDA regulations.

At least once per year, AMS also will select dates for intensified testing at a participating establishment. AMS will also conduct this testing if it finds a positive *Lm* or *Salmonella* result or in response to continuing sanitation non-compliances at the establishment. The samples will vary in number depending on whether product is being tested for *Lm* or *Salmonella* but will always include environmental, product, and food-contact-surface samples. AMS will collect the samples.

For both types of testing, the establishment will pay all costs for sample collection, shipping, shipping materials, and analysis. See *http://www.ams.usda.gov/services/import-exports/rte-canada* for a full description of the program, including sample collection and laboratory testing methods.

HACCP Verification

In order for the establishments to meet Canada's requirements for import of closed-face sandwiches, FSIS will offer voluntary inspection services and will verify that the establishments are producing these products under HACCP and Sanitation SOPs. Therefore, to ship this product to Canada, establishments will need to comply with the requirements in 9 CFR part 417 and 9 CFR 416.11–.17.

By participating in the EV program and receiving voluntary inspection from FSIS (including verification of HACCP plans and Sanitation SOPs), establishments that produce closed-face sandwiches and that meet all FSIS and AMS EV program requirements will be able to meet Canada's stated import requirements for closed-faced sandwiches. To receive these services, establishments should contact FSIS at (202) 720–0082, or by email at *importexport@fsis.usda.gov.*

Comments are invited on: (a) The timetable for implementation of this program, including readiness to participate in the program's pathogen testing and HACCP verification, and business and trade interests affected by compliance or non-compliance with the program; (b) how the proposed programs can be implemented operationally to avoid disruption of trade or business activities; and (c) any other operational issues that commenters need clarified. FSIS will clarify any issues or make adjustments to the implementation date of the program in a Constituent Update.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Additional Public Notification

Public awareness of all aspects of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a broad and diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Subscription options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on October 28, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–27846 Filed 10–30–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE286

New England Fishery Management Council; Public Meetings

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

ACTION: Notice; public hearings.

SUMMARY: The New England Fishery Management Council (Council) will hold one public hearing and one webinar to solicit Public comments on Draft Amendment 19 to the Scallop Fishery Management Plan (FMP).

DATES: The webinar will be held on November 16, 2015 and the meeting will

be held on November 18, 2015. For specific dates and times, see **SUPPLEMENTARY INFORMATION**. Written Public comments must be received on or before 5 p.m. EST, Friday, November 20, 2015.

ADDRESSES: The Public document can be obtained by contacting the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950 at (978) 465–0492 or on their Web site at *http://www.nefmc.org/library/amendment-19-1.*

Meeting address: These meetings will be held in Warwick, RI, and via webinar. For specific locations, see **SUPPLEMENTARY INFORMATION**.

Public comments: Mail to John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Scallop Amendment 19''. Comments may also be sent via fax to (978) 281–9135 or submitted via email to *nmfs.gar.Amendment19@noaa.gov* with ''Comments on Scallop Amendment 19'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Thomas Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The agendas for the following hearings are as follows: New England Fishery Management Council staff will brief the public on the scallop amendment and the contents of the Draft Environmental Assessment prior to opening the hearing for public comments. The schedule is as follows:

Public Hearings: Locations, Schedules, and Agendas

1. *Monday, November 16, 2015, from 10 a.m.–12 p.m.;* Webinar hearing, register to participate *https://global.gotomeeting.com/join/682428445* Call in info: Toll: +1 (872) 240–3412, Access code 682–428–445.

2. *Wednesday, November 18, 2015, from 6–8 p.m.;* Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000; fax: (401) 732–9300.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas Nies (see **ADDRESSES**), at least 5 working days prior to the meeting date.

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

Dated: October 28, 2015.

Jeffrey N. Lonergan,

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

[FR Doc. 2015–27835 Filed 10–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE279

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Recreational Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, November 17, 2015 at 9:30 a.m.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton, 50 Ferncroft Road, Danvers, MA 01923; phone: (978) 777–2500; fax: (978) 750–7959.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will receive a presentation on the results of the Northeast Fisheries Science Center's (NEFSC) 2015 Groundfish Operational Assessments for Gulf of Maine cod, Gulf of Maine haddock, and other groundfish stocks of interest to the recreational fishery. The panel will also receive an overview of draft alternatives in Framework Adjustment 55 (FW 55) specifications and management measures of interest to the recreational fishery, and associated draft impact analysis. They will also review a presentation on the results from NEFSC's bioeconomic model for recreational fisheries for cod and haddock in the Gulf of Maine. Also on the agenda is to develop recommendations to the Groundfish Committee for FY 2016 Gulf of Maine cod and Gulf of Maine haddock recreational measures. The panel will also develop recommendations to the Groundfish Committee for 2016 Council priorities. Additionally, they will also discuss GARFO's Recreational Implementation Plan and develop recommendations to the Groundfish Committee. They will also discuss other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 28, 2015.

Jeffrey N. Lonergan,

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

[FR Doc. 2015–27827 Filed 10–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Hearings; Correction

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

ACTION: Notice of a correction to a public hearing on Amendments to the U.S. Caribbean Reef Fish, Spiny Lobster, and Corals and Reef Associated Plants and Invertebrates Fishery Management Plans: Timing of Accountability Measure-Based Closures.

SUMMARY: The Caribbean Fishery Management Council (CFMC) is considering modifying the timing for the implementation of accountability measure (AM)-based closures in the Caribbean Exclusive Economic Zone

(EEZ) and specifying how often to revisit the modification. The Council is considering these management measures in order to ensure AM-based closures successfully achieve their conservation objective and, to the extent practicable, minimize adverse economic impacts to fishers and fishing communities, consistent with National Standard 8 of the Magnuson-Stevens Fishery Conservation and Management Act.

Following are the actions and management alternatives:

The Draft Amendment consists of two actions:

Action 1: Modify the timing for the implementation of AM-based closures in the EEZ;

Alternative 1: No action. Continue AM-based closures resulting from an annual catch limit (ACL) overage beginning on December 31st of the closure year and extending backward into the year for the number of days neccesary to achieve the required reduction in landings.

Preferred Alternative 2: Accountability measure-based closures resulting from an ACL overage will begin on September 30th of the closure year and would extend backward into the year for the number of days necessary to achieve the required reduction in landings. This closure start date would apply to all fishery management units (FMUs) for each of Puerto Rico commercial and recreational sectors, St. Thomas/St. John, St. Croix, and Caribbean-wide. If for any FMU in any year, the number of available days running from September 30th backward to the beginning of the year is not enough to achieve the required reduction in landings, then the additional days needed would be captured by extending the closure forward, beginning on October 1st and continuing for however many days are needed to fulfill the required reduction.

Alternative 3: Accountability measure-based closures resulting from an ACL overage will begin on January 1st of the closure year and extend forward into the year for the number of days necessary to achieve the required reduction in landing. This closure start date would apply to all FMUs for each of Puerto Rico commercial and recreational sectors, St. Thomas/St. John, St. Croix, and Caribbean-wide.

Alternative 4: Establish a fixed fishing closure start date for the implementation of AMs for each FMU by island/island group (A. Puerto Rico, B. St. Thomas/St. John, C. St. Croix, and D. Caribbean-wide). A different start date may be chosen for each FMU on each island/island group. The start date will begin on the last day of the identified month and go backward towards the beginning of the year. If for any FMU in any year, the number of days left in the year is not enough to achieve the required reduction in landings, then those additional days would be captured by extending the closure forward toward the end of the year.

A. Puerto Rico

I. Commercial:

Sub-Alternative 4a. Closure to start the last day of the month that has the highest landings based on the most recent three years of available landings data. (See Table 2.2.1 in the Draft Amendment for the specific date for each FMU [commercial]).

Sub-Alternative 4b. Closure to start the last day of the month with lowest landings based on the most recent three years of available landings data. (See Table 2.2.1 in the Draft Amendment for the specific date for each FMU [commercial]).

II. Recreational:

Sub-Alternative 4c. Closure to start the last day of the month that has the highest landings based on the most recent three years of available landings data. (See Table 2.2.2 in the Draft Amendment for the specific date for each FMU [recreational]).

Sub-Alternative 4d. Closure to start the last day of the month with lowest landings based on the most recent three years of available landings data. (See Table 2.2.2 in the Draft Amendment for the specific date for each FMU [recreational]).

B. St. Thomas/St. John, U.S. Virgin Islands (USVI) (Commercial and Recreational combined)

Sub-Alternative 4e. Closure to start the last day of the month that has the highest landings based on the most recent three years of available landings data. (See Table 2.2.3 in the Draft Amendment for the specific date for each FMU).

Sub-Alternative 4f. Closure to start the last day of the month with lowest landings based on the most recent three years of available landings data. (See Table 2.2.3 in the Draft Amendment for the specific date for each FMU).

C. St. Croix, USVI (Commercial and Recreational combined)

Sub-Alternative 4g. Closure to start the last day of the month that has the highest landings based on the most recent three years of available landings data. (See Table 2.2.4 in the Draft Amendment for the specific date for each FMU).

Sub-Alternative 4h. Closure to start the last day of the month with lowest landings based on the most recent three years of available landings data. (See Table 2.2.4 in the Draft Amendment for the specific date for each FMU).

D. Caribbean-Wide (Commercial and Recreational combined)

Sub-Alternative 4i. Closure to start the last day of the month that has the highest landings based on the most recent three years of available landings data. (See Table 2.2.5 in the Draft Amendment for the specific date for each FMU).

Sub-Alternative 4j. Closure to start the last day of the month with lowest landings based on the most recent three years of available landings data. (See Table 2.2.5 in the Draft Amendment for the specific date for each FMU).

Action 2: Specify a time period for revisiting the approach to establish AM-based closures selected in Action 1.

Alternative 1: No action. Do not specify how often the approach chosen should be revisited.

Preferred Alternative 2: Review the approach selected no longer than 2 years from implementation and every 2 years thereafter.

Alternative 3: Review the approach selected no longer than 5 years from implementation and every 5 years thereafter.

Dates and Addresses: The meetings will be held on the following dates and locations:

In the U.S. Virgin Islands:

November 16, 2015—7 p.m.–10 p.m.—The Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, USVI.

November 17, 2015—7 p.m.–10 p.m.—Windward Passage Hotel, Charlotte Amalie, St. Thomas, USVI.

In Puerto Rico:

November 23, 2015—7 p.m.–10 p.m.—Doubletree Hotel, De Diego Avenue, Santurce, Puerto Rico.

November 24, 2015—7 p.m.–10 p.m.—Mayaguez Holiday Inn, 2701 Hostos Avenue, Mayagüez, Puerto Rico.

November 25, 2015—2 p.m.–5 p.m.—Holiday Inn Ponce & Tropical Casino, 3315 Ponce By Pass, Ponce, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: This notice is a correction to a meeting notice

that published in the **Federal Register** on October 26, 2015 (80 FR 65215). Due to additional agenda items, the notice is being re-published in its entirety.

Copy of the draft document, ''Amendments to the US Caribbean Reef Fish, Spiny Lobster, and Corals and Reef Associated Plants and Invertebrates Fishery Management Plans: Timing of Accountability Measure-Based Closures'', can be found at the CFMC Web page: *www.caribbeanfmc.com.*

Written comments can be sent to the Council not later than December 10, 2015, by regular mail to the address below, or via email to *graciela_cfmc@yahoo.com.*

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: October 28, 2015.

Jeffrey N. Lonergan,

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

[FR Doc. 2015–27838 Filed 10–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE289

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 41 Assessment Webinar 2 and 3.

SUMMARY: The SEDAR 41 assessments of the South Atlantic stocks of red snapper and gray triggerfish will consist of a series of workshop and webinars: Data Workshops; an Assessment Workshop and webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: SEDAR 41 Assessment Webinar 2 will be held on Tuesday, November 17, 2015, from 9 a.m. until 1 p.m. and Assessment Webinar 3 will be held on Tuesday, December 1, 2015, from 9 a.m. until 1 p.m.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment webinar are as follows:

Participants will discuss any remaining data issues and provide modeling advice to prepare for the Assessment Workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 28, 2015.

Jeffrey N. Lonergan,

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

[FR Doc. 2015–27829 Filed 10–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE232

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of availability; request for comments.

SUMMARY: We, NMFS, announce that the *Proposed Endangered Species Act (ESA) Recovery Plan for Snake River Fall Chinook Salmon* (Proposed Plan) is available for public review and comment. The Proposed Plan addresses the Snake River Fall Chinook Salmon (*Onchorhynchus tshawytscha*) evolutionarily significant unit (ESU), which is listed as threatened under the ESA. The geographic area covered by

the Proposed Plan is the lower and middle mainstem Snake River and tributaries as well as the mainstem Columbia River below its confluence with the Snake River. As required under the ESA, the Proposed Plan contains objective, measurable delisting criteria, site-specific management actions necessary to achieve the Proposed Plan's goals, and estimates of the time and cost required to implement recovery actions. We are soliciting review and comment from the public and all interested parties on the Proposed Plan.

DATES: We will consider and address, as appropriate, all substantive comments received during the comment period. Comments on the Proposed Plan must be received no later than 5 p.m. Pacific daylight time on January 4, 2016.

ADDRESSES: You may submit comments on the Public Draft Recovery Plan by the following methods:

- *Electronic Submissions:* Submit all electronic public comments via: *nmfs.wcr.snakeriverfallchinookplan@noaa.gov.* Please include ''Comments on Snake River Fall Chinook Salmon Recovery Plan'' in the subject line of the email.
- *Mail:* Patricia Dornbusch, National Marine Fisheries Service, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232.
- *Facsimile:* (503) 230–5441.

Instructions: Electronic copies of the Proposed Plan are available on the NMFS Web site at: *http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/snake_river/current_snake_river_recovery_plan_documents.html.* Persons wishing to obtain an electronic copy on CD ROM of the Proposed Plan may do so by calling Bonnie Hossack at (503) 736–4741 or by emailing a request to *bonnie.hossack@noaa.gov* with the subject line ''CD ROM Request for Snake River Fall Chinook Salmon Recovery Plan.''

FOR FURTHER INFORMATION CONTACT: Patricia Dornbusch, NMFS Snake River Fall Chinook Salmon Recovery Coordinator, at (503) 230–5430, or *patty.dornbusch@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

We are responsible for developing and implementing recovery plans for Pacific salmon and steelhead listed under the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*). Recovery means that the listed species and their ecosystems are sufficiently restored, and their future secured, to the point that the protections of the ESA are no longer necessary. Section 4(f)(1) of the ESA requires that recovery plans include, to the extent practicable: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

We believe it is essential to have local support of recovery plans by those whose activities directly affect the listed species and whose continued commitment and leadership will be needed to implement the necessary recovery actions. We therefore support and participate in collaborative efforts to develop recovery plans that involve state, tribal, and federal entities, local communities, and other stakeholders. For this Proposed Plan for threatened Snake River Fall Chinook Salmon, we worked collaboratively with state, tribal, and federal partners to produce a recovery plan that satisfies the ESA requirements. We have determined that this *Proposed ESA Recovery Plan for Snake River Fall Chinook Salmon* meets the statutory requirements for a recovery plan and are proposing to adopt it as the ESA recovery plan for this threatened species. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided prior to final approval of a recovery plan. This notice solicits comments on this Proposed Plan.

Development of the Proposed Plan

For the purpose of recovery planning for the ESA-listed species of Pacific salmon and steelhead in Idaho, Oregon, and Washington, NMFS designated five geographically based ''recovery domains.'' The Snake River Fall Chinook Salmon ESU spawning range is in the Interior Columbia domain. For each domain, NMFS appointed a team of scientists, nominated for their geographic and species expertise, to provide a solid scientific foundation for recovery plans. The Interior Columbia Technical Recovery Team included biologists from NMFS, other federal agencies, states, tribes, and academic institutions.

A primary task for the Interior Columbia Technical Recovery Team was to recommend criteria for determining when each component population within an ESU or distinct population segment (DPS) should be considered viable (*i.e.,* when they are have a low risk of extinction over a 100-year period) and when ESUs or DPSs have a risk of extinction consistent with no longer needing the protections of the ESA. All Technical Recovery Teams used the same biological principles for developing their recommendations; these principles are described in the NOAA technical memorandum *Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units* (McElhany *et al.,* 2000). Viable salmonid populations (VSP) are defined in terms of four parameters: abundance, productivity or growth rate, spatial structure, and diversity.

We also collaborated with state, tribal, and federal biologists and resource managers to provide technical information used to develop the Proposed Plan. In addition, NMFS established a multi-state (Idaho, Oregon, and Washington), tribal, and federal partners' regional forum called the Snake River Coordination Group that addresses the four ESA-listed Snake River salmon and steelhead species. They met twice a year to be briefed and provide technical and policy information to NMFS. We presented regular updates on the status of this Proposed Plan to the Snake River Coordination Group and posted draft chapters on NMFS' West Coast Region Snake River recovery planning Web page. We also made full drafts of the Proposed Plan available for review to the state, tribal, and Federal entities with whom we collaborated to develop the plan.

In addition to the Proposed Plan, we developed and incorporated the *Module for the Ocean Environment* (Fresh *et al.* 2014) as Appendix D to address Snake River Fall Chinook Salmon recovery needs in the Columbia River estuary, plume, and Pacific Ocean. To address recovery needs related to the Columbia River Hydropower System, we developed and incorporated the *Supplemental Recovery Plan Module for Snake River Salmon and Steelhead Mainstem Columbia River Hydropower Projects* (NMFS 2014b) as Appendix E of this Proposed Plan. To address recovery needs related to the Lower Columbia River mainstem and estuary, we incorporated the *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (NMFS 2011a) as Appendix F. To address recovery needs for fishery harvest management in the mainstem Snake and Columbia Rivers, Columbia River estuary, and ocean, we developed and incorporated the *Snake River Harvest Module* (NMFS 2014a) as Appendix G.

The Proposed Plan, including the recovery plan modules, is now available for public review and comment.

Contents of Proposed Plan

The Proposed Plan contains biological background and contextual information that includes description of the ESU, the planning area, and the context of the plan's development. It presents relevant information on ESU structure, guidelines for assessing salmonid population and ESU status, and a brief summary of Interior Columbia Technical Recovery Team products on population structure and species status. It also presents NMFS' proposed biological viability criteria and threats criteria for delisting.

As described in Chapter 2 of the Proposed Plan, the historical Snake River fall Chinook salmon ESU consisted of two populations. The population above the Hells Canyon Dam Complex is extirpated, leaving only one extant population—the Lower Mainstem Snake River population. An ESU with a single population would be at greater extinction risk than an ESU with multiple populations. This is a key consideration in the proposed Snake River fall Chinook salmon biological viability criteria, since there is more than one possible scenario for achieving the criteria. The proposed viability criteria include two possible scenarios and a placeholder for developing additional scenarios that would be consistent with delisting. Scenario A focuses on achieving ESA delisting with two populations (*i.e.,* the extant Lower Mainstem Snake River population and a recovered Middle Snake population above the Hells Canyon Complex). Scenario B illustrates a single-population pathway to delisting. The placeholder scenario describes a framework under which additional single-population scenarios could be developed that would involve developing natural production emphasis areas that would have a low percentage of hatchery-origin spawners. NMFS is interested in comments on how such additional scenarios might be developed, potentially for inclusion in the final recovery plan.

The Proposed Plan also describes specific information on the following: Current status of Snake River Fall Chinook Salmon; limiting factors and threats throughout the life cycle that have contributed to the species decline; recovery strategies and actions addressing these limiting factors and threats; and a proposed research, monitoring, and evaluation program for adaptive management. For recovery actions, the Proposed Plan includes a table summarizing each proposed action, life stage affected, estimated costs, timing, and potential implementing entities. It also describes how implementation, prioritization of actions, and adaptive management will proceed. The Proposed Plan also summarizes time and costs (Chapter 9) required to implement recovery actions. In some cases, costs of implementing actions could not be determined at this time and NMFS is interested in additional information regarding scale, scope, and costs of these actions. We are also particularly interested in comments on establishing appropriate forums to coordinate implementation of the recovery plan.

How NMFS and Others Expect To Use the Plan

With approval of the final recovery plan, we will commit to implement the actions in the plan for which we have authority and funding; encourage other federal and state agencies and tribal governments to implement recovery actions for which they have responsibility, authority, and funding; and work cooperatively with the public and local stakeholders on implementation of other actions. We expect the recovery plan to guide us and other federal agencies in evaluating federal actions under ESA section 7, as well as in implementing other provisions of the ESA and other statutes. For example, the plan will provide greater biological context for evaluating the effects that a proposed action may have on a species by providing delisting criteria, information on priority areas for addressing specific limiting factors, and information on how the ESU can tolerate varying levels of risk.

When we are considering a species for delisting, the agency will examine whether the section 4(a)(1) listing factors have been addressed. To assist in this examination, we will use the delisting criteria described in Section 3.2 and Section 3.3 of the Proposed Plan, which include both biological criteria and criteria addressing each of the ESA section 4(a)(1) listing factors, as well as any other relevant data and policy considerations.

We will also work with the proposed implementation structure, as described in Chapter 8 of the Proposed Plan, to coordinate among existing forums, develop implementation priorities, and address science and adaptive management issues.

Conclusion

Section 4(f)(1)(B) of the ESA requires that recovery plans incorporate, to the extent practicable, (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. We conclude that the Proposed Plan meets the requirements of ESA section 4(f) and are proposing to adopt it as the *ESA Recovery Plan for Snake River Fall Chinook Salmon.*

Public Comments Solicited

We are soliciting written comments on the Proposed Plan. All substantive comments received by the date specified above will be considered and incorporated, as appropriate, prior to our decision whether to approve the plan. While we invite comments on all aspects of the Proposed Plan, we are particularly interested in comments on developing specific scenarios to address the placeholder recovery scenario, comments on the cost of recovery actions for which we have not yet determined implementation costs, and comments on establishing an appropriate implementation forum for the plan. We will issue a news release announcing the adoption and availability of the final plan. We will post on the NMFS West Coast Region Web site (*www.wcr.noaa.gov*) a summary of, and responses to, the comments received, along with electronic copies of the final plan and its appendices.

Literature Cited

Fresh, K. et al. 2014. Module for the Ocean Environment. NMFS Northwest Fisheries Science Center, Seattle, WA. *http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/interior_columbia/snake/ocean_module.pdf.*

McElhany, P., M.H. Ruckelshaus, M.J. Ford, T.C. Wainwright, and E.P. Bjorkstedt. 2000. Viable salmon populations and the recovery of evolutionarily significant units. U.S. Dept. of Commerce, NOAA Tech. Memo., NMFS NWFSC 42, 156 p.

NMFS (National Marine Fisheries Service). 2011. Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead. NMFS Northwest Region. Portland, OR. January. Prepared for NMFS by the Lower Columbia River Estuary Partnership (contractor) and PC Trask & Associates, Inc., subcontractor. *http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/interior_columbia/snake/estuary-mod.pdf.*

NMFS (National Marine Fisheries Service). 2014a. Supplemental recovery plan module for Snake River salmon and steelhead mainstem Columbia River

hydropower projects. Portland, OR. *http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/interior_columbia/snake/hydro_supplemental_recovery_plan_module_063014.pdf.*

NMFS (National Marine Fisheries Service). 2014b. Snake River Harvest Module. Portland, OR. *http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/interior_columbia/snake/harvest_module_062514.pdf.*

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 27, 2015.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–27854 Filed 10–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE277

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Groundfish Plan Team will meet in Seattle, WA.

DATES: The meeting will be held on Monday, November 16, to Friday, November 20, 2015, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, Traynor Room 2076 and NMML Room 2039, 7600 Sand Point Way NE., Building 4, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, November 16, 2015 to Friday, November 20, 2015

The Plan Teams will compile and review the annual Groundfish Stock Assessment and Fishery Evaluation (SAFE) reports, (including the Economic Report, the Ecosystems Consideration Chapter, and the stock assessments for BSAI and GOA groundfishes), and recommend final groundfish harvest specifications for 2016/17.

PLEASE NOTE: Beginning October 10th, U.S. Driver's licenses will be accepted for admittance to the NOAA facility only if they are Real ID compliant. Alternative identification, such as a passport, will be required if a license is non-compliant. For more information see *http://www.dhs.gov/real-id-public-faqs.*

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/fishery-management-plan-team/goa-bsai-groundfish-plan-team/.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: October 28, 2015.

Jeffrey N. Lonergan,

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

[FR Doc. 2015–27832 Filed 10–30–15; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Joint Statement of Principles on Student Loan Servicing

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Policy Guidance.

SUMMARY: On September 29, 2015, the Bureau of Consumer Financial Protection (Bureau) joined with the U.S. Department of the Treasury and the U.S. Department of Education to release a *Joint Statement of Principles on Student Loan Servicing* as a framework for policymakers and market participants looking to improve student loan servicing practices, promote borrower success, and mitigate defaults. This Policy Guidance sets forth those joint principles.

DATES: This Policy Guidance is applicable November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Michael Pierce, Program Manager, Office for Students and Young Americans, 1700 G Street NW., 20552, 202–435–7938.

SUPPLEMENTARY INFORMATION:

1. Policy Guidance

Joint Statement of Principles on Student Loan Servicing

The U.S. Department of Education, the U.S. Department of the Treasury, and the Consumer Financial Protection Bureau have developed a *Joint Statement of Principles on Student Loan Servicing* as a framework to improve student loan servicing practices, promote borrower success and minimize defaults.[1]

General Principles for Student Loan Servicing[2]

Consistent with their respective authorities, responsibilities, and missions, the Departments and the Bureau are committed to working together so that all student loan borrowers have access to (1) the information they need to repay their loans responsibly and avoid default; (2) protections so that they will be treated fairly even if they are struggling to repay their loans; and (3) mechanisms so that errors are resolved expeditiously and assurances that student loan servicers, both in the marketplace and through federally-contracted companies, are held accountable for their conduct. The following principles have been developed to advance these goals.

There are four main types of postsecondary education loans under which borrowers have outstanding balances. Direct Loans are federal loans made directly to borrowers by the U.S. Department of Education through the William D. Ford Federal Direct Loan program. Federal Family Education Loan Program (FFELP) loans were originated by private lenders and guaranteed by the federal government. Federal Perkins Loans, which are co-funded by institutions of higher education and the federal government,

[1] On March 10, 2015, the President signed a Presidential Memorandum on a Student Aid Bill of Rights to Help Ensure Affordable Loan Repayment. The President directed the Secretary of Education, in consultation with the Secretary of the Treasury and the Director of the Consumer Financial Protection Bureau, to issue a report by October 1, 2015 on, among other things, recommendations concerning private and federal student loan servicing standards, flexible repayment opportunities for all student loan borrowers, and changes to bankruptcy laws. This *Joint Statement of Principles on Student Loan Servicing* informed this required report.

[2] On September 30, 2015, the Consumer Financial Protection Bureau released *Student Loan Servicing: Analysis of Public Input and Recommendations for Reform,* analyzing comments the Bureau solicited from stakeholders including student loan borrowers, federal student loan servicers, private student loan market participants, policy experts, and state law enforcement officials and regulators as part of the Departments' and the Bureau's joint efforts to identify initiatives to strengthen student loan servicing.

are originated and administered by participating institutions. Direct Loans, Perkins Loans and FFELP loans are made pursuant to Title IV of the Higher Education Act of 1965, as amended (HEA). The SAFRA Act enacted in 2010 ended new loan originations under the FFELP program in 2010, but a significant number of loans remain outstanding. Private student loans are made by depository and non-depository financial institutions, states, institutions of higher education, and other entities. Private loans are not governed by the Higher Education Act, but are subject to other federal and state laws. All Federal Direct Loans and some FFELP loans are held by the Department of Education and serviced pursuant to contracts with loan servicers and collection contractors. Servicing for Perkins Loans, privately-held FFELP loans, and private student loans is provided at the direction of the current loan holder, and servicing activities for Perkins and FFELP loans are governed by rules and regulations laid out by law and through the U.S. Department of Education. The economic incentives to provide servicing that best serves borrowers', loan holders', and taxpayers' needs vary across the different types of student loans.

In addition, the respective loan types come with varying levels of consumer protections and special benefits. Direct Loans, in general, offer borrowers more protections than private or FFELP loans. Borrowers with FFELP loans continue to consolidate into the Direct Loan program to access certain protections and benefits including the Public Service Loan Forgiveness Program, the nonaccrual of interest for servicemembers serving in areas of hostilities, and certain income-driven repayment plans. For federal loans, pursuant to provisions in the HEA, institutions of higher education are required to provide certain disclosures to borrowers that provide them with clear and helpful information about their loans and repayment options as part of schools' statutorily required entrance and exit counseling duties.

The Departments and the Bureau intend to work closely with one another, consistent with their respective authorities, to strengthen servicing protections for student loan borrowers, and will seek to ensure that student loan servicing is, where appropriate:

- *Consistent.* Student loan borrowers and servicers alike would benefit from a clear set of expectations for what constitutes minimum requirements for services provided by student loan servicers and servicer communications with borrowers, including adequate and timely customer service. Student loan borrowers should expect effective student loan servicing, including, but not limited to, conduct related to payment processing, servicing transfers, customer requests for information, error resolution, and disclosure of borrower repayment options and benefits. Such conduct should account for and recognize variations in loan features, terms, and borrower protections.
- *Accurate and Actionable.* Student loan borrowers often depend on servicers to provide basic information about account features, borrower protections, and loan terms. It is critical that information provided to borrowers by student loan servicers be accurate and actionable. Information, including explanation and instructions regarding borrowers' loans and repayment options, should be presented in a manner that best informs borrowers, helps them achieve positive outcomes, and mitigates the risk and costs of default.
- *Accountable.* Student loan servicers, whether for-profit, not-for-profit or government agencies, should be accountable for serving borrowers fairly, efficiently and effectively. If servicers fall short and violate federal or state consumer financial laws, the HEA, contractual requirements, or federal regulations, borrowers, federal and state agencies and regulators, and law enforcement officials should have access to appropriate channels for recourse, as authorized under law.
- *Transparent.* The public, including student loan borrowers, may benefit from information about the performance of private and federal student loans and the practices of individual student loan lenders and servicers, including information related to loan origination, loan terms and conditions, borrower characteristics, portfolio composition, delinquency and default, payment plan enrollment, utilization of forbearance and deferment, the administration of borrower benefits and protections, and the handling of borrower complaints. The federal government already makes much of this information available for federal student loans, and private-sector lenders and servicers should follow suit. Portfolio performance data, including data at the individual servicer level, should be available for all types of student loans.

2. Regulatory Requirements

This Policy Guidance is a non-binding general statement of policy. It does not establish any binding legal requirements. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Policy Guidance does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: October 27, 2015.

Christopher D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2015–27775 Filed 10–30–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0128]

Agency Information Collection Activities; Comment Request; Perkins Discretionary Grant Performance Report

AGENCY: Department of Education (ED), Office of Career, Technical and Adult Education (OCTAE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 4, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0128. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Laura Messenger, (202) 245–7840.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Perkins Discretionary Grant Performance Report.

OMB Control Number: 1830–0574.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 88.

Total Estimated Number of Annual Burden Hours: 156.

Abstract: The Perkins Discretionary Grant Performance Report form and instructions will be used by grantees to meet Department of Education deadline dates for submission of performance and financial reports for the Office of Career, Technical and Adult Education (OCTAE) Division of Academic and Technical Education (DATE) discretionary grant programs, as required by the Education Department General Administrative Regulations (EDGAR 34 CFR 74.51, 74.52, 75.118, 75.253, 75.590, and 80.40). The Perkins Discretionary Grant Performance Report will be used by OCTAE discretionary grant recipients in lieu of the ED 524B Grant Performance Report and instructions because the ED 524B is not compatible with OCTAE–DATE(TM)s new Perkins Information Management System. Recipients of multi-year discretionary grants must submit interim performance reports, usually annually, for each year funding has been approved in order to receive a continuation award. The annual performance report should demonstrate whether substantial progress has been made toward meeting the approved goals and objectives of the project. OCTAE also requires recipients of 'forward funded' grants that are awarded funds for their entire multi-year project up-front in a single grant award to submit an annual performance report. The Perkins Discretionary Grant Performance Report will be used for interim and final performance reporting. In both the annual and final performance reports, grantees are required to provide data on established performance measures for the grant program (*e.g.,* Government Performance and Results Act measures) and on project performance measures that were included in the grantee(TM)s approved grant application, in order to demonstrate project success, impact and outcomes. The Perkins Discretionary Grant Performance Report form will also be used by grant recipients for other interim reporting such as quarterly or semi-annual performance and/or financial reporting.

Dated: October 27, 2015.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–27779 Filed 10–30–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0127]

Agency Information Collection Activities; Comment Request; Mathematics and Science Partnerships Program

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 4, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0127. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Inas El-Sabban, (202) 205–3810.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Mathematics and Science Partnerships Program.

OMB Control Number: 1810–0669.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Government.

Total Estimated Number of Annual Responses: 450.

Total Estimated Number of Annual Burden Hours: 4,500.

Abstract: This supporting statement serves as an update to approved OMB package 1810–0669. Implemented under the No Child Left Behind Act of 2001, Title II, Part B, the Mathematics and Science Partnerships (MSP) program is a formula grant program strategically designed to improve the content knowledge of teachers and the academic performance of students in mathematics and science. By funding collaborative partnerships between science, technology, engineering, and mathematics (STEM) departments at institutions of higher education (IHEs), and high-need school districts, the MSP program enables the delivery of intensive, content-rich professional development intended to improve classroom instruction and, ultimately, to raise student achievement in math and science.

Because MSP is a formula grant program, the size of individual state awards is based on student population and poverty rates, with no state receiving less than one half of one percent of the total appropriation. Each state is then responsible for administering a competitive grant making process to determine the distribution of funds across proposed MSP projects.

Dated: October 27, 2015.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–27778 Filed 10–30–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1451–001.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2015–10–26 Filing in Compliance with Sept 25 2015 Order in Docket ER15–1451 to be effective 9/25/2015.
Filed Date: 10/26/15.
Accession Number: 20151026–5417.
Comments Due: 5 p.m. ET 11/16/15.

Docket Numbers: ER15–2208–002.
Applicants: ISO New England Inc.
Description: Compliance filing: Winter Reliability Compliance Filing to be effective 9/14/2015.
Filed Date: 10/26/15.
Accession Number: 20151026–5241.
Comments Due: 5 p.m. ET 11/16/15.

Docket Numbers: ER16–142–000.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Cancellation: Notice of Termination of McAllister Ranch ID IA and WDT SA to be effective 12/31/2015.
Filed Date: 10/26/15.
Accession Number: 20151026–5007.
Comments Due: 5 p.m. ET 11/16/15.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA15–3–000.
Applicants: Alabama Electric Marketing, LLC, Astoria Generating Company, L.P., Big Sandy Peaker Plant, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, CSOLAR IV South, LLC, CSOLAR IV West, LLC, High Desert Power Project, LLC, Kiowa Power Partners, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, New Mexico Electric Marketing, LLC, Rolling Hills Generating, L.L.C., Tenaska Alabama Partners, L.P., Tenaska Alabama II Partners, L.P., Tenaska Frontier Partners, Ltd., Tenaska Gateway Partners, Ltd., Tenaska Georgia Partners, L.P., Tenaska Power Management, LLC, Tenaska Power Services Co., Tenaska Virginia Partners, L.P., Texas Electric Marketing, LLC, TPF Generation Holdings, LLC, Wolf Hills Energy, LLC.
Description: Quarterly Land Acquisition Report of the Tenaska MBR Sellers.
Filed Date: 10/26/15.
Accession Number: 20151026–5430.
Comments Due: 5 p.m. ET 11/16/15.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM14–3–000.
Applicants: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Services, Inc., Entergy Texas, Inc., Entergy Services, Inc.
Description: Response to Third Deficiency Letter of Entergy Services, Inc., et al.
Filed Date: 10/23/15.
Accession Number: 20151023–5371.
Comments Due: 5 p.m. ET 11/20/15.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD15–5–000; RD15–5–001; RD15–6–000.
Applicants: North American Electric Reliability Corporation.
Description: Clarifying Supplemental Information of the North American Electric Reliability Corporation Updating Implementation Plan.
Filed Date: 10/23/15.
Accession Number: 20151023–5403.
Comments Due: 5 p.m. ET 11/3/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 27, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27842 Filed 10–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–2238–001.
Applicants: Repsol Energy North America Corporation.
Description: Notice of Change in Status of Repsol Energy North America Corporation.
Filed Date: 10/27/15.
Accession Number: 20151027–5208.
Comments Due: 5 p.m. ET 11/17/15.

Docket Numbers: ER15–623–008.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Revisions to the OATT and RAA to comply fully with the June 22 Order to be effective 7/22/2015.
Filed Date: 10/27/15.
Accession Number: 20151027–5246.

Comments Due: 5 p.m. ET 11/17/15.

Docket Numbers: ER16–143–000.

Applicants: Citizens Sunrise Transmission LLC.

Description: § 205(d) Rate Filing: Annual TRBAA Filing to be effective 1/1/2016.

Filed Date: 10/27/15.

Accession Number: 20151027–5029.

Comments Due: 5 p.m. ET 11/17/15.

Docket Numbers: ER16–144–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2015–10–27_SA 2861 ATXI–AIC Construction Agreement—Ipava Substation to be effective 10/27/2015.

Filed Date: 10/27/15.

Accession Number: 20151027–5121.

Comments Due: 5 p.m. ET 11/17/15.

Docket Numbers: ER16–145–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 312 7th Revised—NITSA with Southern Montana to be effective 11/1/2015.

Filed Date: 10/27/15.

Accession Number: 20151027–5123.

Comments Due: 5 p.m. ET 11/17/15.

Docket Numbers: ER16–146–000.

Applicants: NorthWestern Corporation.

Description: Initial rate filing: SA 760—NITSA with Beartooth Electric Cooperative to be effective 11/1/2015.

Filed Date: 10/27/15.

Accession Number: 20151027–5134.

Comments Due: 5 p.m. ET 11/17/15.

Docket Numbers: ER16–147–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: 2015–10–27 NSP–SEY, StJms, HILLS,-NOC to be effective 1/1/2016.

Filed Date: 10/27/15.

Accession Number: 20151027–5186.

Comments Due: 5 p.m. ET 11/17/15.

Docket Numbers: ER16–148–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: 4 GIAs & 4 Distribution Serv Agmts with FTS Master Tenant 1, LLC to be effective 12/27/2015.

Filed Date: 10/27/15.

Accession Number: 20151027–5189.

Comments Due: 5 p.m. ET 11/17/15.

Docket Numbers: ER16–149–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2015–10–27_SA 2854 MDU–MDU Facilities Construction Agreement (F109) to be effective 10/28/2015.

Filed Date: 10/27/15.

Accession Number: 20151027–5245.

Comments Due: 5 p.m. ET 11/17/15.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA15–3–000.

Applicants: Bayonne Energy Center, LLC, Zone J Tolling Co., LLC, Macquarie Energy LLC.

Description: Quarterly Land Acquisition Report of Bayonne Energy Center, LLC, et al.

Filed Date: 10/27/15.

Accession Number: 20151027–5233.

Comments Due: 5 p.m. ET 11/17/15.

Docket Numbers: LA15–3–000.

Applicants: Battery Utility of Ohio, LLC, Border Winds Energy, LLC, Pleasant Valley Wind, LLC, Joliet Battery Storage LLC, West Chicago Battery Storage LLC.

Description: Quarterly Land Acquisition Report of Battery Utility of Ohio, LLC, et al.

Filed Date: 10/27/15.

Accession Number: 20151027–5234.

Comments Due: 5 p.m. ET 11/17/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 27, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27843 Filed 10–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–244]

El Dorado Irrigation District; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application to amend the El Dorado Project license filed by El Dorado Irrigation District (licensee). The licensee proposes constructing an earthen stability buttress, raising the crest of the dam, and upgrading appurtenant facilities. No Federal lands would be involved in the proposed action. The project is located on the South Fork American River adjacent to the unincorporated community of Pollock Pines in El Dorado, County, California.

An environmental assessment (EA) has been prepared for Commission staff's review of the proposed action, containing staff's analysis of the proposed action and concluding that approval of the proposal, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment. The EA is available for electronic review and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–184) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372 or for TTY, (202) 502–8659.

Any comments on the EA should be filed by *November 27, 2015,* and addressed to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–184–244) on all comments filed. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, please contact CarLisa Linton at (202) 502–8416 or *Carlisa.linton-peters@ferc.gov.*

Dated: October 26, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27804 Filed 10–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14376–002]

Cave Run Energy, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 14, 2015, Cave Run Energy, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located at the U.S. Army Corps of Engineers' (Corps) Cave Run Dam, located on the Licking River in Rowan and Bath Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A bifurcation structure constructed at the end of the dam's outlet conduit; (2) a powerhouse containing three turbine/generating units with a total capacity of 4.95 megawatts; (3) a 70-foot-long, 150-inch-diameter steel penstock; (4) a 1,200-foot-long, 12.7-kilovolt transmission line. The proposed project would have an average annual generation of 20,000 megawatt-hours, and operate utilizing surplus water from the Cave Run Dam, as directed by the Corps.

Applicant Contact: Mr. Mark Boumansour, Cave Run Energy, LLC, 1401 Walnut St., Suite 220, Boulder, CO 80302. (303) 440–3378.

FERC Contact: Dustin Wilson, phone: (202) 502–6528.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14376–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 26, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27805 Filed 10–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–65–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: PCB TETLP DEC 2015 FILING to be effective 12/1/2015.
Filed Date: 10/21/15.
Accession Number: 20151021–5080.
Comments Due: 5 p.m. ET 11/2/15.

Docket Numbers: RP16–66–000.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company Request for Waiver of FERC Gas Tariff Part 6.3 of the General Terms & Conditions.
Filed Date: 10/21/15.
Accession Number: 20151021–5156.
Comments Due: 5 p.m. ET 11/2/15.

Docket Numbers: RP16–67–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: KeySpan Ramapo 11–1–2015 Release to BUG to be effective 11/1/2015.
Filed Date: 10/23/15.
Accession Number: 20151023–5073.
Comments Due: 5 p.m. ET 11/4/15.

Docket Numbers: RP16–68–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—Chevron TEAM2014 Release to Sequent 8938592 to be effective 11/1/2015.
Filed Date: 10/23/15.
Accession Number: 20151023–5096.
Comments Due: 5 p.m. ET 11/4/15.

Docket Numbers: RP16–69–000.
Applicants: Clear Creek Storage Company, L.L.C.
Description: Compliance filing Clear Creek Storage Company, L.L.C.—Order No. 801 Compliance Filing to be effective 11/23/2015.
Filed Date: 10/23/15.
Accession Number: 20151023–5163.
Comments Due: 5 p.m. ET 11/4/15.

Docket Numbers: RP16–70–000.
Applicants: Exelon Generating Company, LLC, Summit Natural Gas of Maine.
Description: Joint Petition of Exelon Generating Company, LLC and Summit Natural Gas of Maine, Inc. for Limited Waivers and Clarification under RP16–70.
Filed Date: 10/23/15.
Accession Number: 20151023–5264.
Comments Due: 5 p.m. ET 11/4/15.

Docket Numbers: RP16–71–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: Neg Rate 2015–10–23 Twin Eagle & Tenaska Extension w HK to be effective 11/1/2015.
Filed Date: 10/23/15.
Accession Number: 20151023–5329.
Comments Due: 5 p.m. ET 11/4/15.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP14–247–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Report Filing: RP14–247 Rate Case Refund Report.
Filed Date: 10/23/15.
Accession Number: 20151023–5115.
Comments Due: 5 p.m. ET 11/4/15.

Docket Numbers: RP16–41–001.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Tariff Amendment: 10/23/15 Negotiated Rates—Emera Energy

Services, Inc. (RTS) 2715–24 & –25 AMND to be effective 11/1/2015.

Filed Date: 10/23/15.

Accession Number: 20151023–5261.

Comments Due: 5 p.m. ET 11/4/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 26, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27844 Filed 10–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12686–004]

Baker County, Oregon; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969, and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47,897), the Office of Energy Projects has reviewed Baker County, Oregon's (Baker County) application for a license to construct its proposed Mason Dam Hydroelectric Project, and has prepared an Environmental Assessment (EA). The proposed 3.4-megawatt (MW) project would be located on the Powder River, at the existing U.S. Bureau of Reclamation's (Reclamation) Mason Dam, near Baker City, in Baker County, Oregon. The project would occupy federal land managed by Reclamation and the U.S. Forest Service.

The EA contains Commission staff's analysis of the potential environmental impacts of the proposed hydroelectric project. The EA concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filings. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.*

You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix ''Project No. 12686–004'' to all comments.

Please contact Kenneth Hogan (Commission Staff) by telephone at (202) 502–8434, or by email at *Kenneth.Hogan@ferc.gov,* if you have any questions.

Dated: October 27, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27839 Filed 10–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–4–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Application

Take notice that on October 9, 2015, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application with the Federal Energy Regulatory Commission, pursuant to section 7(c) of the Natural Gas Act (NGA), to construct, install, modify, operate, and maintain certain pipeline facilities located in Pennsylvania, as described in more detail below, all as more completely described in the Application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed to Patrick Stewart, Senior Counsel, Tennessee Gas Pipeline Company, L.L.C., 1001 Louisiana Street, Houston, Texas 77002, phone: (713) 369–8765, facsimile: (713) 420–1601, email: *Patrick_Stewart@kindermorgan.com;* or Debbie Kalisek, Regulatory Affairs, Tennessee Gas Pipeline Company, L.L.C., 1001 Louisiana Street, Houston, Texas 77002, phone: (713) 420–3292, facsimile: (713) 420–1605, email: *debbie_kalisek@kindermorgan.com.*

Specifically, Tennessee requests authorization for the construction and operation of the Orion Project, which include: (1) An approximately 8.23 mile long, 36-inch diameter pipeline loop along Tennessee's existing 300 Line right-of-way in Wayne and Pike Counties, Pennsylvania, ending at existing Compressor Station 323 (Loop 322); (2) an approximately 4.68 mile long, 36-inch diameter pipeline loop along Tennessee's existing 300 Line right-of-way in Pike County, Pennsylvania, beginning at Compressor Station 323 (Loop 323); and (3) certain appurtenant and auxiliary facilities. Tennessee has executed binding precedent agreements with shippers for 100 percent of the 135,000 Dth per day of incremental firm transportation capacity created by the Orion Project. The Orion Project is estimated to cost $143,549,615.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final

environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: November 16, 2015.

Dated: October 26, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27803 Filed 10–30–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0533; FRL–9936–52–OEI]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Servicing of Motor Vehicle Air Conditioners (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 2, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2015–0533 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rebecca von dem Hagen, Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, MC 6205J, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9445; fax number: (202) 343–2362; email address: *vondemhagen.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 13, 2015 (40 FR 48529), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one (1) comment during the comment period, which is addressed in the ICR supporting statement. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute.

Title: Servicing of Motor Vehicle Air Conditioners.

ICR numbers: EPA ICR No. 1617.08, OMB Control No. 2060–0247.

ICR Status: This ICR is scheduled to expire on October 31, 2015. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 609 of the Clean Air Act Amendments of 1990 (Act) provides general guidelines for the recovery and recycling of motor vehicle air conditioners. It states that ''no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recovery and/or recovery and recycling equipment (hereafter referred to as ''refrigerant handling equipment'') and no such person may perform such service unless such person has been properly trained and certified.'' In 1992, EPA developed regulations under section 609 that were published in 57 FR 31240, and codified at 40 CFR Subpart B (Section 82.30 *et seq.*). The information required to be collected under the Section 609 regulations is: Approved refrigerant handling equipment; approved independent standards testing organizations; technician training and certification; and certification, reporting and recordkeeping.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: The following is a list of NAICS codes for organizations potentially affected by the information requirements covered under this ICR. It is meant to include any establishment that may service or maintain motor vehicle air conditioners. 4411 Automobile Dealers; 4413 Automotive Parts, Accessories, and Tire Stores; 44711 Gasoline Stations with Convenience Stores; 45299 All Other General Merchandise Stores; 811198 All Other Automotive Repair and Maintenance; Other affected groups include: Independent Standards Testing Organizations; Organizations with Technician Certification Programs.

Estimated Number of Respondents: 50,318.

Frequency of Response: On occasion, biennially, only once.

Estimated Total Annual Hour Burden: 4,164.

Estimated Total Annual Cost: $224,619.62, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 359 hours in g the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to an adjustment in the calculation to estimate the burden resulting from required submissions for new equipment certifications.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–27849 Filed 10–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0714; FRL–9936–47–OW]

Notice of a Public Meeting of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a meeting of the National Drinking Water Advisory Council (NDWAC), as authorized under the Safe Drinking Water Act. The meeting is scheduled for November 17, 18 and 19, 2015. The NDWAC typically considers issues associated with drinking water protection and public drinking water systems. During this meeting, the NDWAC will focus discussions on developing recommendations for the EPA Administrator on the Lead and Copper National Primary Drinking Water Regulation—Long Term Revisions.

DATES: The meeting on November 17, 2015, will be held from 8:30 a.m. to 4:15 p.m.; November 18, 2015, from 8 a.m. to 5 p.m.; and November 19, 2015, from 8 a.m. to noon, eastern time.

ADDRESSES: The public meeting will be held in Crystal City, Arlington, Virginia. The exact location of the meeting will be noticed in the **Federal Register** no later than the week before the meeting, posted at *http://water.epa.gov/drink/ndwac/* and posted at *www.regulations.gov* under Docket ID No. EPA–HQ–OW–2015–0714.

FOR FURTHER INFORMATION CONTACT: For more information about this meeting or to request written materials, contact Michelle Schutz of the Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, by phone at 202–564–7374 or by email at *schutz.michelle@epa.gov.* For additional information about the NDWAC meeting, please visit *http://water.epa.gov/drink/ndwac/or www.regulations.gov* (search for Docket ID No. EPA–HQ–OW–2015–0714).

SUPPLEMENTARY INFORMATION:

Details about Participating in the Meeting: Teleconferencing will be available during the meeting. The number of teleconference connections available for the meeting is limited and will be offered on a first-come, first-served basis. The teleconference number is (1) 866–299–3188; when prompted, enter conference code 202 564 7347.

To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Michelle Schutz by November 9, 2015, by email at *schutz.michelle@epa.gov* or by phone at 202–564–7374. The NDWAC will allocate 45 minutes for the public's input (from 9:30 a.m. to 10:15 a.m., eastern time) at the meeting on November 18, 2015. Oral statements will be limited to three minutes at the meeting. It is preferred that only one person present a statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after the NDWAC meeting. Written statements intended for the meeting must be received by November 9, 2015, to be distributed to all members of the NDWAC before any final discussion or vote is completed. Any statement received on or after the date specified will become part of the permanent file for the meeting and will be forwarded to the NDWAC members for their information.

National Drinking Water Advisory Council: The NDWAC was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act (SDWA)

of 1974, Public Law 93–523, 42 U.S.C. 300j-5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NDWAC was established under the SDWA to provide practical and independent advice, consultation and recommendations to the EPA Administrator on the activities, functions, policies and regulations required by the SDWA.

Special Accommodations: For information on access or services for individuals with disabilities, please contact Michelle Schutz at 202–564–7374 or by email at *schutz.michelle@epa.gov.* To request an accommodation for a disability, please contact Michelle Schutz at least 10 days prior to the meeting to give the hosting facility as much time as possible to process your request.

Dated: October 27, 2015.

Peter Grevatt,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2015–27883 Filed 10–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–CERCLA–10–2015–0134; FRL–9936–44–Region–10]

Proposed CERCLA Administrative Cost Recovery Settlement; Ashue Road Site, Wapato, Yakima County, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs incurred for the Ashue Road Site located at Section 17, Township 11, Range 19 in Wapato, Yakima County, Washington. Under this proposed settlement, the settling parties are Groat Bros., Inc., T.W. Clark Construction, LLC, and the Wapato School District No. 207. The proposed settlement requires the settling parties to pay $95,000 to the Environmental Protection Agency Hazardous Substance Superfund. Upon payment of this sum to Environmental Protection Agency (EPA), the settling parties will be released from their obligations for payments to EPA for costs EPA incurred at the Site prior to the effective date of the proposed settlement.

For 30 days following the date of publication of this notice, the EPA will receive written comments relating to the proposed settlement. The EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at the U.S. EPA Region 10 Office, located at 1200 Sixth Avenue, Seattle, Washington 98101.

DATES: Comments must be received on or before December 2, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–CERCLA–10–2015–0134, 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: Ted Yackulic, Assistant Regional Counsel, Office of Regional Counsel, Mail Stop ORC–113, Environmental Protection Agency, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; telephone number: (206) 553–1218; fax number: (206) 553–1762; email address: *yackulic.ted@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

The ASHUE ROAD SITE is located at Section 17, Township 11, Range 19 in Wapato, Yakima County, WA, and is located on fee property within the reservation for the Yakama Nation. The Site covers approximately 2.46 acres. There is a residential home within the Site. The area surrounding the Site supports agricultural and residential uses. During 2012 a portion of the Wapato High School in Wapato, Washington was demolished. The Wapato School District No. 207 engaged T.W. Clark Construction, LLC as the general contractor for the demolition work. T.W. Clark Construction, LLC hired Groat Bros., Inc. as sub-contractor for performing demolition work and transporting demolition materials from the High School. The demolition work included the demolition of materials that contained asbestos. A portion of materials generated during the Wapato High School demolition project were transported to the Site for disposal. The Site is not licensed by the State of Washington, Yakima County, or the Yakama Nation to receive demolition materials or materials that contain hazardous substances for disposal. EPA conducted a field investigation of the Site on October 5, 2012. EPA's investigation revealed the presence of asbestos in the demolished materials disposed of at the Site. Asbestos is a hazardous substance. EPA oversaw the performance of a removal action at the Site by T.W. Clark Construction, LLC, and Groat Bros. Inc. The removal action involved the excavation and off-Site disposal of the high school demolition wastes. EPA incurred approximately $311,330.96 performing or overseeing the performance of response costs at the Site. Pursuant to the terms of the CERCLA Section 122(h)(1) Settlement Agreement for Recovery of Response Costs, the settling parties will pay EPA $95,000. In return for the payment of this amount, EPA covenants not to sue the settling parties for past response costs—response costs incurred by EPA prior to the effective date of the Settlement Agreement—at the Site. In the event that EPA continues to incur response costs at the Site, EPA's covenant not to sue does not include costs incurred by EPA after the effective date of the Settlement Agreement.

Dated: October 15, 2015.

Chris D. Field,

Manager, Emergency Management Program, EPA Region 10.

[FR Doc. 2015–27885 Filed 10–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9936–43–Region 6]

Public Water System Supervision Program Revision for the State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Oklahoma is revising its approved Public Water System Supervision (PWSS) program. Oklahoma has adopted the Revised Total Coliform Rule (RTCR) by reference under Title 252 Chapter 631 Subchapters 1–3 of the *Oklahoma Administrative Code Pertaining to the Oklahoma Department of Environmental Quality Pubic Water Supply Operation.* EPA has reviewed and approved the RTCR primacy application submitted by Oklahoma. Therefore, EPA intends to approve this PWSS program revision package, which gives the Oklahoma Department of Environmental Quality primary enforcement responsibility for implementing the Revised Total Coliform Rule for all public water systems regulated by the state.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by December 2, 2015 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 2, 2015, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on December 2, 2015. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Oklahoma Department of Environmental Quality, Public Water System Compliance, 707 North Robinson, Oklahoma City, Oklahoma 73102; and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Copies of the documents which explain the rule can also be obtained at EPA's Web site at *https://www.federalregister.gov/articles/2013/02/13/2012-31205/national-primary-drinking-water-regulations-revisions-to-the-total-coliform-rule* and *https://www.federalregister.gov/articles/2014/02/26/2014-04173/national-primary-drinking-water-regulations-minor-corrections-to-the-revisions-to-the-total-coliform,* or by writing or calling Ms. Evelyn Rosborough at the address below.

FOR FURTHER INFORMATION CONTACT: For further information contact Evelyn Rosborough, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–7515, facsimile (214) 665–6490, or email: *rosborough.evelyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: October 16, 2015.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2015–27901 Filed 10–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9936–42–OAR]

Notice of Public Meeting of the Interagency Steering Committee on Radiation Standards (ISCORS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) will host a meeting of the Interagency Steering Committee on Radiation Standards (ISCORS) on Monday, November 9, 2015 in Washington, DC. The purpose of ISCORS is to foster early resolution and coordination of regulatory issues associated with radiation standards. Member agencies include: EPA; the Nuclear Regulatory Commission; and Departments of Energy; Defense; Transportation; Homeland Security; Health and Human Services; and Labor's Occupational Safety and Health Administration. Observer agencies include: The Office of Science and Technology Policy, Office of Management and Budget, Defense Nuclear Facilities Safety Board, as well as state representatives from Arizona and Pennsylvania. ISCORS maintains several objectives: (1) Facilitate a consensus on allowable levels of radiation risk to the public and workers; (2) promote consistent and scientifically sound risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation; (3) promote completeness and coherence of Federal standards for radiation protection; and (4) identify interagency radiation protection issues and coordinate their resolution. ISCORS meetings include presentations by Subcommittee Chairs and discussions of current radiation protection issues. Committee meetings normally involve pre-decisional intra-governmental discussions and, as such, are normally not open for observation by members of the public or media. This particular ISCORS meeting is open to all interested members of the public. Time will be reserved on the agenda for members of the public to provide comments.

Please Note: A discussion on the draft International Atomic Energy Agency (IAEA) Safety Requirements document, DS457, Preparedness and Response for a Nuclear or Radiological Emergency, is scheduled for this meeting and is intended to provide an overview and invite viewpoints on the draft document during the IAEA Member State review process. The U.S. government, as a member state of the IAEA, is afforded an opportunity to provide comments. The draft document is available at: *http://www-ns.iaea.org/downloads/standards/drafts/ds457.pdf.* The IAEA Safety Standards are not binding on the U.S., and the standards are used in different ways in different countries. The U.S. does not routinely adopt IAEA Safety Standards, but has considered the safety standards as a useful point of reference in the development of proposals under the Administrative Procedure Act (APA) for changes to regulations or guidance in the U.S. Members of the public who attend the ISCORS meeting will also be afforded the opportunity to provide any viewpoints that they might wish the U.S. government to consider in the development of comments. In light of the importance of this draft document, particularly in light of the events at the Fukushima Daiichi nuclear power station, this meeting provides an opportunity

for input, but it is not considered as formal public comment. Any future actions by an agency of the U.S. government to consider use of the IAEA document, when finalized, will be subject to the normal APA process for notice and comment. Presentations of previous ISCORS public meetings are available at the ISCORS Web site, *www.iscors.org.* The final meeting agenda will be posted on the Web site shortly before the meeting. Please note that this public meeting will not have an available conference line due to conference room restrictions.

DATES: The meeting will be held on Monday, November 9, 2015, from 1:00 p.m. to 4:30 p.m.

ADDRESSES: The ISCORS meeting will be held in Room 1153 at the USEPA William Jefferson Clinton East Building (WJC East), 1201 Constitution Avenue NW., Washington, DC. Attendees are required to present a photo ID such as a government agency photo identification badge or valid driver's license. The Department of Homeland Security has begun implementing REAL ID Act requirements for visitors who present state-issued driver's licenses as IDs at restricted federal facilities. Driver's licenses from states and territories that do not comply with the REAL ID Act will not be accepted as identification. More details on these ID requirements can be found at *http://www2.epa.gov/aboutepa/visiting-epa-headquarters* and clicking on the Building Access tab. Visitors and their belongings will be screened by EPA security guards. Visitors must sign the visitors log at the security desk and will be issued a visitors badge by the security guards to gain access to the meeting.

FOR FURTHER INFORMATION CONTACT: Marisa Thornton, Radiation Protection Division, Office of Radiation and Indoor Air, Mailcode 6608T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone 202–343–9237; fax 202–343–2304; email *thornton.marisa@epa.gov.*

SUPPLEMENTARY INFORMATION: Pay parking is available for visitors at multiple garages around the Ronald Reagan building and Federal Triangle complex. Visitors can also ride metro to the Federal Triangle station (Blue and Orange Line). After exiting the turnstiles, go up both escalators to street level. Turn around and walk towards 12th Street NW. Turn right on 12th Street and continue walking until you get to Constitution Avenue. Then turn right onto Constitution Avenue and 1201 William Jefferson Clinton East is the first building on your right.

Visit the ISCORS Web site, *www.iscors.org* for more detailed information.

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2015–27886 Filed 10–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0494; FRL–9936–41–OECA]

Proposed Information Collection Request; Comment Request; Tips and Complaints Regarding Environmental Violations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Tips and Complaints Regarding Environmental Violations (Renewal)'' (EPA ICR No. 2219.05, OMB Control No. 2020–0032) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through 04/30/2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 4, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2009–0494, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Michael LeDesma, Legal Counsel Division, Office of Criminal Enforcement, Forensics, and Training; Environmental Protection Agency, Building 25, Box 25227, Denver Federal Center, Denver, CO 80025; telephone number: 303–462–9453 or fax number: 303–462–9075; email address: *ledesma.michael@epa.gov*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Office of Enforcement and Compliance Assurance (OECA) is the component of the Environmental Protection Agency responsible for administrative, civil and criminal enforcement of the environmental laws that EPA administers. EPA's criminal enforcement program, and, to a lesser extent, its civil enforcement program are, like other federal law enforcement programs, dependent on tips and complaints from concerned citizens and members of the regulated community. The OECA Tips & Complaints Web page provides a convenient means by which

these individuals can voluntarily submit tips and complaints regarding suspected violations of environmental law. OECA is considering the use of a mobile-friendly version of the Tips and Complaints Web pages that will complement the existing process. Tips or complaints received are used by civil and/or criminal enforcement personnel at EPA to determine whether an investigation is warranted into the suspected or alleged misconduct. In some cases, EPA may decide to refer tips or complaints for investigation to other federal agencies or to State or local authorities within whose jurisdiction the matter may appropriately fall. The OECA Tips and Complaints Web page or mobile-friendly versions does not replace or otherwise supplant other means of providing tips or complaints to EPA; it merely provides a convenient means by which to supply these tips or complaints.

As with complaints provided by phone, fax, or electronic mail, we expect that tippers or complainants are already in the possession of information that leads them to suspect a violation of environmental law when they contact EPA to report the matter. Accordingly, EPA believes that the burden associated with the reporting is merely that arising from the need to read the instructions and type or select information into the appropriate fields. In our estimate, this amounts to approximately ½ hour per tip or complaint, for total annualized burden for all tippers and complainants of 5,143 hours. While we do not expect actual labor costs associated with these burden hours, the opportunity cost of 4,601 burden hours would be approximately $100,026.

EPA does not maintain hardcopies of the information supplied through the webform. Tips or complaints not acted upon within 30 days are automatically purged from the database. Tips or complaints upon which some action is taken are preserved for a period of five years, pursuant to the record schedule for criminal investigations.

Form Numbers: None.

Respondents/affected entities: Anyone wishing to file a tip or complaint.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 10,286 (total).

Frequency of response: Occasionally.

Total estimated burden: 5,143 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $100,026 (per year), includes no annualized capital or operation & maintenance costs.

Changes in Estimates: There is an increase of 542 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase reflects the fact that tips and complaints are being filed at a higher rate than originally anticipated, a strong indication of the success of this program. There has been no change in the information being reported or the estimated burden per respondent.

Dated: October 15, 2015.

Henry Barnet,

Director, Office of Criminal Enforcement, Forensics and Training.

[FR Doc. 2015–27892 Filed 10–30–15; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board—Appointment of Members

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the Performance Review Board of the Equal Employment Opportunity Commission.

FOR FURTHER INFORMATION CONTACT: Lisa M. Williams, Chief Human Capital Officer, U.S. Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507, (202) 663–4306.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations to the Chair, EEOC, with respect to performance ratings, pay level adjustments and performance awards.

The following are the names and titles of executives appointed to serve as members of the SES PRB. Members will serve a 12-month term, which begins on November 18, 2015.

PRB Chair: Ms. Delner Franklin-Thomas, Director, Birmingham District Office, Equal Employment Opportunity Commission.

Members:

Ms. Julianne Bowman, Director, Chicago District Office, Equal Employment Opportunity Commission;

Mr. Carlton Hadden, Director, Office of Federal Operations, Equal Employment Opportunity Commission;

Mr. James L. Lee, Deputy General Counsel, Office of General Counsel, Equal Employment Opportunity Commission;

Ms. Veronica Venture, Director, EEO and Diversity, Department of Homeland Security.

Alternate: Ms. Germaine Roseboro, Director, Office of the Chief Financial Officer, Equal Employment Opportunity Commission.

By the direction of the Commission.

Dated: October 23, 2015.

Jenny R. Yang,

Chair.

[FR Doc. 2015–27733 Filed 10–30–15; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0072, –0093, –0095, –0117, –0145, –0152 & –0161)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995. The FDIC recently requested comment for 60 days on proposals to renew the information collections described below. Only one comment was received, as explained below. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these information collections, and again invites comment on these renewals.

DATES: Comments must be submitted on or before December 2, 2015.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper, Counsel, (202.898.3877) Room MB–3016 or Manny Cabeza, Counsel, (202.898.3767), MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building

(located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary Kuiper or Manny Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to revise and renew the following currently-approved collections of information:

1. Title: Acquisition Services Information Requirements.

OMB Number: 3064–0072.

Form Numbers: 3064–1600/04, 1600–07, 3700–57, 3700/04A, 3700/12, 3700/44, 3700/59.

Affected Public: Entities contracting with FDIC.

Estimated Number of Respondents: 5,135.

Estimated Average Burden per Respondent: .5 hours.

Estimated Total Annual Burden Hours: 2,434 hours.

General Description of Collection: This is a collection of information involving submission of various forms by contractors doing business with the FDIC.

FDIC Form 3700/59, Fair Inclusion of Minorities and Women, is a contract clause implementing Section 342(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5452). The contract clause seeks a commitment from an FDIC Contractor to ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce and the workforces of its applicable subcontractors. Further, the clause asserts the FDIC's right to request documentation from the Contractor that demonstrates the Contractor's good faith effort to include minorities and women in its workforce and subcontractors' workforces, and requires the Contractor to annually certify that it has made such good faith efforts.

FDIC Form 3700/04A, Contractor Representations and Certification, must be completed by any offeror that responds to a solicitation for an award over $100,000. The Form is being revised to add two certifications, ''Certification Regarding Fair Inclusion of Minorities and Women'' and ''Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability.'' The ''Certification Regarding Fair Inclusion of Minorities and Women'' implements § 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5452) and requires an offeror to certify to its commitment to equal opportunity in employment and contracting and that it has made and will continue to make a good faith effort to ensure, to the maximum extent possible, the fair inclusion of minorities and women in its workforce and in the workforce of its applicable subcontractors. The ''Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability'' implements Section 744 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235)), by requiring an offeror to represent whether it is or is not ''a corporation that has 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.''

One comment was received regarding this information collection that did not address the propriety of the collection of information, the practical utility of the information requested, or the accuracy of FDIC's estimate of the burden of the collection of information. The comment addressed policy considerations that FDIC believes are fully embodied in the implementing statutory provisions and the information and certifications requested in the forms included in the collection of information.

2. Title: Notices Required of Government Securities Dealers or Brokers.

OMB Number: 3064–0093.

Form Numbers: G–FIN; G–FINW; G–FIN4; and G–FIN5.

Affected Public: Insured state nonmember banks acting as government securities brokers and dealers.

Estimated Number of Respondents: 17.

Frequency of Response: On Occasion.

Estimated Average Burden per Respondent: 1 hours.

Estimated Total Annual Burden Hours: 17 hours.

General Description of Collection: The Government Securities Act of 1986 requires all financial institutions acting as government securities brokers and dealers to notify their Federal regulatory agencies of their broker-dealer activities, unless exempted from the notice requirements by Treasury Department regulation.

3. Title: Procedures for Monitoring Bank Protection Act Compliance.

OMB Number: 3064–0095.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 4,049.

Estimated Average Burden per Respondent: .5 hours.

Estimated Total Annual Burden Hours: 2,025 hours.

General Description of Collection: The collection requires insured state nonmember banks to comply with the Bank Protection Act and to review bank security programs.

4. Title: Mutual Stock Conversion of State Savings Banks.

OMB Number: 3064–0117.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 15.

Estimated Average Burden per Respondent: 250 hours.

Estimated Total Annual Burden Hours: 3,750 hours.

General Description of Collection: State nonmember savings bank must file a notice of intent to convert to stock form, and provide the FDIC with copies of documents filed with state and federal banking and/or securities regulators in connection with any proposed mutual-to-stock conversion.

5. Title: Notice Regarding Unauthorized access to Customer Information.

OMB Number: 3064–0145.

Affected Public: Insured state nonmember banks.

Frequency of Response: On Occasion.

Number of FDIC-Regulated Banks that will Notify Customers: 93.

Estimated Time per Response: 29 hours.

Estimated Total Annual Burden Hours: 2,697 hours.

General Description of Collection: This collection reflects the FDIC's expectations regarding a response program that financial institutions should have, to address unauthorized access to or use of customer information, that could result in substantial harm or inconvenience to a customer. The information collection requires financial institutions to: (1) Develop notices to customers; and (2) in certain circumstances, determine which customers should receive the notices, and to send the notices to customers.

6. Title: ID Theft Red Flags.

OMB Number: 3064–0152.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 4,049.

Estimated Average Burden per Respondent: 16 hours.

Estimated Total Annual Burden Hours: 64,784 hours.

General Description of Collection: The regulation containing this information collection requirement is 12 CFR part 334, which implements sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159 (2003).

FACT Act Section 114: Section 114 requires the Agencies to jointly propose guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. In addition, each financial institution and creditor is required to establish reasonable policies and procedures to address the risk of identity theft that incorporate the guidelines. Credit card and debit card issuers must develop policies and procedures to assess the validity of a request for a change of address under certain circumstances.

The information collections pursuant to section 114 require each financial institution and creditor to create an Identify Theft Prevention Program and report to the board of directors, a committee thereof, or senior management at least annually on compliance with the proposed regulations. In addition, staff must be trained to carry out the program. Each credit and debit card issuer is required to establish policies and procedures to assess the validity of a change of address request. The card issuer must notify the cardholder or use another means to assess the validity of the change of address.

FACT Act Section 315: Section 315 requires the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when such a user receives a notice of address discrepancy from a consumer reporting agencies. Part 334 provides such guidance. Each user of consumer reports must develop reasonable policies and procedures that it will follow when it receives a notice of address discrepancy from a consumer reporting agency. A user of consumer reports must furnish an address that the user has reasonably confirmed to be accurate to the consumer reporting agency from which it receives a notice of address discrepancy.

The Agencies believe that the entities covered by the proposed regulation are already furnishing addresses that they have reasonably confirmed to be accurate to consumer reporting agencies from which they receive a notice of address discrepancy as a usual and customary business practice. Therefore, this requirement is not included in the burden estimates set out below.

7. Title: Furnisher Information Accuracy and Integrity (FACTA 312).

OMB Number: 3064–0161.

Affected Public: State nonmember banks.

Policies and Procedures:

Estimated Number of Respondents: 4,049.

Estimated Burden per Respondent: 40 hours (24 hours to implement written policies and procedures and training associated with the written policies and procedures; 8 hours to amend procedures for handling complaints received directly from consumers; and, 8 hours to implement the new dispute notice requirements.)

Estimated Annual Burden: 161,960 hours (4,049 × 40 hours).

Frivolous or Irrelevant Dispute Notices:

Number of Frivolous or Irrelevant Dispute Notices: 88,980.

Estimated Burden per Frivolous or Irrelevant Dispute Notice: 14 minutes.

Estimated Annual Burden: 20,762 hours (88,980 × 14/60).

Total Estimated Annual Burden: 182,722 hours (161,960 hours for policies and procedures plus 20,762 hours for frivolous and irrelevant dispute notices).

General Description of the Collection: FDIC is required by section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) to issue guidelines for use by furnishers regarding the accuracy and the integrity of the information about consumers that they furnish to consumer reporting agencies, and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing guidelines. Section 312 also requires the Agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the collections of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 28th day of October 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27836 Filed 10–30–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination, 10461 First East Side Savings Bank, Tamarac, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10461 First East Side Savings Bank, Tamarac, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of First East Side Savings Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective October 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: October 28, 2015.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27851 Filed 10–30–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination, 10466 Hometown Community Bank, Braselton, Georgia

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10466 Hometown Community Bank, Braselton, Georgia (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Hometown Community Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-

Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective October 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: October 28, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27850 Filed 10–30–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 2015.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Steven D. Carr and Cheryl A. Carr,* both of Wichita, Kansas; to acquire control of Community State Bancshares, Inc., Wichita, Kansas, parent of Community Bank of Wichita, Inc., Wichita, Kansas.

Board of Governors of the Federal Reserve System, October 28, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–27853 Filed 10–30–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 2015.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Michael J. Elsenpeter, Walker, Minnesota;* to acquire voting shares of Walker Ban Co., Walker, Minnesota; and thereby indirectly acquire voting shares of First National Bank North, Walker, Minnesota.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Howard Errol Snyder, Arlee, Montana;* to acquire voting shares of Cornerstone Alliance, Ltd., parent of CornerBank, both in Winfield, Kansas.

Board of Governors of the Federal Reserve System, October 27, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–27769 Filed 10–30–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 27, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Fort Madison Financial Company,* Fort Madison, Iowa; to acquire 100 percent of Keokuk Savings Bank and Trust Company, Keokuk, Iowa.

2. *First Illinois Bancorp, Inc.,* East Saint Louis, Illinois; to acquire 100 percent of Concord Bancshares, Inc., and thereby indirectly acquire Concord Bank, both of Saint Louis, Missouri.

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First National Bancorp, Inc.,* Green Forest, Arkansas; to acquire 100 percent of the voting shares of Twin Lakes Community Bank, Flippin, Arkansas.

Board of Governors of the Federal Reserve System, October 28, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–27852 Filed 10–30–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors no later than November 27, 2015.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *ESB Bancorp MHC, Easthampton, Massachusetts;* (''ESB MHC'') to merge with Hometown Community Bancorp MHC, Oxford, Massachusetts (''Hometown MHC''), with ESB MHC as the surviving entity to be known as ''Hometown Financial Group, MHC''; and (ii) ESB Bancorp, Inc., Easthampton, Massachusetts (''ESB Bancorp''), to merge with Hometown Community Bancorp, Inc., Oxford, Massachusetts (''Hometown Bancorp''), with ESB Bancorp as the surviving entity to be known as ''Hometown Financial Group, Inc.'' Upon consummation of the merger, Easthampton Savings Bank and Hometown Bank will remain separate wholly-owned subsidiaries of Hometown Financial Group, Inc.

Board of Governors of the Federal Reserve System, October 27, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–27768 Filed 10–30–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0149; Docket 2015–0055; Sequence 21]

Submission for OMB Review; Subcontract Consent

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning subcontract consent. A notice was published in the **Federal Register** at 80 FR 41501 on July 15, 2015. No comments were received.

DATES: Submit comments on or before December 2, 2015.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0149, Subcontract Consent''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0149, Subcontract Consent'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0149, Subcontract Consent.

Instructions: Please submit comments only and cite ''Information Collection 9000–0149, Subcontract Consent,'' in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, Office of Government-wide Policy, contact via telephone 703–605–2828 or email at *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) clause 52.244–2, Subcontracts, requires prime contractors to provide contracting officers notification before the award of any cost-plus-fixed-fee subcontract, or certain fixed-price subcontracts. This requirement for advance notification is driven by statutory requirements in 10 U.S.C. 2306 and 41 U.S.C. 3905. FAR clause 52.244–2 also requires prime contractors to get consent to subcontract for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions under fixed-price contracts that exceed the simplified acquisition threshold.

The objective of requiring consent to subcontract, as discussed in FAR Part 44, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds, and complies with Government policy when subcontracting. The Government requires a contractor to provide certain information (*e.g.,* subcontractor's name, type of subcontract, price, description of supply or services, etc.) reasonably in advance of placing a subcontract to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment. The information provides the Government a basis for granting, or withholding consent to subcontract.

B. Annual Reporting Burden

Based on information from the Federal Procurement Data System (FPDS) regarding contracts that would be required to provide information pursuant to FAR clause 52.244–2, an upward adjustment is being made to the number of respondents. As a result, an upward adjustment is being made to the estimated annual reporting burden hours since the notice regarding the

previous extension to this clearance was published in the **Federal Register** at 77 FR 56644, on September 13, 2012.

Number of Respondents: 6,601.

Responses per Respondent: 3.

Total Responses: 19,803.

Average Burden Hours per Response: 1.846.

Total Burden Hours: 36,557.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0149, Subcontract Consent, in all correspondence.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2015–27819 Filed 10–30–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10333]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (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.

DATES: Comments must be received by January 4, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**). CMS–10333 Consumer Assistance Program Grants

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Consumer Assistance Program Grants; *Use:* Section 1002 of the Affordable Care Act provides for the establishment of consumer assistance (or ombudsman) programs, starting in FY 2010. Federal grants will support these programs. These programs will assist consumers with filing complaints and appeals, assist consumers with enrollment into health coverage, collect data on consumer inquiries and complaints to identify problems in the marketplace, educate consumers on their rights and responsibilities, and with the establishment of the new Exchange marketplaces, resolve problems with premium credits for Exchange coverage. Importantly, these programs must provide detailed reporting on the types of problems and questions consumers may experience with health coverage, and how these problems and questions are resolved. In order to strengthen oversight, the law requires programs to report data to the Secretary of the Department of Health and Human Services (HHS) ''As a condition of receiving a grant under subsection (a), an office of health insurance consumer assistance or ombudsman program shall be required to collect and report data to

the Secretary on the types of problems and inquiries encountered by consumers'' (Sec. 2793 (d)). Analysis of this data reporting will help identify patterns of practice in the insurance marketplaces and uncover suspected patterns of noncompliance. HHS must share program data reports with the Departments of Labor and Treasury, and State regulators. Program data also can offer CCIIO one indication of the effectiveness of State enforcement, affording opportunities to provide technical assistance and support to State insurance regulators and, in extreme cases, inform the need to trigger federal enforcement. *Form Number:* CMS–10333 (OMB Control Number: 0938–1097); *Frequency:* Annually, Quarterly; *Affected Public:* Private Sector: State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 459; *Total Annual Hours:* 9,588. (For policy questions regarding this collection contact Lateefa Dawkins at 301–492–4262.)

Dated: October 28, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–27859 Filed 10–30–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Evaluation of the Child Welfare Capacity Building Collaborative.

OMB No.: New Collection.

Description: The Evaluation of the Child Welfare Capacity Building Collaborative is sponsored by the Children's Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services. The Capacity Building Collaborative includes three centers (Center for States, Center for Tribes, Center for Courts) funded by the Children's Bureau to provide national child welfare expertise and evidence-informed training and technical assistance services to State, Tribal and Territorial public child welfare agencies and Court Improvement Programs (CIPs). The Centers offer a wide array of services including, but not limited to: Web-based content and resources, product development and dissemination, self-directed and group-based training, virtual learning and peer networking events, and tailored consultation and coaching. During the project period the Centers' services will be evaluated by both Center-specific evaluations and a Cross-Center Evaluation. The Center-specific evaluations are designed to collect data on Center-specific processes and outcomes. The Cross-Center Evaluation is designed to respond to a set of cross-cutting evaluation questions posed by the Children's Bureau. The Cross-Center Evaluation will examine: The extent to which key partners across and within the Centers are collaborating; whether the capacity building service interventions offered by the Centers are evaluable; the degree to which Centers follow common protocols; whether service interventions are delivered or performed as designed; how satisfied recipients are with the services received; how effective the service interventions were; which service approaches were most effective and under what conditions; and the costs of services.

The Cross-Center Evaluation is utilizing a longitudinal mixed methods approach to evaluate the Centers' services as they develop and mature over the course of the study period. Multiple data collection strategies will be used to efficiently capture quantitative and qualitative data to enable analyses that address each evaluation question. Proposed Cross-Center Evaluation data sources for this effort include (1) satisfaction surveys to assess recipients' satisfaction with services, such as the Learning Experiences Satisfaction Survey; (2) a leadership interview, administered to all State child welfare directors, Tribal child welfare directors, and CIP coordinators that are receiving services from the Centers; and (3) a collaboration survey, an annual Web-based survey administered to the directors and staff of the three Centers. Center-specific data sources for this effort include (1) assessment tools such as the Tribal Organizational Assessment Caseworker Interview; and (2) service-specific feedback forms, such as the Center for States Intensive Projects instrument and the Center for Courts CQI Workshops instrument.

Respondents: Respondents of data collection instruments will include (1) child welfare and judicial professionals that use the Centers' Web pages, products, and online courses, that participate in virtual or in-person trainings or peer events, and that receive brief or intensive tailored services from the Centers; (2) State child welfare directors, Tribal child welfare directors, and CIP coordinators that are receiving services from the Centers; and (3) the directors and staff of the three Capacity Building Centers. The proposed data collection will span four years.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Webpage & Product Satisfaction Survey	1,560	1	.08	125
Learning Experiences Satisfaction Survey	500	1	.33	165
Learning Experience Module Survey	900	1	.08	72
Peer Event Satisfaction Survey	5,502	1	.08	441
Assessment & Capacity Building Plan Satisfaction Survey	450	1	.066	30
Center for Tribes Contact Form	50	1	.05	3
Center for Tribes Demographic Survey	20	1	1.75	35
Tribal Organizational Assessment Caseworker Interview	20	1	1.25	25
Tribal Organizational Assessment Community Provider Interview	16	1	1.25	20
Tribal Organizational Assessment Community Member/Elder Interview	12	1	1.0	12
Tribal Organizational Assessment Family Interview	14	1	1.0	14
Center for States Information and Referral	12	1	.05	1
Center for States Intensive Projects	330	2	.33	218
Center for States Constituency Groups	400	2	.33	264
Center for States Consultant Feedback Form	156	1	.13	21
Center for States Brief Services	125	1	.33	42

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
CIP Annual Meeting Survey	200	1	.13	26
Center for Courts CQI Workshops	48	1	.17	8
Leadership Interview—States	13	2	1	26
Leadership Interview—CIPs	13	2	1	26
Leadership Interview—Tribes	8	2	1.25	20
Leadership Interview Part II—Tribes	8	2	.67	11
Annual Collaboration Survey	230	1	.36	83

Estimated Total Annual Burden Hours: 1,688.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–27833 Filed 10–30–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–2270]

The Drug Supply Chain Security Act Implementation: Product Tracing Requirements for Dispensers—Compliance Policy; Updated Guidance for Industry, Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; revised guidance document.

SUMMARY: The Food and Drug Administration (FDA or we) is issuing a revised guidance document that extends the compliance policy described in the guidance for industry entitled ''DSCSA Implementation: Product Tracing Requirements for Dispensers—Compliance Policy.'' This revised guidance announces FDA's intention with regard to enforcement of certain product tracing requirements of the Federal Food, Drug, and Cosmetic Act (FD&C Act) added by the Drug Supply Chain Security Act (DSCSA). FDA does not intend to take action against dispensers who, prior to March 1, 2016, accept ownership of product without receiving transaction information, transaction history, and transaction statements (product tracing information), prior to or at the time of a transaction, or do not capture and maintain the product tracing information, as required by the FD&C Act.

DATES: Effective November 2, 2015. For information about enforcement dates, please see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2015–D–2270 for ''The Drug Supply Chain Security Act Implementation: Product Tracing Requirements for Dispensers—Compliance Policy; Revised Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the

Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *drugtrackandtrace@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 6, 2015, FDA published a Notice of Availability in the **Federal Register** (80 FR 38449) announcing a guidance document entitled ''DSCSA Implementation: Product Tracing Requirements for Dispensers—Compliance Policy.'' The guidance described FDA's intention with regard to enforcement of the product tracing information requirements under section 582(d)(1) of the FD&C Act (21 U.S.C. 360eee–1(d)(1)). FDA is issuing a revised guidance that extends the compliance policy described in the guidance. We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (21 CFR 10.115(g)(2)). We made this determination because this guidance document provides information pertaining to certain statutory requirements that took effect on July 1, 2015, regarding the provisions to provide, capture, and maintain product tracing information under section 582(d)(1) of the FD&C Act, and it extends a compliance policy that would have expired for transactions after November 1, 2015. It is important that FDA provide this information before that date. Although this guidance document is immediately in effect, it remains subject to comment in accordance with the Agency's good guidance practices (21 CFR 10.115(g)(3)).

On November 27, 2013, the DSCSA (Title II of Pub. L. 113–54) was signed into law. Section 202 of DSCSA adds sections 581 and 582 to the FD&C Act, which set forth new definitions and requirements for the tracing of products through the pharmaceutical distribution supply chain. Starting in 2015, trading partners (manufacturers, wholesale distributors, dispensers, and repackagers) were required under sections 582(b)(1), (c)(1), (d)(1), and (e)(1) of the FD&C Act to exchange product tracing information when engaging in transactions involving certain prescription drugs. For dispensers, requirements for the tracing of products through the pharmaceutical distribution supply chain under section 582(d)(1) of the FD&C Act took effect on July 1, 2015. FDA published a guidance document on July 6, 2015, stating that it does not intend to take action against dispensers who, prior to November 1, 2015, (1) accept ownership of product without receiving the product tracing information, as required by section 582(d)(1)(A)(i) of the FD&C Act, or (2) do not capture and maintain the product tracing information, as required by section 582(d)(1)(A)(iii) of the FD&C Act.

Some dispensers—primarily smaller, independent pharmacies and health systems—have expressed concern that they will be unable to comply with these requirements by November 1, 2015. Thus, FDA recognizes that these dispensers continue to need additional time to work with trading partners to ensure that the product tracing information required by section 582 of the FD&C Act is captured and maintained by dispensers. In light of these concerns, FDA does not intend to take action against dispensers who, prior to March 1, 2016: (1) Accept ownership of product without receiving product tracing information, prior to or at the time of a transaction, as required by section 582(d)(1)(A)(i) of the FD&C Act or (2) do not capture and maintain the product tracing information, as required by section 582(d)(1)(A)(iii) of the FD&C Act. This compliance policy does not extend to other requirements of the FD&C Act applicable to dispensers and other trading partners, including those in section 582 of the FD&C Act, such as verification related to suspect and illegitimate product (including quarantine, investigation, notification, and recordkeeping) and requirements related to engaging in transactions only with authorized trading partners. The guidance document explains the scope of the compliance policy in further detail.

The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: October 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27841 Filed 10–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Bioequivalence Recommendations for Progesterone; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of Availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry on progesterone gel entitled ''Draft Guidance on Progesterone.'' The recommendations provide specific guidance on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for progesterone gel.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by January 4, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for Bioequivalence Recommendations for Progesterone; Draft Guidance for Industry; Availability. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Xiaoqiu Tang, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4730, Silver Spring, MD 20993–0002, 301–796–5850.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry, ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of draft BE recommendations for progesterone gel.

FDA initially approved new drug application 020701 for Crinone gel in July 1997. There are no approved ANDAs for this product. We are now issuing a draft guidance for industry on BE recommendations for generic progesterone gel (''Draft Guidance on Progesterone'').

In June 2013, Watson Laboratories, manufacturer of the reference listed drug, Crinone, submitted a citizen petition requesting that FDA require ANDA applicants to demonstrate bioequivalence to Crinone with studies that include pharmacokinetic and clinical endpoint studies and to issue a draft BE guidance identifying these studies. (FDA notes that subsequent to submission of the petition, Watson Laboratories informed FDA that the company has changed its name to Actavis Labs UT Inc.) FDA has reviewed the issues raised in the petition and is responding to the petition (Docket No. FDA–2013–P–0664, available at *http://www.regulations.gov*).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

The draft guidance, when finalized, will represent the Agency's current thinking on the design of BE studies to support ANDAs for progesterone gel. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: October 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27816 Filed 10–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–3787]

Information To Support a Claim of Electromagnetic Compatibility of Electrically Powered Medical Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Information to Support a Claim of Electromagnetic Compatibility (EMC) of Electrically-Powered Medical Devices.'' This guidance describes the types of information that should be provided to support a claim of electromagnetic compatibility (EMC) in a premarket submission for an electrically powered medical device. Electromagnetic disturbance is electronic product radiation that may interfere with the performance of an electrically powered medical device in its intended environment (*i.e.,* cause an electromagnetic interference (EMI)). EMC assessment helps to ensure that a device is able to function in its intended environment without introducing excessive electromagnetic disturbances that might interfere with other devices. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 17, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2015–D–3787 for ''Information to Support a Claim of Electromagnetic Compatibility (EMC) of Electrically-Powered Medical Devices.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Information to Support a Claim of Electromagnetic Compatibility (EMC) of Electrically-Powered Medical Devices'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Donald Witters, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 62, Rm. 1130, Silver Spring, MD 20993–0002, 301–796–2483.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance to provide FDA's current thinking on the types of information that should be provided in a premarket submission to support a claim of electromagnetic compatibility for an electrically powered medical device. EMI is a hazard with associated risk for electrically powered medical devices. EMC assessment can help to ensure that the risks associated with performance degradation of electrically powered medical devices due to EMI are adequately mitigated.

The draft guidance includes information consistent with specifications described in FDA-recognized consensus national or international standards for EMC such as in the International Electrotechnical Commission (IEC) 60601–1–2: Edition 3: 2007–03, Medical Electrical Equipment—Part 1–2: General Requirements for Basic Safety and Essential Performance—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests; IEC 60601–1–2: Edition 4.0: 2014–01, Medical Electrical Equipment, Part 1–2: General Requirements for Basic Safety and Essential Performance—Collateral Standard: Electromagnetic Disturbances—Requirements and Tests; Association for the Advancement of Medical Instrumentation (AAMI)/American National Standards Institute (ANSI)/IEC 60601–1–2: 2007/(R) 2012 Medical Electrical Equipment—Part 1–2: General Requirements for Basic Safety and Essential Performance—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests; and AAMI/ANSI/IEC 60601–1–2: 2014, Medical Electrical Equipment—Part 1–2: General Requirements for Basic Safety and Essential Performance—Collateral Standard: Electromagnetic Disturbances—Requirements and Tests Standards that sponsors and manufacturers of electrically powered medical devices often reference. This draft guidance is intended to help ensure that clear and consistent information is provided in premarket submissions regarding medical device EMC and to facilitate the review of submissions with EMC claims.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on information that should be provided to support claims of electromagnetic compatibility of electrically powered medical devices. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Information to Support a Claim of Electromagnetic Compatibility (EMC) of Electrically-Powered Medical Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1400057 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231. The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120. The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078. The collections of information in 21 CFR part 814, subpart H have been approved under OMB control number 0910–0332. The collections of information in sections 520(m) and 515A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j and 21 U.S.C. 360e–1, respectively) and 613(b) of Food and Drug Administration Safety and Innovation Act have been approved under OMB control number 0910–0661.

Dated: October 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27818 Filed 10–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–4040–New–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before January 4, 2016.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

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 document identifier HHS–OS–4040–New–60D for reference.

Information Collection Request Title: DATA Act Sec. 5. ''Simplifying Federal Award Reporting'' Grants Pilot.

Abstract: Public Law 113–101, The Digital Accountability and Transparency Act of 2014 (DATA Act) expands the Federal Funding Accountability and Transparency Act of 2006 by increasing accountability and transparency in Federal spending. Section 5 of the DATA Act (''Sec. 5. Simplifying Federal Award Reporting'') tasks the Director of the Office of Management and Budget (OMB) to establish a pilot program (Sec. 5 (b)).

OMB has designated the Department of Health and Human Services (HHS) as the executing agent of the pilot program. Within HHS, the DATA Act Program Management Office (PMO) (DAP) has been established under the Office of the

Assistant Secretary for Financial Resources (ASFR) in order to implement this pilot program. ASFR/DAP, in coordination with Grants.gov, is requesting a generic clearance for the purpose of conducting tests under the pilot program to obtain qualitative and quantitative data and gain an understanding of the burden imposed on Federal recipients.

The DAP has designed several test models to evaluate recipient burden and assess quality of data. The goal of these test models is to determine whether new technology, data standards, processes, and forms aid in reducing recipient burden and increase the accuracy and quality of the data submitted. Under this clearance, a variety of methods (surveys, focus groups, etc.) could be used to collect data, with the exact nature of the questions currently undetermined. DAP expects these questions to include, but not be limited to, topics pertaining to the Standard Form (SF) 424, the Consolidated Federal Financial Reports, and the expanded Single Audit form (SF–SAC). If this data is not collected, the requirements of the DATA Act Section 5 pilot will not be met. The types of collections that this generic clearance covers include, but are not limited to:

- Surveys,
- Focus Groups,
- Other qualitative methods such as interviews, small discussion groups, and case studies.

Likely Respondents: Recipients of Federal contracts, grants, and sub-awards.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Estimated annual reporting burden				
Type of collection	Number of respondents	Annual frequency per response	Hours per response	Total hours
Surveys, Focus Groups, and other qualitative methods	300	1	56.25	16,875
Total	300			16,875

OS 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.

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2015–27860 Filed 10–30–15; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice To Propose the Redesignation of the Service Delivery Area for the Wampanoag Tribe of Gay Head (Aquinnah)

AGENCY: Indian Health Service, HHS.

ACTION: Notice; extension of the comment period.

SUMMARY: This document extends the comment period for the notice to propose Redesignation of the Service Delivery Area for the Wampanoag Tribe of Gay Head (Aquinnah), which was published in the **Federal Register** on October 5, 2015. The comment period for the notice, which would have ended on October 23, 2015, is extended by 30 days.

DATES: The comment period for the notice published in the **Federal Register** on August 24, 2015 (80 FR 51281) allowed for thirty days; the comment period was subsequently extended in the **Federal Register** (80 FR 60158) for an additional 30 days to October 23, 2015. This notice extends the comment period for an additional 30 days to November 22, 2015.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile transmission. You may submit comments in one of three ways (please choose only one of the ways listed):

1. *By regular mail.* You may mail written comments to the following address ONLY: Betty Gould, Regulations Officer, Indian Health Service, 801 Thompson, Avenue, TMP STE 450, Rockville, Maryland 20852.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

2. *By express or overnight mail.* You may send written comments to the above address.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the address above. If you intend to deliver your comments to the Rockville address, please call telephone number (301) 443–1116 in advance to schedule your arrival with a staff member.

Comments will be made available for public inspection at the Rockville address from 8:30 a.m. to 5:00 p.m., Monday–Friday, approximately three weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Carl Harper, Director, Office of Resource Access and Partnerships, Indian Health Service, 801 Thompson Avenue, Rockville, Maryland 20852. Telephone: (301) 443–1553.

SUPPLEMENTARY INFORMATION: The notice that was published in the **Federal Register** on August 24, 2015 advises the public that the Indian Health Service proposes to expand the geographic boundaries of the Service Delivery Area for the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts. The Aquinnah service delivery area is currently comprised of members of the Tribe residing in Martha's Vineyard, Dukes County in the State of Massachusetts.

The Bureau of Indian Affairs recognized the Wampanoag Tribe of Gay Head on February 10, 1987. Martha's Vineyard, Dukes County was designated as the Aquinnah service delivery area in the Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987, Public Law 100–95.

This comment period is being extended to allow all interested parties the opportunity to comment on the proposed rule. Therefore, we are extending the comment period until November 22, 2015.

Dated: October 23, 2015.

Robert G. McSwain,

Principal Deputy Director, Indian Health Service.

[FR Doc. 2015–27898 Filed 10–30–15; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Career Awards Review.

Date: November 24, 2015.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; AKI Ancillary Studies.

Date: December 2, 2015.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel PAR–12–265 Ancillary Clinical Studies in Diabetes and Bone Health (R01).

Date: December 8, 2015.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Study on Bariatric Surgery.

Date: December 8, 2015.

Time: 3:00 p.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 27, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–27812 Filed 10–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; Career Award and Conference Grant Review (2016/01).

Date: December 8, 2015.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark Martin Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Suite 920, Bethesda, MD 20892, 240–447–2148, *mark.martin@mail.nih.gov.*

Dated: October 27, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–27814 Filed 10–30–15; 8:45 am]

BILLING CODE 4140–01–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; Member Conflict: Exercise in Aging.

Date: November 12, 2015.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Samuel C. Edwards, Ph.D., IRG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mitochondria and Therapy for Aging Heart; RDoc Predictors of Trauma Processes.

Date: November 16, 2015.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Samuel C. Edwards, Ph.D., IRG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Platelets and Hematopoiesis.

Date: November 19, 2015.

Time: 3:00 p.m. to 7:00 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: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 2015.

Natasha Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–27813 Filed 10–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5831–N–53]

30-Day Notice of Proposed Information Collection: Supplement to Application for Federally Assisted Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 2, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 2, 2015 at 80 FR 59806.

A. Overview of Information Collection

Title of Information Collection: Supplement to Application for Federally Assisted Housing.

OMB Approval Number: 2502–0581.

Type of Request: Extension of a currently approved collection.

Form Number: HUD Form 92006.

Description of the need for the information and proposed use: Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in HUD's assisted housing programs to provide any individual or family applying for occupancy in HUD-assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The objective of providing such information, if this information is provided, and if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing any the delivery of services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

Respondents: The respondents are individuals or families who are new admissions in the covered programs.

Estimated Number of Respondents: 302,770.

Estimated Number of Responses: 302,770.

Frequency of Response: Each individual or family only responds once unless they wish to update their information.

Average Hours per Response: 0.25 hours.

Total Estimated Burdens: 75,692.50.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

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

HUD encourages interested parties to submit comment in response to these questions.

Authority: 12 U.S.C. 1701z–1 Research and Demonstrations.

Date: October 27, 2015.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2015–27858 Filed 10–30–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5902–N–01]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of appointments.

SUMMARY: The Department of Housing and Urban Development announces the establishment of two Performance Review Boards to make recommendations to the appointing authority on the performance of its

senior executives. Towanda A. Brooks, John P. Benison, Camille E. Acevedo, Matthew E. Ammon, and Dominique G. Blom will serve as members of the Departmental Performance Review Board to review career SES performance.

Laura H. Hogshead, Rafael C. Diaz, Tonya T. Robinson, and Lynn M. Ross will serve as members of the Departmental Performance Review Board to review noncareer SES performance. The address is: Department of Housing and Urban Development, Washington, DC 20410–0050.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Juliette Middleton, Director, Office of Executive Resources, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 402–3058. (This is not a toll-free number)

Dated: October 27, 2015.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2015–27861 Filed 10–30–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: List of Restricted Joint Bidders.

SUMMARY: Pursuant to the joint bidding provisions of 30 CFR 556.41–556.44, the Director of the Bureau of Ocean Energy Management is publishing a List of Restricted Joint Bidders. Each entity within one of the following groups is restricted from bidding with any entity in any of the other following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2015, through April 30, 2016. This List of Restricted Joint Bidders will cover the period November 1, 2015, through April 30, 2016, and replace the prior list published on May 18, 2015, which covered the period of May 1, 2015, through October 31, 2015.

Group I

BP America Production Company
BP Exploration & Production Inc.
BP Exploration (Alaska) Inc.

Group II

Chevron Corporation
Chevron U.S.A. Inc.
Chevron Midcontinent, L.P.
Unocal Corporation
Union Oil Company of California
Pure Partners, L.P.

Group III

Eni Petroleum Co. Inc.
Eni Petroleum US LLC
Eni Oil US LLC
Eni Marketing Inc.
Eni BB Petroleum Inc.
Eni US Operating Co. Inc.
Eni BB Pipeline LLC

Group IV

Exxon Mobil Corporation
ExxonMobil Exploration Company

Group V

Petroleo Brasileiro S.A.
Petrobras America Inc.

Group VI

Shell Oil Company
Shell Offshore Inc.
SWEPI LP
Shell Frontier Oil & Gas Inc.
SOI Finance Inc.
Shell Gulf of Mexico Inc.

Group VII

Statoil ASA
Statoil Gulf of Mexico LLC
Statoil USA E&P Inc.
Statoil Gulf Properties Inc.

Group VIII

Total E&P USA, Inc.

Dated: October 13, 2015.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–27896 Filed 10–30–15; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2015–0062]

Wind Energy Research Lease Issuance on the Atlantic Outer Continental Shelf Offshore Virginia

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability of a Research Lease of Submerged Lands for Renewable Energy Activities on the Outer Continental Shelf Offshore Virginia.

SUMMARY: BOEM has issued a wind energy research lease to the Commonwealth of Virginia, Department of Mines, Minerals and Energy for an area situated on the Outer Continental Shelf offshore Virginia. The purpose of this notice is to inform the public of the availability of the executed lease, Renewable Energy Lease No. OCS–A–0497.

Proposed activities on the lease include the installation and operation of wind turbine generators and resource assessment devices, as well as associated offshore substation platforms, interarray cables, and subsea export cables. The total acreage of the lease area is approximately 2,135 acres. The lease area is comprised of six aliquots (*i.e.,* sub-blocks) lying within Official Protraction Diagram Currituck Sound NJ18–11 Blocks 6061 and 6111. The lease and supporting documentation, including required environmental compliance documentation and notices that solicited competitive interest, can be found online at: *http://www.boem.gov/VOWTAP/.*

Authority: This Notice of the Availability of a wind energy research lease is published pursuant to 30 CFR 585.238(f), which implements subsection 8(p) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(p)).

FOR FURTHER INFORMATION CONTACT: Mr. Casey Reeves, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1320 or *casey.reeves@boem.gov.*

Dated: October 13, 2015.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–27875 Filed 10–30–15; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–907]

Certain Vision-Based Driver Assistance System Cameras, Components Thereof, and Products Containing the Same: Notice of the Commission's Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation, and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 28, 2014, based on a complaint filed by Magna Electronics Inc. of Auburn Hills, Michigan. *See* 79 FR 4490–91 (Jan. 28, 2014). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vision-based driver assistance system cameras and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,116,929 (''the '929 patent'') and 8,593,521 (''the '521 patent''). The complaint further alleges the existence of a domestic industry. Subsequently, the complaint and notice of investigation were amended by adding U.S. Patent Nos. 8,686,840 (''the '840 patent'') and 8,692,659 (''the '659 patent''), and by terminating the investigation in-part as to all claims of the '521 patent. The '929 patent was later terminated from the investigation. The respondent named in the Commission's notice of investigation is TRW Automotive U.S., LLC of Livonia, Michigan (''TRW''). The Office of Unfair Import Investigations (''OUII'') was also named a party in the investigation.

On April 27, 2015, the ALJ issued his final ID. The ID found that no violation of section 337 has occurred. Specifically, the ID found that the '659 and '840 patents were not indirectly infringed, that the '840 patent is invalid, and that the domestic industry requirement for the '840 patent has not been met. The ALJ also issued his recommendation on remedy and bonding.

On May 11, 2015, Magna and TRW each filed petitions for review. On May 19, 2015, the parties, including OUII, filed responses to the respective petitions for review. On May 28, 2015, Magna filed a corrected response. The Commission determined to review the ID's findings with respect to: (1) Importation; (2) whether the asserted claims of the '659 patent require a camera; (3) direct infringement of the '659 patent; (4) induced infringement of the '659 and '840 patents; (5) contributory infringement of the '659 and '840 patents; (6) whether the '659 patent satisfies the requirements of 35 U.S.C. 112; (7) anticipation of the '659 patent claims based on Rayner; (8) anticipation of the '659 patent claims based on Batavia; (9) anticipation of the '659 patent claims based on the SafeTrac Prototype; (10) obviousness of the '659 patent based on Rayner in combination with Blank; (11) obviousness of the '659 patent based on Batavia, the SafeTrac Prototype, and the Navlab 1997 Demo; (12) whether the claims are invalid under the America Invents Act § 33(a); and (13) the technical prong of domestic industry for the '659 and '840 patents.

On August 17, 2015, the parties briefed the issues on review, remedy, bonding, and the public interest. On August 27, 2015, the parties filed their reply submissions. After the conclusion of this briefing, TRW filed ''Respondent's Short Submission Out Of Time Regarding Complainant Admission on Commission Topic 2'' and Magna filed a response thereto.

After considering the final ID, written submissions, and the record in this investigation, the Commission has determined to affirm-in-part and reverse-in-part the final ID and to terminate the investigation with a finding of no violation of section 337. Specifically, the Commission finds that (1) the importation requirement has not been satisfied for the '659 patent; (2) the asserted claims of the '659 patent do not require a camera; (3) certain automobiles equipped with a mounting system configured to receive certain accused products directly infringe the '659 patent; (4) the accused products do not contributorily infringe the '659 patent; (5) the accused products do not induce infringement of the '659 patent; (6) claims 1 and 3 of the '659 patent are invalid under 35 U.S.C. 103 based on Rayner in view of Blank; (7) claims 1 and 3 of the '659 patent are not anticipated by Rayner; (8) the asserted claims are not invalid under the America Invents Act § 33(a); (9) the technical prong of the domestic industry requirement for the '840 patent has not been met; and (10) the technical prong of the domestic industry requirement for the '659 patent has not been met. The Commission also (11) takes no position on indirect infringement of the '840 patent; (12) takes no position on importation with respect to the '840 patent; (13) takes no position on whether claim 1 of the '659 patent is invalid based on Batavia, the SafeTrac Prototype, and the Navlab 1997 Demo, either alone or in combination; (14) takes no position on whether the asserted claims of the '659 patent satisfy the requirements of 35 U.S.C. 112; and (15) rejects TRW's filing titled ''Respondent's Short Submission Out Of Time Regarding Complainant Admission on Commission Topic 2.''

A Commission Opinion will issue shortly.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 27, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–27811 Filed 10–30–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1058 (Second Review)]

Wooden Bedroom Furniture From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on wooden bedroom furniture from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the

Commission;[1] to be assured of consideration, the deadline for responses is December 2, 2015. Comments on the adequacy of responses may be filed with the Commission by January 14, 2016.

DATES: *Effective Date:* November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— On January 4, 2005, the Department of Commerce issued an antidumping duty order on imports of wooden bedroom furniture from China (70 FR 329). Following the first five-year reviews by Commerce and the Commission, effective December 30, 2010, Commerce issued a continuation of the antidumping duty order on imports of wooden bedroom furniture from China (75 FR 82373). The Commission is now conducting a second review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its full first five-year review determination, the Commission found one *Domestic Like Product* consisting of all wooden bedroom furniture, including both joinery and non-joinery forms, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic producers of wooden bedroom furniture. In its full first five-year review determination, the Commission defined the *Domestic Industry* as all producers of the *Domestic Like Product,* except those firms for which it specifically excluded because their primary interest was as *Importers* of the *Subject Merchandise* rather than as *Domestic Producers.* Certain Commissioners defined the *Domestic Industry* differently in the full first five-year review.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 15–5–347, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 2, 2015. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 14, 2016. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided In Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2009.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2014, except as noted (report quantity data in terms of both pieces and pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in terms of both pieces and pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject*

Merchandise imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in terms of both pieces and pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2009, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 26, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–27661 Filed 10–30–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–959]

Certain Electric Skin Care Devices, Brushes and Chargers Therefore, and Kits Containing the Same: Notice of a Commission Determination Not To Review an Initial Determination Granting-in-Part Complainant's Motion for Leave To Amend the Amended Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 22) of the presiding administrative law judge (''ALJ'') granting-in-part complainant's motion for leave to amend the amended complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''Section 337''), on June 25, 2015, based on a complaint filed by Pacific Bioscience Laboratories, Inc. of Redmond, Washington (''PBL'') on April 30, 2015. An amended complaint was filed on May 20, 2015. 80 FR 36576–77 (Jun. 25, 2015). The amended complaint, as supplemented, alleges a violation of Section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,320,691 (''the '691 patent'') and 7,386,906, and U.S. Design Patent No. D523,809 by numerous respondents. The amended complaint further alleges violations of Section 337 based upon the importation into the United States, or in the sale of certain electric skin care devices, brushes and chargers therefor, and kits containing the same, by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The Commission's Office of Unfair Import Investigations (''OUII'') was also named as a party.

On September 11, 2015, complainant PBL filed a motion pursuant to 19 CFR 210.14(b) seeking leave to amend its amended complaint and the Commission's notice of investigation to (1) change the name of respondent ''Michael Todd True Organics LP'' to ''Michael Todd LP'' in order to reflect the new name of that entity; (2) assert violation as to an additional accused product of respondents Michael Todd LP and MTTO LLC (collectively, ''MT''); and (3) assert infringement of additional claims of the '691 patent by MT's accused products. On September 23, 2015, the Commission investigative attorney filed a response supporting the motion in part and opposing the motion in part. On September 28, 2015, PBL filed a reply brief.

On October 2, 2015, the ALJ issued Order No. 22, granting-in-part and denying-in-part complainant's motion. The ALJ granted PBL's motion with

respect to changing the name of respondent ''Michael Todd True Organics LP'' to ''Michael Todd LP'' and accusing an additional MT product of infringement. Order No. 22 at 6. The ALJ denied the motion with respect to PBL's assertion of additional infringement claims against MT under the '691 patent.

Pursuant to Commission Rule 210.14(b), the name change of respondent ''Michael Todd True Organics LP'' to ''Michael Todd LP'' is an ID. No party petitioned for review of the subject ID, and the Commission has determined not to review it.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 27, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–27815 Filed 10–30–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–15–035]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 6, 2015 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–525 and 731–TA–1260–1261 (Final)(Certain Welded Line Pipe from Korea and Turkey). The Commission is currently scheduled to complete and file its determinations and views of the Commission on November 18, 2015.
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:

Issued: October 28, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–27923 Filed 10–29–15; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–15–036]

Government In the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 9, 2015 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. 731–TA–753, 754, and 756 (Third Review)(Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine). The Commission is currently scheduled to complete and file its determinations and views of the Commission on December 2, 2015.
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:

Issued: October 27, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–27924 Filed 10–29–15; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Air Act, Emergency Panning and Community Right-To-Know Act, Clean Water Act, and The Resource Conservation and Recovery Act

On October 26, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Iowa in the lawsuit entitled *United States* v. *Barton Solvents, Inc.,* Civil Action No. 15–378.

Defendant Barton Solvents, Inc. (Barton) distributes chemicals, oils, surfactants, and plasticizers, and provides custom liquid blending, food grade packaging, and laboratory services. The Complaint alleges the following violations at five solvent blending, storage and distribution plants owned and operated by Barton in Iowa and Kansas: (1) Violations of Section 112(r)(1) of the Clean Air Act, known as the General Duty Clause (GDC), 42 U.S.C. 7412(r)(1); (2) violation of Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 10004; (3) violations of the Spill Prevention Control and Countermeasure (SPCC) regulations promulgated under Section 311(j) of the Clean Water Act, 40 CFR 1321(j); and (4) violations of multiple federal and state Resource Conservation and Recovery Act (RCRA) requirements, 42 U.S.C. 6901 *et seq.* Under the proposed Consent Decree, Barton will correct ongoing violations, conduct three extensive audits of GDC, SPCC, and RCRA compliance at all of its facilities and pay a civil penalty of $1.1 million.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Barton Solvents, Inc.,* D.J. Ref. No. 90–5–2–1–10133. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $21.00 (25 cents per page

reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–27765 Filed 10–30–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0047]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine DEA Form 488

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 4, 2016.

FOR FURTHER INFORMATION CONTACT: If you have comments 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 John R. Scherbenske, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed 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 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. *Title of the Form/Collection:* Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form: 488. The applicable component within the Department of Justice is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

Abstract: Title 21, United States Code (U.S.C.), Section 952, and Title 21, Code of Federal Regulations (CFR), § 1315.34 require that persons who desire to import the List I chemicals Ephedrine, Pseudoephedrine, or Phenylpropanolamine during the next calendar year shall apply to DEA on DEA Form 488 for an import quota for those List I chemicals.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that 35 persons complete 80 DEA Forms 488 annually for this collection at 1 hour per form, for an annual burden of 80 hours. Respondents complete a separate DEA Form 488 for each List I chemical for which quota is sought.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 80 annual burden hours.

If additional information is required please 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., Suite 3E.405B, Washington, DC 20530.

Dated: October 27, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–27761 Filed 10–30–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1699]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention announces its next meeting.

DATES: Friday, November 13, 2015, from 3:00 p.m. to 4:45 p.m. (Eastern Time).

ADDRESSES: The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St. NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Visit the Web site for the Coordinating Council at *www.juvenilecouncil.gov* or contact Georgina M. McDowell, Acting Designated Federal Official (DFO), OJJDP, by telephone at (202) 616–5153 (not a toll-free number) or via email: *Georgina.McDowell@ojp.usdoj.gov.* The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention (''Council''), established by statute in the Juvenile and Delinquency Prevention Act of 1974 section 206(a) (42 U.S.C. 5616(a)), will meet to carry out its advisory functions. Documents such as meeting announcements, agendas, minutes, and reports will be available on the Council's Web page, *www.juvenilecouncil.gov* where you may also obtain information on the meeting.

Although designated agency representatives may attend, the Council membership consists of the Attorney General (Chair), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Secretary of Health and Human Services (HHS), the Secretary of Labor (DOL), the Secretary of Education (DOE), the Secretary of Housing and Urban Development (HUD), the Director

of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. The nine additional members are appointed by the Speaker of the U.S. House of Representatives, the U.S. Senate Majority Leader, and the President of the United States. Other federal agencies take part in Council activities, including the Departments of Agriculture, Defense, Interior, and the Substance and Mental Health Services Administration of HHS.

Meeting Agenda: The agenda will include: (a) Opening remarks and introductions; (b) Discussion of the Overview of National, State and Local Efforts to Reduce and Prevent Youth Violence; and (c) Council member announcements.

Registration: For security purposes, members of the public who wish to attend the meeting must pre-register online at *www.juvenilecouncil.gov* no later than Tuesday November 10, 2015. Should problems arise with Web registration, contact Scott Peton, Senior Meeting Planner/Federal Contractor, at (240) 432–3014 or send a request to register to Mr. Peton. Please include name, title, organization or other affiliation, full address and phone, fax and email information and send to his attention either by fax to (866) 854–6619, or by email to *speton@aeioonline.com.* Note that these are not toll-free telephone numbers. Additional identification documents may be required. Meeting space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments: Interested parties may submit written comments and questions in advance by Tuesday, November 10, 2015, to Georgina M. McDowell, Acting Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Georgina.McDowell@ojp.usdoj.gov.* Alternatively, fax your comments to (202) 353–9093 and contact Marshall Edwards, Senior Program Manager/Federal Contractor, at (202) 514–0929 to ensure that they are received. These are not toll-free numbers.

The Council expects that the public statements submitted will not repeat previously submitted statements. Written questions from the public are also invited at the meeting.

Robert L. Listenbee,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2015–27488 Filed 10–30–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

President's Committee on the International Labor Organization Charter Renewal

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of charter renewal.

SUMMARY: On September 30, 2015, President Obama continued the President's Committee on the International Labor Organization (ILO) for two years through September 30, 2017 (E.O. 13708, 80 FR 60271 (October 5, 2015)). In response, and pursuant to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), the Secretary of Labor renewed the committee's charter on October 13, 2015.

Purpose: The President's Committee on the International Labor Organization was established in 1980 by Executive Order 12216 to monitor and assess the work of the ILO and make recommendations to the President regarding United States policy towards the ILO. The committee is chaired by the Secretary of Labor and the Department of Labor's Bureau of International Labor Affairs is responsible for providing the necessary support for the committee.

The committee is composed of seven members: The Secretary of Labor (chair), the Secretary of State, the Secretary of Commerce, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and one representative each from organized labor and the business community, designated by the Secretary. The labor and business members are the presidents of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the United States Council for International Business (USCIB), respectively, as the most representative organizations of U.S. workers and employers engaged in ILO matters.

Authority: The authority for this notice is granted by the Federal Advisory Committee Act (5 U.S.C. App. 2) and Executive Order No. 13708 of September 30, 2015.

FOR FURTHER INFORMATION CONTACT: Robert B. Shepard, Director, Office of International Relations, Bureau of International Labor Affairs, U.S. Department of Labor, telephone (202) 693–4808.

Signed at Washington, DC, on October 26, 2015.

Carol Pier,

Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. 2015–27878 Filed 10–30–15; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by the MSHA's Office of Standards, Regulations, and Variances on or before December 2, 2015.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards,

Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2015–004–M.

Petitioner: Cementation USA, Inc., 10151 Centennial Parkway, Suite 110, Sandy, Utah 84070.

Mine: Eagle Mine, MSHA I.D. No. 20–03454, located in Marquette County, Michigan.

Regulation Affected: 30 CFR 57.15031 (Location of self-rescue devices).

Modification Request: The petitioner requests a modification of the existing standard to permit the miners at the Eagle Mine to wear 10-minute Ocenco Self-Contained Self-Rescue (SCSR) Devices on their mine belts in tandem with 1-hour SCSRs located on their vehicles, or equipment being operated within 500 feet or five minutes walking distance from any miner, whichever is less. The petitioner states that:

(1) The Eagle Mine is a trackless mining environment that utilizes rubber-tired, diesel- powered equipment.

(2) The majority of the work performed in this environment keeps the miners on or near mobile equipment.

(3) Mine Emergency Planning requires miners report to refuge chambers during emergencies.

(4) There are two 4-person and three 12-person MineARC refuge chambers strategically located underground.

(5) Only 48 persons are allowed underground at any given time, based on occupancy ratings of refuge chambers.

(6) Refuge chambers are strategically located and able to be reached within 10-minutes from the working locations.

(7) Secondary escape ways are located on each level are able to be reached within 10 minutes from anywhere on the working level.

(8) Miners currently carry Drager Oxy 6000 on their mine belt. The Drager Oxy 6000 is an MSHA approved SCSR that weighs 3.5 kg/7.7lbs.

(9) The Ocenco M–20 SCSR is an MSHA approved SCSR that weights 3.2 lbs.

(10) Miners will frequently catch the release latches of the Oxy 6000 SCSR on equipment handles, requiring replacement of the units.

The petitioner proposes to:

(1) Require all Cementation miners to wear Ocenco M–20 unit Self-Contained Self-Rescue Devices on their mine belts.

(2) Require all Cementation miners to inspect their issued Ocenco M–20 unit on a daily basis

(3) Have one Drager Oxy 6000 SCSR per occupant seat located on each piece of Cementation underground equipment or vehicle.

(4) Have the equipment operators inspect the Drager Oxy 6000 SCSR stored on Cementation equipment as part of the pre-op inspection.

(5) Provide cached six Drager Oxy 6000 SCSRs in each refuge chamber. The SCSRs will be inspected on a weekly basis as part of the weekly refuge chamber inspection.

(6) Provide cached five Drager Oxy 6000 SCSRs at the secondary escape way on each working level of the mine. These SCSRs will be inspected on a weekly basis.

(7) Store the MSHA Rated SCSRs in a sealed box that is clearly marked with highly visible reflective signage indicated on all escape and evacuation maps posted in the mine. These SCSRs will be inspected on a weekly basis.

(8) Provide training for all underground miners quarterly in the use, limitations, care, and inspection of the 10-minue and the 1-hour SCSR devices. This training will include:

(a) Hands-on training for all types of self-rescue devices used at the mine, which include:

(i) Instruction and demonstration in the use, care, and maintenance of self-rescue devices; and

(ii) The complete donning of the SCSR by assuming a donning position, opening the device, activating the device, inserting the mouthpiece, and putting on the nose clip.

(b) Hands on training in transferring from a 10-minute SCSR to a 1-hour SCSR.

(9) Provide instructor certified training annually for each Cementation miner that will include donning SCSRs in smoke, simulated smoke, or an equivalent environment, and breathing through a realistic SCSR training unit that provides the sensation of SCSR airflow resistance and heat.

(10) Have the operator certify by signature and date that the training was conducted according to the conditions in this petition, at the completion of training. This certification will include the names of the miners who participated in the training.

(11) The certifications will be made available to the Cementation miner's representative or an authorized Representative of the Secretary on request. This certificate will be kept at the mine for three years.

(12) Inspect all stored 1-hour SCSRs in the mine for defects in accordance with the manufacturer's instructions on a weekly basis and record the results for each device. Records of these inspections will be made available to the miner's representative and an Authorized Representative of the Secretary on request. Records of these inspections will be maintained for three years.

(13) Maintain all SCSRs in good condition. SCSRs that do not function properly will be removed from service and replaced with properly functioning SCSRs.

The petitioner asserts that the combination of self-contained self-rescue devices will at all times guarantee no less than the same measure of protection for miners as afforded by the standard.

Docket Number: M–2015–005–M.

Petitioner: Tronox Alkali Corp., 950 17th Street, Suite 2600, Denver, Colorado 80202.

Mine: Tronox Alkali @Westvaco, MSHA I.D. No. 48–00152, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.4760(a) (Shaft mines).

Modification Request: The petitioner requests a modification of the existing standard that recognizes that Tronox Alkali Corp., can utilize a mechanical ventilation reversal process for compliance that at all times, provides the same or a greater degree of protection to persons underground as would be afforded by other methods of compliance (*e.g.* control doors), and avoids reducing safety by the use of other methods. The petitioner states that:

(a) Westvaco is governed in part by 30 CFR 57.22214, which prohibits compliance with 30 CFR 57.4760(a), if controls doors are used.

As a Class III underground mine, ''changes in ventilation which affect the

main air current or any split thereof, and which adversely affect the safety of persons in the mine will be made only when the mine is idle,'' 30 CFR 57.22214(a) (emphasis added). The only persons permitted in the mine during these ventilation changes are the persons making such changes, 30 CFR 57.22214(b). The use of control doors potentially violates the provision and diminishes safety.

The actuation of control doors near intake shafts changes the ventilation of the main air current, could occur while the mine is not idle, and may adversely affect safety, even if only performed when fire, smoke, or toxic gases are detected. In contrast, controlled air reversal would only be instituted by management to improve safety by moving combustion gases out of the mine and away from miners. Accordingly, changes in a mine's ventilation via control doors has the potential to conflict with 30 CFR 57.22214. On the other hand, mechanical ventilation reversal of the airflow would not conflict, thereby providing further reasons for the approval of this petition.

b. Empirical testing of the underground airflow confirms that Tronox can accomplish ventilation reversal pursuant to 30 CFR 57.4760(a)(2).

Tronox and its predecessor have operated Westvaco since before the Mine Act was enacted. Throughout that time, Westvaco worked with knowledge that, if necessary, a reversal of airflow was always available to control the spread of fire, smoke, and toxic gases.

During an April 8, 2015, MSHA spot inspections, the Secretary's authorized representative issued the Citations to Tronox for alleged violation of the standard. In response to the Citations, Tronox upgraded its ventilation system. Westvaco has three intake shafts (Nos. 8, 5, and 7), each equipped with identical 1500 hp Jeffry 8HU Vane Axial ventilation fans, located on the surface. These fans provide the motive air forced into the mine to maintain a positive pressure, forcing air out of the mine through Shaft Nos. 1, 2, 3, 4, 6, and 9. Tronox engineering upgrades allow the mine's hoistman to turn off the ventilation fans, individually or in combination, from their workstation. The hoistman's station is manned during every shift at Westvaco.

After the upgrades were complete, Tronox performed engineering tests and analyses to confirm that the on-duty hoistman could mechanically reverse the ventilation airflow in the mine by turning off the main fans in various permutations. Specifically, by turning off one of the three main fans that force air into the mine, Tronox is able to maintain positive pressure while simultaneously directing the flow of air toward a different exhaust shaft.

Tronox tested the fans' effect on underground airflow with anemometers, smoke tubes, pressure transducers, and synchronized watches. During the test, Tronox turned off each ventilation fan and measured the airflow direction, velocity, and pressure fluctuations at the bottom of the shaft, before and after each fan was de-energized. The airflow direction was cross-checked at the top of the shaft to validate the findings underground. The pressure transducers at the top and bottom of the intake shaft were set to log pressure readings every five seconds. The testing showed a quantifiable change in the direction of the underground airflow near each of the shaft stations, which would control the spread of smoke and toxic gases underground in the event of a fire.

1. When the 8 Shaft fan is operating the airflow in the vicinity traveled away from the 8 Shaft, through the east and southern passageways, towards the longwall. The anemometer and smoke tube recorded the velocity of the airflow in the area.

When the 8 Shaft fan is turned off, the direction of the airflow reversed in less than two minutes, and the 8 Shaft transitioned from an intake shaft to an exhaust shaft. The velocity of the airflow, now traveling towards the 8 Shaft, was measured between 35 and 125 feet per minute.

Most important when the 8 Shaft fan was running the airflow in the three passageways—east, south, and southwest—emanating from the 8 Shaft had been towards the 5 Shaft and 7 Shaft. With the 8 Shaft turn off, the airflow in these three passages reversed, traveling towards the 8 Shaft and away from the 5 Shaft and 7 Shaft. In the event Westvaco experiences a fire in the southern section of the mine, by turning off the 8 Shaft fan, the change in air pressure would force the smoke and toxic gases to travel towards and exit the mine through the 8 Shaft. At the same time, fresh air from the 5 Shaft and 7 Shaft main fans would fill the passageways used by the miners to reach the two designated escape routes at the 5 Shaft and 7 Shaft, and would enhance the safety of the evacuation in a means comparable to, or exceeding the safety provided by the control doors.

2. When the 5 Shaft is operating, the airflow in the vicinity traveled away from the 5 Shaft through the north, west, and southern passageways. The anemometers recorded the velocity of the airflow in this area.

When the 5 Shaft was turned off, once again the direction of the airflow reversed in less than two minutes, and the 5 Shaft transitioned from an intake shaft to an exhaust shaft. The velocity of the airflow, now traveling towards the 5 Shaft, was measured between 140 and 195 feet per minute.

Similar to the 8 Shaft, when the 5 Shaft fan was running, the airflow in the three adjacent passageways—east, south, and southwest—emanating from the 5 Shaft had been towards the 8 Shaft and the 7 Shaft. With the 5 Shaft fan turned off, the airflow in these three passages reversed, traveling towards the 5 Shaft and away from the 8 Shaft and the 7 Shaft. In the event Westvaco experienced a fire in the central section of the mine, by turning off the 5 Shaft fan, the change in air pressure would force the smoke and toxic gases to travel towards and exit the mine through the 5 Shaft. At the same time, fresh air from the 8 Shaft and the 7 Shaft main fans would fill the northern and southern passageways, would provide the miners with good air as they progressed to the 8 Shaft primary hoist or the 7 Shaft northern escape route, and would enhance the safety of the evacuation in a means comparable to or exceeding the safety provided by control doors.

3. When the 7 Shaft fan is operating the airflow in the vicinity traveled away from the 7 Shaft, through west passageway. The anemometer recorded the velocity of the airflow in the area.

When the 7 Shaft fan was turned off, the direction of the airflow reversed in less than two minutes, and the 7 Shaft transitioned from an intake shaft to an exhaust shaft. The velocity of the airflow, now traveling towards the 7 Shaft, was measured at 195 feet per minute.

The 7 Shaft is on the northern side of the mine, and the intake air travels from the 7 Shaft down a westward passageway before joining the airstream supplied by the 5 Shaft in the center of the mine. With the 7 Shaft fan turned off, the airflow in the northern section of the mine is reversed, and the air supplied by the 5 Shaft flows into the northern section and exhausts through the 7 Shaft. In the event Westvaco experienced a fire in the norther section of the mine, by turning off the 7 Shaft fan, the change in air pressure would force the smoke and toxic gases to travel towards and exit the mine through the 7 Shaft. At the same time, fresh air from the 5 Shaft main fan would fill the northern section passageways, would provide the miners with good air as they progressed to the 8 Shaft primary hoist or the 5 Shaft escape route, and would enhance the safety of the evacuation in

a means comparable to, or exceeding the safety provided by control doors.

4. Overall results of engineering upgrades and Westvaco conditions. Based on the empirical data gathered from Tronox' testing, the upgrades permit the reversal of the direction of the airflow underground in all sections of the mine within two minutes. This performance demonstration, when used in accordance with the Westvaco Emergency Control Plan, readily complies with subsection (a)(2) of the standard, and provides equivalent or improved protection as compared to subsection (a)(1) of the standard, while preventing a potential diminution of safety from other compliance methods.

Control doors in an underground mine are intended to constrain or restrict airflow and ventilation in an attempt to isolate fire, smoke, and toxic gases. By isolating these hazards, control doors (in theory) prevent airflow migrating from the hazardous area to sections of the mine that can expel any hazardous gases or smoke. By isolating various sections of a mine and restricting the ventilation, control doors potentially trap smoke and toxic gases in areas miners may need to travel in order to reach operational hoists and escapeways. However, the ability to mechanically reverse the ventilation airflow in designated sections of the mine, not only draws smoke and toxic gases away from egress points, it provide a source of fresh air into the areas where miners are located.

c. The installation of control doors at Westvaco could result in a diminution of safety by reducing or eliminating ventilation during an evacuation. The purpose of the standard is to ''control the spread of fire, smoke and toxic gases.'' The first alternative to comply with the Standard envisions the installation of control doors. The second alternative envisions mechanical ventilation reversal, 30 CFR 57.4760(a). The alternatives are mutually exclusive. If Tronox is forced to implement the first alternative, and the installed control doors were actuated in response to an emergency, Westvaco's main fans at the affected intake shafts would be isolated and rendered ineffective. The fans, if left running would be forcing air into closed shafts, and the motors would be forced out of their operating ranges and likely stalled, resulting in a loss of ventilation in passageways adjoining the closed control doors.

Conversely, Tronox' procedures were tested and proven to reverse the airflow in the mine with the shutdown of a main fan. Requiring Tronox to install control doors would restrict this airflow reversal, and would likely increase the accumulation of smoke and toxic gases in areas confined between any control doors that closed in an emergency. A better solution to protect the health and safety of the evacuating miners would affirm that an airflow reversal will draw smoke and toxic gases out of the shaft, rather than accumulating underground where miners are still evacuating.

Moreover, compliance with 30 CFR 57.4760(a)(2), which specifically authorizes airflow reversal, provides a greater or equal level to safety than the use of control doors. By continuing to operate fans at the unaffected intake shafts, Westvaco is maintaining positive pressure, impeding the geological formation from degassing, and reducing the amount of methane in the mine. The airflow reversal provides a superior measure of protection than the alternatives, which would not impede degassing of subsurface methane into the workplace.

1. The alternate solution contemplated by 30 CFR 57.4760(a)(1), control doors, will result in a diminution of safety to miners at Westvaco, as compared to Tronox' installed engineering upgrades that produce air reversal capability for use in a manner consistent with its escape and evacuation plan. If the control doors for all three shafts were actuated in response to an emergency, all three ventilation fans would have to be turned off. Turning off all three fans and having the control doors closed would put Westvaco in a more hazardous situation than utilizing intentional reverse airflow ventilation because: (a) Contaminated air near the fire may not be forced up the designated exhaust shaft needed to provide safety for the miners; and (b) there may be no ventilation source for the miners along the escape routes or in the shafts.

In addition, the standard requires that control doors be constructed so that they can be opened from either side by one person, or be provided with a personnel door that can be opened from either side, 30 CFR 57.4760(a)(1)(vi). Although this requirement for control doors to have a method that allows miners to pass through them to reach the intake shaft makes sense from an entrapment standpoint, the fact that the doors may be opened during an emergency creates the potential for toxic gases to migrate from one side of the door to the other. In addition, opening and closing control doors or personnel doors during an emergency creates the potential for the door to be accidentally opened or left open.

2. Tronox' implementation of mechanical ventilation reversal meets the criteria required by 30 CFR 44.4(a). As demonstrated by Tronox' testing, analysis, and Westvaco's layout, Tronox' ability to remotely reverse fan ventilation enables Tronox to direct, as opposed to simply restrict, the flow of air underground during a fire. Airflow reversal would be used only in emergencies, with the approval of the mine Manager/Disaster Director or his/her designee. In the event of an emergency, the Disaster Director will continually assess the location of the miners and the location of the fire and/or smoke source, and the 8, 5, and 7 Shafts will be maintained as air intake shafts to provide fresh air underground. In the event that the Disaster Director determines that air reversal via the shutdown of airflow from one of these intake shafts is necessary to control the spread of fire, smoke, or toxic gases, and will not adversely affect the evacuation, the Disaster Director will coordinate with the Ventilation Coordinator the shutdown of a main fan to reverse the airflow in the desired area. The Safety Coordinator, pursuant to Westvaco' Emergency Control Plan, will inform MSHA of the airflow reversal.

For example, the Disaster Director would order the fan at the 8 Shaft to be turned off in the event there is a fire or smoke in the southern section of the mine, and miners are to the north of the fire or smoke source. If the Disaster Director determines that the drop in air pressure would force smoke and toxic gases to travel toward Shaft No. 8, and allow fresh air to flow from the 7 Shaft and 5 Shaft, the Disaster Director would direct the Ventilation Coordinator to shut down the 8 Shaft's main fan. During this reversal of airflow, the air in the east, and south passageways emanating from the 8 Shaft would now exhaust through the 8 Shaft as the miners underground continued to execute their trained response—to evacuate in fresh air by a secondary escape route.

In contrast to control doors, which merely segregate the intake shafts and mine passageways into isolated or unventilated zones and can be accidently closed or left open. Tronox' use of mechanical ventilation reversal can provide beneficial affects to the entire mine. The ventilation reversal can draw air, smoke, and toxic gases near the fire away from the remainder of the mine on a continual basis as the miners egress.

Ventilation reversal allows miners to arrive at each shaft station without having to stop to open a control/personnel door and then close it behind them. Moreover, the positive effects of the ventilation reversal are preserved as the miners reach the shaft stations. In

contrast, a control door's integrity and the isolation at each door's location are breached every time an egressing miner opens the control door.

Notwithstanding the fact that Tronox' use of mechanical ventilation reversal is entirely consistent with 30 CFR 57.4760(a), Tronox recognizes that the benefits of this engineering solution will be maximized with additional training for its miners. If this petition is approved, Tronox proposes to provide additional training, beyond its current Part 48 training, that will instruct miners and supervisors on the ventilation reversal capability upgrades and the condition and procedures for their use during emergencies.

Tronox continues to maintain that its engineering upgrades at Westvaco, along with its evacuation and escape plans, comply with the standard, 30 CFR 57.4760(a)(2), and the citations should be terminated. Nevertheless, in the alternative to the extent MSHA contends that control doors or other abatement means are required, Tronox respectfully requests MSHA grant this petition for modification of the standard. For the reasons discussed above, permitting Tronox to mechanically reverse the ventilation, in conjunction with the proposed additional training measures, provides equal or greater protection to the miners than installing control doors that will constrict airflow underground. In addition, the imposition of 30 CFR 57.4760(a)(1) at Westvaco, as applied by MSHA, as opposed to the application of 30 CFR 57.4760(a)(2) as described herein, will result in a diminution of safety to the miners at Westvaco.

The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Sheila McConnell,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2015–27820 Filed 10–30–15; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0054]

Proposed Extension of Information Collection; Fire Protection (Underground Coal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure 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. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Fire Protection (Underground Coal Mines).

DATES: All comments must be received on or before January 4, 2016.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2015–0032.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Fire protection standards for underground coal mines are based on section 311(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act).

30 CFR 75.1100 requires that each coal mine be provided with suitable firefighting equipment adapted for the size and conditions of the mine, and that the Secretary of Labor shall establish minimum requirements of the type, quality, and quantity of such equipment.

30 CFR 75.1100–3 requires that chemical fire extinguishers be examined every 6 months and that the date of the examination be recorded on a permanent tag attached to the extinguisher.

30 CFR 75.1103–5(a)(2)(ii) requires that a map or schematic be updated within 24 hours of any change in the locations of automatic fire warning sensors and the intended air flow direction at these locations. This map or schematic would be kept at a manned surface location where personnel have an assigned post of duty.

30 CFR 75.1103–8(a) requires that a qualified person examine the automatic fire sensor and warning device systems on a weekly basis and conduct a functional test of the complete system at least once every seven days.

Section 75.1103–8(b) requires that a record of the weekly automatic fire sensor functional tests be maintained by the mine operator and kept for a period of one year.

30 CFR 75.1103–8(c) requires that sensors be calibrated in accordance with the manufacturer's calibration instructions at intervals not to exceed 31 days. Records of the sensor calibrations must be maintained by the operator and kept for a period of one year.

30 CFR 75.1103–11 requires that each fire hydrant and hose be tested at least once a year and the records of those tests be maintained at an appropriate location.

30 CFR 75.1501(a)(3) requires the operator to certify that each responsible person is trained and that the certification is maintained at the mine for at least one year.

30 CFR 75.1502 requires each mine operator to adopt and follow a mine evacuation and firefighting program of instruction that addresses all mine emergencies created as a result of a fire, an explosion, or a gas or water inundation. In addition, this section requires mine operators to submit this program of instruction, and any revisions, to MSHA for its approval and to train miners regarding the use of the program of instruction, and any revisions to such program of instruction, after it is approved by MSHA.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Fire Protection (Underground Coal Mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information has practical utility;

• Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to 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.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Fire Protection (Underground Coal Mines). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Revision of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0054.

Affected Public: Business or other for-profit.

Number of Respondents: 237.

Frequency: On occasion.

Number of Responses: 144,427.

Annual Burden Hours: 24,916 hours.

Annual Respondent or Recordkeeper Cost: $332.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2015–27822 Filed 10–30–15; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by the MSHA's Office of Standards, Regulations, and Variances on or before December 2, 2015.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2015–019–C.

Petitioner: UtahAmerican Energy, Inc., 794 North ''C'' Canyon Road, P.O. Box 910, East Carbon, Utah 84520.

Mine: Lila Canyon Mine, MSHA I.D. No. 42–02241, located in Carbon County, Utah.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, as it pertains to the use of non-permissible surveying equipment, including total stations and theodolites with low-voltage batteries if they have an IP rating of 66 or higher subject to the conditions of the petition. The petitioner states that:

(1) Nonpermissible electronic surveying equipment will only be used until equivalent permissible electronic surveying equipment is available or if viable new mechanical surveying equipment is not commercially available.

(2) Lila Canyon will maintain a logbook for electronic surveying equipment. The logbook will be kept with each corresponding instrument. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(3) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by the person that will operate the equipment prior to taking

the equipment underground to ensure the equipment is being maintained in a safe operating condition. These checks will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(4) Recording the results of the inspection in the equipment logbook.

(5) The equipment will be examined at least weekly by a qualified person as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook. Inspection entries in the logbook may be expunged after one year.

(6) All nonpermissible electronic surveying equipment will be serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment logbook and will include a description of the work performed.

(7) The nonpermissible surveying equipment that will be used in or inby the last open crosscut will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance.

(8) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more methane is detected while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn outby the last open crosscut. Prior to returning inby the last open crosscut, all requirements of 30 CFR 75.323 will be complied with.

(9) As an additional safety check, prior to setting up and energizing nonpermissible electronic surveying equipment in or inby the last open crosscut, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the areas appear to be sufficiently rock dusted and for the presence of accumulated float coal dust. If the rock dusting appears insufficient or the presence of accumulated coal dust is observed, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulations of coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area that is not rocked dusted within 40 feet of a working face where a continuous miner is used to extract coal, the area will be rock dusted prior to energizing the electronic surveying equipment.

(10) All hand-held methane detectors will be MSHA approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(11) Prior to energizing any of the nonpermissible surveying equipment in or inby the last open crosscut, methane tests must be made no more than eight inches from the roof or floor at the location of the equipment.

(12) All areas to be surveyed will be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, an additional examination is not required.

(13) A qualified person as defined in existing 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment inby the last open crosscut. A second person in the surveying crew, if there are two people in the crew, will also continuously monitor for methane. That person will either be a qualified person as defined in 30 CFR 75.151 or will be in the process of being trained to be a qualified person but will not make such tests for a period of 6 months, as required by 30 CFR 75.151. On completion of the 6-month training period, the second person on the survey crew must become qualified in order to continue on the survey crew. If the surveying crew consists of one person, such person will monitor for methane with two separate devices. While the equipment is used in or inby the last open crosscut, one qualified person who is continuously monitoring for methane will remain with the electronic surveying equipment.

(14) Batteries contained in the surveying equipment must be ''changed out'' or ''charged'' in intake air outby the last open crosscut. Replacement batteries for the electronic surveying equipment will not be brought in or inby the last open crosscut. On each entry into the mine, all batteries for the electronic surveying equipment must be fully charged.

(15) When using nonpermissible electronic surveying equipment inby the last open crosscut the surveyor must confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in the last open crosscut or coming to the longwall face is the quantity that is required by the mine's ventilation plan.

(16) Nonpermissible electronic surveying equipment will not be used when coal production is occurring in the section. All mining in the section will cease prior to use of the equipment in or inby the last open crosscut.

(17) Personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

(18) All persons who operate nonpermissible electronic surveying equipment will receive specific training on the terms and conditions of the proposed decision and order before using nonpermissible electronic surveying equipment in or inby the last open crosscut. A record of the training will be kept with the other training records.

(19) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for their approved part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the PDO. When training is conducted on the terms and conditions stated in the PDO, an MSHA Certificate of Training (Form 5000–23) will be completed. Comments on the certificate of training will indicate surveyor training.

(20) Lila Canyon will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2001, within one year of the PDO becoming final. Lila Canyon will replace or retire from service any electronic surveying instrument that was acquired between January 1, 2002 and December 31, 2007; and within two years of the PDO becoming final. Within three years of the date that the PDO becomes final, Lila Canyon will replace or retire from service any electric theodolite that was acquired more than five years prior to the date that the PDO becomes final, or any total station acquired more than ten years prior to the day that the PDO becomes final. After five years, Lila Canyon will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than five years from date of manufacture and total stations will be no older than 10 years from date of manufacture.

(21) Lila Canyon is responsible for seeing that all surveying contractors hired by Lila Canyon are using relatively new electronic equipment, *i.e.*, theodolites no older than five years from date of manufacture and total stations no older than 10 years from date of manufacture. The conditions of use in the PDO will apply to all nonpermissible electronic surveying equipment used in or inby the last open crosscut regardless of whether the equipment is used by Lila Canyon or by an independent contractor. Nonpermissible equipment will not be used where float coal dust is in suspension.

The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2015–020–C.

Petitioner: UtahAmerican Energy, Inc., 794 North ''C'' Canyon Road, P.O. Box 910, East Carbon, Utah 84520.

Mine: Lila Canyon Mine, MSHA I.D. No. 42–02241, located in Carbon County, Utah.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered nonpermissible surveying equipment in the return, as it pertains to the use of non-permissible surveying equipment, including total stations and theodolites with low-voltage batteries if they have an IP rating of 66 or higher subject to the conditions of the petition. The petitioner states that:

(1) Nonpermissible electronic surveying equipment will only be used until equivalent permissible electronic surveying equipment is available or if viable new mechanical surveying equipment is not commercially available.

(2) Lila Canyon will maintain a logbook for electronic surveying equipment. The logbook will be kept with each corresponding instrument. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(3) All nonpermissible electronic surveying equipment to be used in the return will be examined by the person that will operate the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. These checks will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(4) Recording the results of the examination in the equipment logbook.

(5) The equipment will be examined at least weekly by a qualified person as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook. Inspection entries in the logbook may be expunged after one year.

(6) All nonpermissible electronic surveying equipment will be serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment logbook and will include a description of the work performed.

(7) The nonpermissible surveying equipment that will be used in the return will not be put into service until MSHA has inspected the equipment and determined that it is in compliance.

(8) Non permissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more methane is detected while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn out of the return. Prior to returning into the return, all requirements of 30 CFR 75.323 will be complied with.

(9) As an additional safety check, prior to setting up and energizing nonpermissible electronic surveying equipment in the return, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the areas appear to be sufficiently rock dusted and for the presence of accumulated float coal dust. If the rock dusting appears insufficient or the presence of accumulated coal dust is observed, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulations of coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area that is not rock dusted within 40 feet of a working face where a continuous miner is used to extract coal, the area will be rock dusted prior to energizing the electronic surveying equipment.

(10) All hand-held methane detectors will be MSHA approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(11) Prior to energizing any of the nonpermissible surveying equipment in the return, methane tests must be made no more than eight inches from the roof or floor at the location of the equipment.

(12) All areas to be surveyed will be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, an additional examination is not required.

(13) A qualified person as defined in existing 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in the return. A second person in the surveying crew, if there are two people in the crew, will also continuously monitor for methane. That person will either be a qualified person as defined in 30 CFR 75.151 or will be in the process of being trained to be a qualified person but will not make such tests for a period of 6 months, as required by 30 CFR 75.151. Upon completion of the 6 month training period the second person on the survey crew must become qualified to continue on the survey crew. If the surveying crew consists of one person, such person will monitor for methane with two separate devices. While the equipment is in the return, one qualified person who is continuously monitoring for methane will remain with the electronic surveying equipment.

(14) Batteries contained in the surveying equipment must be ''changed out'' or ''charged'' in intake air, out of the return. Replacement batteries for the electronic surveying equipment will not be brought into the return. On each entry into the mine, all batteries for the electronic surveying equipment must be fully charged.

(15) When using nonpermissible electronic surveying equipment in the return, the surveyor must confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in the last open crosscut or coming to

the longwall face is the quantity that is required by the mine's ventilation plan.

(16) Nonpermissible electronic surveying equipment will not be used when coal production is occurring in the section. All mining in the section will cease prior to use of the equipment in the return.

(17) Personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

(18) All persons who operate nonpermissible electronic surveying equipment will receive specific training on the terms and conditions of the proposed decision and order before using nonpermissible electronic surveying equipment in the return. A record of the training will be kept with the other training records.

(19) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for their approved part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the PDO. When training is conducted on the terms and conditions stated in the PDO, an MSHA Certificate of Training (Form 5000–23) will be completed. Comments on the certificate of training will indicate surveyor training.

(20) Lila Canyon will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2001; within one year of the PDO becoming final. Lila Canyon will replace or retire from service any electronic surveying instrument that was acquired between January 1, 2002 and December 31, 2007; and within two years of the PDO becoming final. Within three years of the date that the PDO becomes final, Lila Canyon will replace or retire from service any electric theodolite that was acquired more than five years prior to the date that the PDO becomes final, or any total station acquired more than ten years prior to the day that the PDO becomes final. After five years, Lila Canyon will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than five years from date of manufacture and total stations will be no older than 10 years from date of manufacture.

(21) Lila Canyon is responsible for seeing that all surveying contractors hired by Lila Canyon are using relatively new electronic equipment, *i.e.*, theodolites no older than five years from date of manufacture and total stations no older than 10 years from date of manufacture. The conditions of use in the PDO will apply to all nonpermissible electronic surveying equipment used in a return regardless of whether the equipment is used by Lila Canyon or by an independent contractor. Nonpermissible equipment will not be used where float coal dust is in suspension.

The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2015–021–C.

Petitioner: UtahAmerican Energy, Inc., 794 North ''C'' Canyon Road, P.O. Box 910, East Carbon, Utah 84520.

Mine: Lila Canyon Mine, MSHA I.D. No. 42–02241, located in Carbon County, Utah.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings or longwall faces, as it pertains to the use of non-permissible surveying equipment, including total stations and theodolites with low-voltage batteries if they have an IP rating of 66 or higher subject to the conditions of the petition. The petitioner states that:

(1) Nonpermissible electronic surveying equipment will only be used until equivalent permissible electronic surveying equipment is available or if viable new mechanical surveying equipment is not commercially available.

(2) Lila Canyon will maintain a logbook for electronic surveying equipment. The logbook will be kept with each corresponding instrument. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(3) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall face will be examined by the person that will operate the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. These checks will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(4) Recording the results of the inspection in the equipment logbook.

(5) The equipment will be examined at least weekly by a qualified person as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook. Inspection entries in the logbook may be expunged after one year.

(6) All nonpermissible electronic surveying equipment will be serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment logbook and will include a description of the work performed.

(7) The nonpermissible surveying equipment that will be used within 150 feet of pillar workings or the longwall face will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance.

(8) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more methane is detected while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn further than 150 feet from pillar workings or longwall faces. Prior to returning within 150 feet from pillar workings or longwall faces, all requirements of 30 CFR 75.323 will be complied with.

(9) As an additional safety check, prior to setting up and energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the areas appear to be sufficiently rock dusted and for the presence of accumulated float coal dust. If the rock dusting appears insufficient or the presence of accumulated coal dust is observed, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulations of coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area that is not rock dusted within 40 feet of a working face where a continuous miner is used to extract coal, the area will be rock ducted prior to

energizing the electronic surveying equipment.

(10) All hand-held methane detectors will be MSHA approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors must provide visual and audible warnings when methane is detected at or above 1.0 percent.

(11) Prior to energizing any of the nonpermissible surveying equipment within 150 feet of pillar workings or longwall faces, methane tests must be made no more than eight inches from the roof or floor at the location of the equipment.

(12) All areas to be surveyed will be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, an additional examination is not required.

(13) A qualified person as defined in existing 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings or longwall faces. A second person in the surveying crew, if there are two people in the crew, will also continuously monitor for methane. That person will either be a qualified person as defined in 30 CFR 75.151 or will be in the process of being trained to be a qualified person but will not make such tests for a period of 6 months, as required by 30 CFR 75.151. On completion of the 6 month training period the second person on the survey crew must become qualified to continue on the survey crew. If the surveying crew consists of one person, such person will monitor for methane with two separate devices. While the equipment is used within 150 feet of pillar workings or longwall faces, one qualified person who is continuously monitoring for methane will remain with the electronic surveying equipment.

(14) Batteries contained in the surveying equipment must be ''changed out'' or ''charged'' more than 150 feet away from pillar workings or the longwall face. Replacement batteries for the electronic surveying equipment will not be brought in or inby the last open crosscut, into the return, or within 150 feet of pillar workings or longwall faces. On each entry into the mine, all batteries for the electronic surveying equipment must be fully charged.

(15) When using nonpermissible electronic surveying equipment within 150 feet of pillar workings or the longwall face, the surveyor must confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in the last open crosscut or coming to the longwall face is the quantity that is required by the mine's ventilation plan.

(16) Nonpermissible electronic surveying equipment will not be used when coal production is occurring in the section. All mining in the section will cease prior to use of the equipment within 150 feet of pillar workings and longwall faces.

(17) Personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

(18) All persons who operate nonpermissible electronic surveying equipment will receive specific training on the terms and conditions of the proposed decision and order before using nonpermissible electronic surveying equipment within 150 feet of the longwall face or pillar workings. A record of the training will be kept with the other training records.

(19) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for their approved part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the PDO. When training is conducted on the terms and conditions stated in the PDO, an MSHA Certificate of Training (Form 5000–23) will be completed. Comments on the certificate of training will indicate surveyor training.

(20) Lila Canyon will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2001; within one year of the PDO becoming final. Lila Canyon will replace or retire from service any electronic surveying instrument that was acquired between January 1, 2002 and December 31, 2007; and within two years of the PDO becoming final. Within three years of the date that the PDO becomes final, Lila Canyon will replace or retire from service any electric theodolite that was acquired more than five years prior to the date that the PDO becomes final, or any total station acquired more than ten years prior to the day that the PDO becomes final. After five years, Lila Canyon will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than five years from date of manufacture and total stations will be no older than 10 years from date of manufacture.

(21) Lila Canyon is responsible for seeing that all surveying contractors hired by Lila Canyon are using relatively new electronic equipment, *i.e.*, theodolites no older than five years from date of manufacture and total stations no older than 10 years from date of manufacture. The conditions of use in the PDO will apply to all nonpermissible electronic surveying equipment used within 150 feet of pillar workings or longwall faces regardless of whether the equipment is used by Lila Canyon or by an independent contractor. Nonpermissible equipment will not be used where float coal dust is in suspension.

The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Sheila McConnell,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2015–27823 Filed 10–30–15; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–H022k–2006–0062]

Preparations for the 30th Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS)

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that on Thursday, November 12, 2015, OSHA will conduct a public meeting to discuss proposals in preparation for the 30th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held December 9 to December 11, 2015 in Geneva, Switzerland. OSHA, along with the U.S. Interagency GHS (Globally Harmonized System of Classification and Labelling of Chemicals) Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the

UNSCEGHS meeting. Members of the Regulatory Cooperation Council (RCC) will be present to update Canada's status of their GHS policy and procedures. International conference call capability will be available for this portion of the public meeting.

Also, on Thursday, November 12, 2015, the Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) will conduct a public meeting (See Docket No. PHMSA–2015–0188, Notice No. 15–19) to discuss proposals in preparation for the 48th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held November 30 to December 9, 2015, in Geneva, Switzerland. During this meeting, PHMSA is also requesting comments relative to potential new work items that may be considered for inclusion in its international agenda. PHMSA will also provide an update on recent actions to enhance transparency and stakeholder interaction through improvements to the international standards portion of its Web site.

DATES: Thursday November 12, 2015

ADDRESSES: Both meetings will be held at the DOT Headquarters Conference Center, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

Times and Locations: PHMSA public meeting: 9:00 a.m. to 12:00 p.m. EDT, Conference Rooms 8–10.

OSHA public meeting: 1:00 p.m. to 2:30p.m. EDT, Conference Rooms 8–10.

RCC public meeting: 3:00 p.m. to 4:30 p.m. EDT, Conference Rooms 8–10.

Advanced Meeting Registration: The DOT requests that attendees pre-register for these meetings by completing the form at: *https://www.surveymonkey.com/r/LVXNWYT.*

Attendees may use the same form to pre-register for both the PHMSA and the OSHA meetings. Failure to pre-register may delay your access into the DOT Headquarters building. Additionally, if you are attending in-person, arrive early to allow time for security checks necessary to access the building.

Conference call-in and ''live meeting'' capability will be provided for both meetings.

The number is reserved and the Live Meeting link is setup for all day.

Toll Free (USA)

Toll Free: 888–675–2535
Access code: 3614708

International Callers

International Toll: 215–446–0145
Access: 3614708
Attendee URL: *https://www.livemeeting.com/cc/phmsa/join?id=JKJ4DF&role=attend&pw=w5%3CPP%28%5D%2Cs*

FOR FURTHER INFORMATION CONTACT: For information about the PHMSA Meeting at 9:00 a.m.: Mr. Steven Webb or Mr. Aaron Wiener, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590: Telephone: (202) 366–8553.

For information about the OSHA Meeting at 1:00 p.m. and the RCC Meeting at 3:00 p.m.: Ms. Maureen Ruskin, Office of Chemical Hazards-Metals, OSHA Directorate of Standards and Guidance, Department of Labor, Washington, DC 20210: Telephone: (202) 693–1950, email: *ruskin.maureen@dol.gov.*

SUPPLEMENTARY INFORMATION:

The OSHA Meeting: OSHA is hosting an open informal public meeting of the U.S. Interagency GHS Coordinating Group to provide interested groups and individuals with an update on GHS-related issues and an opportunity to express their views orally and in writing for consideration in developing U.S. Government positions for the upcoming UNSCEGHS meeting. Interested stakeholders may also provide input on issues related to OSHA's activities in the U.S.-Canada Regulatory Cooperation Council (RCC) at the meeting.

General topics on the agenda include:

- Review of Working papers
- Correspondence Group updates
- Regulatory Cooperation Council (RCC) Update

Information on the work of the UNSCEGHS including meeting agendas, reports, and documents from previous sessions, can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division Web site located at the following web address: *http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html.* The UNSCEGHS bases its decisions on Working Papers. The Working Papers for the 30th session of the UNSCEGHS are located at: *http://www.unece.org/trans/main/dgdb/dgsubc3/c32015.html.*

Informal Papers submitted to the UNSCEGHS provide information for the Sub-committee and are used either as a mechanism to provide information to the Sub-committee or as the basis for future Working Papers. Informal Papers for the 30th session of the UNSCEGHS are located at: *http://www.unece.org/trans/main/dgdb/dgsubc4/c4inf30.html.*

The PHMSA Meeting: The **Federal Register** notice and additional detailed information relating to PHMSA's public meeting will be available upon publication at *http://www.regulations.gov* (Docket No. PHMSA–2015–0188 No.) and on the PHMSA Web site at: *http://www.phmsa.dot.gov/hazmat/regs/international.*

The primary purpose of PHMSA's meeting will be to prepare for the 47th session of the UNSCE TDG. The 48th session of the UNSCE TDG is the first of four meetings scheduled for the 2015–2016 biennium. The UNSCE will consider proposals for the 20th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations, which may be implemented into relevant domestic, regional, and international regulations from January 1, 2019. Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations Transport Division's Web site at *http://www.unece.org/trans/danger/danger.html.*

Authority and Signature: This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), and Secretary's Order 1–2012 (77 FR 3912), (Jan. 25, 2012).

Signed at Washington, DC, on October 26, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–27821 Filed 10–30–15; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 15–CRB–0011 DART (SRF/CO) (2014)]

Distribution of 2014 DART Sound Recordings Fund Royalties (Copyright Owners and Featured Artists Subfunds)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice soliciting comments on motion for partial distribution.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion for partial distribution in connection with 2014 DART Sound Recordings Fund royalties.

DATES: Comments are due on or before December 2, 2015.

ADDRESSES: This Notice is also posted on the agency's Web site (*www.loc.gov/crb*). Submit comments via email to *crb@loc.gov.* See the **SUPPLEMENTARY**

INFORMATION section below for instructions on submitting comments in other formats.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On July 23, 2015, the Alliance of Artists and Recording Companies (AARC), on behalf of itself and claimants with which it has reached settlements (Settling Claimants) filed with the Copyright Royalty Judges (Judges) a Notice of Settlement and Request for Partial Distribution of the 2014 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties (Notice and Request). In the Notice and Request, AARC states that the Settling Claimants have agreed among themselves concerning distribution of the 2014 DART Sound Recordings Fund royalties from two subfunds: Copyright Owners and Featured Recording Artists.

With respect to the Featured Recording Artists Subfund, AARC represents that it has reached settlements with all but one claimant (Herman Kelly) for that subfund and that the nonsettling claimant has unit sales totaling 1,287 in a universe of over one billion claimants' sound recordings sold in 2014. Notice and Request at 2.

With respect to the Copyright Owners Subfund, AARC represents that it had reached settlements with all but four claimants (Dr. Dwight Sanders, Eric Burns, Tajai Music, Inc., and Afterschool Publishing Company (APC), which is affiliated with Herman Kelly). The Judges have since dismissed the claims of Dr. Sanders and Mr. Burns. Order Dismissing Claims of Burns and Sanders (Sept. 11, 2015). AARC represents that the nonsettling parties have combined record sales of 794,469 units in a universe of nearly one billion record sales for 2014. Notice and Request at 2.[1]

AARC requests a partial distribution of 98% from the Copyright Owners Subfund and an equal percentage from the Featured Recording Artists Subfund pursuant to Section 801(b)(3)(C) of the Copyright Act. Under that section of the Copyright Act, before ruling on a partial distribution motion the Judges must publish a notice in the **Federal Register** seeking responses to the motion to ascertain whether any claimant entitled to receive such royalty fees has a reasonable objection to the proposed distribution. 17 U.S.C. 801(b)(3)(C). Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution from the 2014 DART Sound Recordings Fund of 98% of the royalties in the Featured Recording Artists Subfund and 98% of the royalties in the Copyright Owners Subfund to the Settling Claimants. Any party wishing to advise the Judges of the existence and extent of an objection must do so, in writing, by the end of the comment period. The Judges will not consider any objections to the partial distribution motion that are raised after the close of that period.

How To Submit Comments

Interested claimants must submit comments to only one of the following addresses. Unless responding by email or online, claimants must submit an original, five paper copies, and an electronic version on a CD.

Email: crb@loc.gov; or

Online: Use the Federal eRulemaking Portal ''Regulations.gov'' at: *http://www.regulations.gov.*

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE. and D Street NE., Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000.

Dated: October 26, 2015.

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2015–27645 Filed 10–30–15; 8:45 am]

BILLING CODE 1410–72–P

[1] For his part, on August 7, 2015, Mr. Kelly filed a Settlement Proposal Offer and Request on behalf of himself and APC, in which Mr. Kelly appears willing to stipulate to the sales figure that AARC asserts is attributable to Mr. Kelly and APC. Mr. Kelly requests a ''proper equal share of any amounts from the 2014 funds.'' Although the Copyright Royalty Board (CRB) has accepted Mr. Kelly's filings to date to the extent that Mr. Kelly is petitioning on his own behalf, CRB Rule 350.2 requires that all parties other than individuals ''must be represented by an attorney.'' 37 CFR 350.2. Therefore, going forward, individual claimants may continue to represent their own interests before the CRB, but they may not represent the interests of other claimants or groups of claimants without a licensed attorney. The CRB Web site provides the names and contact information of licensed attorneys that have stated their willingness to represent *pro se* claimants free of charge.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

President's Committee on the Arts and the Humanities: Meeting #71

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the 71st meeting of the President's Committee on the Arts and the Humanities (PCAH) will tentatively be held in the Monument Room, Occidental Grill & Seafood, 1475 Pennsylvania Avenue NW., Washington, DC 20004. Ending time is approximate.

DATES: November 17, 2015 from 10:00 a.m. to 12:30 p.m.

FOR FURTHER INFORMATION CONTACT: Lindsey Clark of the President's Committee at (202) 682–5409 or *lclark@pcah.gov.*

SUPPLEMENTARY INFORMATION: The meeting, on Wednesday, November 17th, will begin with welcome, overview of the agenda, and acknowledgement of new members. This will be followed by reports on Committee Programs (Film Forward, National Student Poets Program, NEH/Spoken Word Ambassador program, Turnaround Arts, and Financial forecasting/program sustainability) and Plans for 2016—Member Survey and Proposals (Review of survey data and main points, plans for 2016 activities). Remarks from the Executive Director will follow. There also will be reports from the President's Committee partners—the Institute of Museum and Library Services (IMLS), National Endowment for the Arts (NEA), and National Endowment for the Humanities (NEH), as well as other Partner updates. The meeting will adjourn after closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the ''Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities.''

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Lindsey Clark of

the President's Committee seven (7) days in advance of the meeting at (202) 682–5409 or write to the Committee at Constitution Center, 400 7th St. SW., Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Clark at *lclark@pcah.gov.*

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Dated: October 28, 2015.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2015–27845 Filed 10–30–15; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

SES Performance Review Board

AGENCY: National Transportation Safety Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National Transportation Safety Board, Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT: Emily T. Carroll, Chief, Human Resources Division, Office of Administration, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594–0001, (202)314–6233.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, United States Code requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor and considers recommendations to the appointing authority regarding the performance of the senior executive.

The following have been designated as members of the Performance Review Board of the National Transportation Safety Board:

The Honorable T. Bella Dinh-Zarr, Vice Chairman, National Transportation Safety Board; PRB Chair.

The Honorable Earl F. Weener; Member, National Transportation Safety Board.

Edward Benthall, Chief Financial Officer, National Transportation Safety Board.

Florence A.P. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission

John A. Cavolowsky, Director, Airspace Operations and Safety Program, National Aeronautics and Space Administration

Jerold Gidner, Tribal Liaison Officer; Office of Policy, Management, and Budget; Department of the Interior (Alternate)

Anthony P. Scardino, Chief Financial Officer, U.S. Patent and Trademark Office (Alternate)

Candi R. Bing,

Federal Register Liaison.

[FR Doc. 2015–27762 Filed 10–30–15; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–608; NRC–2013–0053]

SHINE Medical Technologies, Inc.; Notice of Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Construction permit application; notice of hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) will convene an evidentiary session to receive testimony and exhibits in the uncontested proceeding regarding the application from SHINE Medical Technologies, Inc. (SHINE), for a construction permit (CP) to construct a medical radioisotope production facility in Janesville, Wisconsin. This mandatory hearing will consider safety and environmental matters relating to the requested CP.

DATES: The hearing will be held on December 15, 2015, beginning at 9:00 a.m. Eastern Time. For the schedule for submitting pre-filed documents and deadlines affecting Interested Government Participants, see Section VI of the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID 50–608 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:

- *NRC's Electronic Hearing Docket:* You may obtain publicly available documents related to this hearing on line at *http://www.nrc.gov/about-nrc/regulatory/adjudicatory.html.*
- *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: Denise McGovern, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0681; email: *Denise.McGovern@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission hereby gives notice that, pursuant to Section 189a of the Atomic Energy Act (AEA) of 1954, as amended (the Act), it will convene an evidentiary session to receive testimony and exhibits in the proceeding regarding the SHINE application for a CP under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), to construct a medical radioisotope production facility in Janesville, Wisconsin.

Part one of the SHINE's CP application was submitted by letter dated March 26, 2013 (ADAMS Accession No. ML13088A192), and by letter dated May 31, 2013 (ADAMS Accession No. ML13172A361), SHINE submitted the second and final part of its two-part application for a CP. By letter dated September 25, 2013 (ADAMS Accession No. ML13269A378), SHINE supplemented this submission with a discussion of preliminary plans for coping with emergencies, as required by 10 CFR 50.34(a)(10), completing its application for a CP. The construction permit application, including the environmental report, may be viewed in its entirety at ADAMS Accession No. ML13172A324. This mandatory hearing will concern safety and environmental matters relating to the requested CP application, as more fully described below.

II. Evidentiary Uncontested Hearing

The Commission will conduct this hearing beginning at 9:00 a.m., Eastern Time on December 15, 2015, at the Commission's headquarters in Rockville, Maryland. The hearing will continue on subsequent days, if necessary.

III. Presiding Officer

The Commission is the presiding officer for this proceeding.

IV. Matters To Be Considered

The matter at issue in this proceeding is whether the review of the SHINE CP application by the Commission's staff has been adequate to support the findings found in 10 CFR 50.35, 50.40, 50.50, and 10 CFR 51.105. Those findings are as follows:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

With respect to the CP: (1) Whether the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public; (2) whether such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report (3) whether safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; (4) whether on the basis of the foregoing, there is reasonable assurance that, (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility and (ii) taking into consideration the site criteria contained in 10 CFR part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public; (5) whether there is reasonable assurance (i) that the construction of the facility will not endanger the health and safety of the public, and (ii) that construction activities can be conducted in compliance with the Commission's regulations; (6) whether the applicant is technically and financially qualified to engage in the proposed activities in accordance with the Commission's regulations in chapter I of title 10 of the CFR; (7) whether the issuance of a permit for the construction of the facility to the applicant will not, in the opinion of the Commission, be inimical to the common defense and security or to the health and safety of the public; and (8) whether the application meets the standards and requirements of the AEA and the Commission's regulations, and that notifications, if any, to other agencies or bodies have been duly made.

Issues Pursuant to the National Environmental Policy Act (NEPA) of 1969

With respect to the CP: (1) Determine whether the requirements of Sections 102(2)(A), (C), and (E) of NEPA and the applicable regulations in 10 CFR part 51 have been met; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit should be issued, denied, or appropriately conditioned to protect environmental values; and (4) determine whether the NEPA review conducted by the NRC staff has been adequate.

V. Schedule for Submittal of Pre-Filed Documents

No later than November 24, 2015, unless the Commission directs otherwise, the NRC staff and the applicant shall submit a list of its anticipated witnesses for the hearing.

No later than November 24, 2015, unless the Commission directs otherwise, the applicant shall submit its pre-filed written testimony. The NRC staff submitted its pre-filed testimony on October 23, 2015.

The Commission may issue written questions to the applicant or the NRC staff before the hearing. If such questions are issued, an order containing such questions will be issued no later than November 10, 2015. Responses to such questions are due November 24, 2015, unless the Commission directs otherwise.

VI. Interested Government Participants

No later than November 9, 2015, any interested State, local government body, or Federally-recognized Indian tribe may file with the Commission a statement of any issues or questions that the State, local government body, or Indian tribe wishes the Commission to give particular attention as part of the uncontested hearing process. Such statement may be accompanied by any supporting documentation that the State, local government body, or Indian tribe sees fit to provide. Any statements and supporting documentation (if any) received by the Commission using the agency's E-filing system [1] by the deadline indicated above will be made part of the record of the proceeding. The Commission will use such statements and documents as appropriate to inform its pre-hearing questions to the NRC staff and applicant, its inquiries at the oral hearing, and its decision following the hearing. The Commission may also request, prior to November 17, 2015, that one or more particular States, local government bodies, or Indian tribes send one representative each to the evidentiary hearing to answer Commission questions and/or make a statement for the purpose of assisting the Commission's exploration of one or more of the issues raised by the State, local government body, or Indian tribe, in the pre-hearing filings described above. The decision whether to request the presence of a representative of a State, local government body, or Indian tribe at the evidentiary hearing to make a statement and/or answer Commission questions is solely at the Commission's discretion. The Commission's request will specify the issue or issues that each representative should be prepared to address.

Many of the procedures and rights applicable to the inherently adversarial nature of NRC's contested hearing process are not available in this uncontested hearing. Participation in the NRC's contested hearing process is governed by 10 CFR 2.309 (for persons or entities, including a State, local government, or Indian tribe seeking to file contentions of their own) and 10 CFR 2.315(c) (for an interested State, local government, or Federally-recognized Indian tribe seeking to participate with respect to contentions filed by others). Participation in this uncontested hearing does not affect the right of a State, a local government, or an Indian tribe to participate in the separate contested hearing process.

[1] The process for accessing and using the agency's E-filing system is described in the March 12, 2015, notice of hearing (80 FR 13036) that was issued by the Commission for this proceeding. Participants who are unable to use the electronic information exchange (EIE), or who will have difficulty complying with EIE requirements in the time frame provided for submission of written statements, may provide their statements by electronic mail to *hearingdocket@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of October, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2015–27856 Filed 10–30–15; 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: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment its draft Interim Staff Guidance (ISG) DSS–ISG–2015–XX, ''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 draft ISG will provide clarifying guidance for NRC staff understanding of expectations for consistent oversight associated with implementing enforcement discretion for tornado missile protection noncompliance per EGM 15–002. This guidance will allow consistent enforcement and regulation of licensees that implement corrective actions outlined in EGM 15–002.

DATES: Submit comments by December 2, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–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 listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: 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:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0231 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0231.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section. The draft ISG is available in ADAMS under Accession No. ML15259A029.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0231 in your comment submission.

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

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

II. Background

Following the issuance of EGM 15–002 (ADAMS Accession No, ML15111A269), the NRC staff received internal and external stakeholder comments requesting clarification in complying with NRC expectations for implementing enforcement discretion in accordance with the EGM 15–002, specifically the implementation of compensatory measures and guidance on addressing operability status of equipment once the EGM is implemented. Therefore, the NRC staff has developed draft ISG DSS–ISG–2015–XX, ''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.

The NRC is requesting public comments on the draft ISG to ensure that it provides sufficiently clear guidance to the NRC staff concerning expectations for implementation of EGM 15–002.

Dated at Rockville, Maryland, this 27th day of October 2015.

For the Nuclear Regulatory Commission.

Alex Garmoe,

Acting Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–27857 Filed 10–30–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–13 and CP2016–15; Order No. 2787]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract

152 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 4, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 152 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–13 and CP2016–15 to consider the Request pertaining to the proposed Priority Mail Contract 152 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than November 4, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–13 and CP2016–15 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments are due no later than November 4, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–27831 Filed 10–30–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 152 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 27, 2015 (Request).

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–13; Order No. 2785]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 3, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On October 26, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a redacted copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–13 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than November 3, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–13 for consideration of the matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).
3. Comments are due no later than November 3, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–27764 Filed 10–30–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–12 and CP2016–14; Order No. 2786]

New Postal Product

AGENCY: Postal Regulatory Commission.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, October 26, 2015 (Notice).

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 151 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 4, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 151 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–12 and CP2016–14 to consider the Request pertaining to the proposed Priority Mail Contract 151 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than November 4, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–12 and CP2016–14 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than November 4, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–27830 Filed 10–30–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 151 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 27, 2015 (Request).

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:* November 2, 2015.

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 October 27, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 151 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–12, CP2016–14.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–27776 Filed 10–30–15; 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:* October 30, 2015.

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 October 27, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 152 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2016–13, CP2016–15.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–27781 Filed 10–30–15; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to

minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

Under Section 8 of the Railroad Unemployment Insurance Act (RUIA), as amended by the Railroad Unemployment Improvement Act of 1988 (Pub. L. 100–647), the RRB determines the amount of an employer's contribution, primarily on the basis of the RUIA benefits paid, both unemployment and sickness, to the employees of the railroad employer. These experienced-based contributions take into account the frequency, volume, and duration of the employees' unemployment and sickness benefits. Each employer's contribution rate includes a component for administrative expenses as well as a component to cover costs shared by all employers. The regulations prescribing the manner and conditions for remitting the contributions and for adjusting overpayments or underpayments of contributions are contained in 20 CFR 345.

RRB Form DC–1, Employer's Quarterly Report of Contributions under the Railroad Unemployment Insurance Act, is used by railroad employers to report and remit their quarterly contributions to the RRB. Employers can use either the manual version of the form or its Internet equivalent. One response is requested quarterly of each respondent and completion is mandatory.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (80 FR 41099 on July 14, 2015) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employer's Quarterly Report of Contributions Under the RUIA.

OMB Control Number: 3220–0012.

Form(s) submitted: DC–1.

Type of request: Reinstatement without change of a previously approved collection.

Affected public: Private Sector: Businesses or other for-profits.

Abstract: Railroad employers are required to make contributions to the Railroad Unemployment Insurance fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

Changes proposed: The RRB proposes no changes to Form DC–1.

THE BURDEN ESTIMATE FOR THE ICR IS AS FOLLOWS

Form No.	Annual responses	Time (minutes)	Burden (hours)
DC–1 (Paper Copy)	1,235	25	515
DC–1 (Internet)	1,365	25	569
Total	2,600		1,084

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2015–27826 Filed 10–30–15; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76262; File No. SR–CHX–2015–05]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Unify Procedures for the Handling of Resting Orders in a Security Subject to a Trading Halt, Pause or Suspension on the Exchange

October 26, 2015.

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 October 19, 2015, the Chicago Stock Exchange, Inc. (''CHX'' 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

CHX proposes to amend CHX Rules to unify procedures for the handling of resting orders in a security subject to a trading halt, pause or suspension on the Exchange. CHX has designated this proposed rule change as non-controversial pursuant to Section 19(b)(3)(A) [3] of the Act and Rule 19b–4(f)(6) [4] thereunder and has provided the Commission with the notice required by Rule 19b–4(f)(6)(iii).[5] The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the

[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).

[5] 17 CFR 240.19b–4(f)(6)(iii).

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 CHX Rules to unify procedures for the handling of resting orders in a security subject to a trading halt, pause or suspension on the Exchange.[6] Specifically, the Exchange proposes to apply the current procedures for the handling of resting orders in a security subject to a Limit Up-Limit Down (''LULD'') trading pause[7] to all trading halts on the Exchange (''proposed unification'').

Currently, upon initiation of *any* trading halt, pause or suspension in a security on the Exchange, the Exchange will take the following actions:

- Stop all trading in the security;
- Cancel all resting orders marked Cancel On Halt, as defined under Article 1, Rule 2(b)(1)(B); and
- Reject all incoming orders;

provided valid incoming Sub-second Non-displayed Auction Process Auction Only Orders (''SNAP AOOs''), as defined under Article 1, Rule 2(h)(3),[8] not marked Cancel On Halt received during a trading halt on the Exchange will be placed in the SNAP AOO Queue, pursuant to Article 18, Rule 1(c)(4),[9] and not cancelled.[10]

However, the Exchange handles resting orders in a security subject to a trading halt, pause or suspension on the Exchange differently depending on whether trading is stopped due to a LULD trading pause. In the case of a LULD trading pause, the Exchange will cancel *all* resting orders in the subject security, except that SNAP AOOs not marked Cancel On Halt will be placed or remain in the SNAP AOO Queue and not cancelled.[11] However, for all other trading halts, pauses or suspensions, the Exchange will maintain the resting orders in the subject security, except that orders marked Cancel On Halt will be cancelled.[12]

Upon the initiation of any trading halt, pause or suspension in a security on the Exchange, the Exchange now proposes to cancel all resting orders in the security, while maintaining the current exception for SNAP AOOs not marked Cancel On Halt. To this end, the Exchange proposes various amendments to CHX Rules, as described below.

Initially, as a global amendment, the Exchange proposes to replace certain references throughout CHX Rules to trading halts, suspensions and/or pauses, or some combination thereof, with the more uniform ''trading halts, suspensions or pauses.'' The Exchange believes that this consistency will promote clarity of CHX Rules. Specifically, the Exchange proposes to make such amendments to Article 1, Rule 2(b)(1)(B); Article 18, Rule 1(b)(3); Article 20, Rule 1(b) and (d);[13] and paragraph .02 of Article 20, Rule 1.

Amended paragraph .02 of Article 20, Rule 1

Current paragraph .02 of Article 20, Rule 1 provides as follows:

> If trading in one or more issues is suspended or halted, which requires the Exchange to suspend trading in the issue, other than a LULD Trading Pause, all orders in those issues shall remain in the Matching System unless they are cancelled by the Participant that submitted the order. The Matching System shall not accept any orders, or any changes to orders (other than cancellations), in those issues during a trading suspension or halt, subject to Article 18, Rule 1(c). Immediately after the trading halt or suspension has ended, the Matching System shall begin accepting orders and shall match them as provided in Rule 8(d), below.

The Exchange now proposes to amend paragraph. 02 to contemplate the proposed unification. The Exchange also proposes to clarify that ''resting'' orders shall be cancelled and that the amended rule applies to trading halts, pauses and suspensions ''on the Exchange,'' which obviates current language providing that the rule applies to trading halts that require the Exchange to suspend trading in the issue. As such, amended paragraph .02 provides as follows:

> If trading in one or more issues is halted, paused or suspended on the Exchange, all resting orders in those issues shall be cancelled from the Matching System, subject to Article 18, Rule 1(c). The Matching System shall not accept any orders in those issues during a trading halt, pause or suspension, subject to Article 18, Rule 1(c). Immediately after the trading halt, pause or suspension has ended, the Matching System shall begin accepting orders and shall match them as provided in Rule 8(d), below.

Amended Article 1, Rule 2(b)(1)(B) (Cancel On Halt)

Current Article 1, Rule 2(b)(1)(B) defines ''Cancel On Halt'' as follows:

> A limit order modifier that requires an order to be automatically cancelled by the Matching System if a trading halt or suspension is declared in that security.

The Exchange now proposes to amend the definition to clarify that orders marked Cancel On Halt will be cancelled if a trading halt, pause or suspension is declared in the security ''on the Exchange,'' as certain operational halts declared by away markets may not require the Exchange to suspend trading in the security. Moreover, since the Exchange proposes to cancel all resting orders, except for SNAP AOOs, during a trading halt, pause or suspension, the Exchange proposes to adopt additional language that provides that all limit orders, except for SNAP AOOs, as defined under Article 1, Rule 2(h)(3), shall be deemed to have been received Cancel On Halt, which cannot be overridden by an order sender. The Exchange submits that this is appropriate because the current rules require SNAP AOOs to be placed in, or remain on, the SNAP AOO Queue during a trading halt, pause or suspension and, thus, such queued SNAP AOOs would already be inactive and removed from the SNAP CHX book, without the need for cancellations.[14] As such, amended Rule 2(b)(1)(B) provides as follows:

> ''Cancel On Halt'': a limit order modifier that requires an order to be automatically cancelled by the Matching System if a trading halt, pause or suspension is declared in that security by the Exchange.

[6] The Exchange may initiate a trading halt, pause or suspension for various reasons, including, but not limited to, technical issues with the Matching System or in response to a regulatory halt initiated by the primary listing market.

[7] *See* CHX Article 20, Rule 2A(c).

[8] CHX Article 1, Rule 2(h)(3) is effective, but not yet operative. *See infra* note 10.

[9] CHX Article 20, Rule 8(b)(2)(A) is effective, but not yet operative. *See infra* note 10.

[10] The proposed rule change to adopt SNAP was recently approved, but is not yet operative. *See* Securities Exchange Act Release No. 76087 (October 6, 2015), 80 FR 61540 (October 13, 2015).

[11] *See* CHX Article 20, Rule 2A(c); *see also* CHX Article 18, Rule 1(c) (which is effective, but not yet operative); *see also supra* note 10.

[12] *See* paragraph .02 of CHX Article 20, Rule 1.

[13] Incidentally, the Exchange proposes to amend CHX Article 20, Rule 1(b) to replace reference to ''Rules 1(d) and (2)'' with ''CHX Rules'' generally, as trading halts, pauses or suspensions may be effected on the Exchange pursuant to various CHX Rules, including, but not limited to, Article 20, Rules 1(d) and (2). Similarly, the Exchange proposes to amend CHX Article 20, Rule 1(d) to provide that trading may also be halted, paused or suspended on the Exchange, and resumed thereafter, pursuant to other CHX Rules. Specifically, trading halts, pauses or suspensions may be declared and lifted pursuant to the following CHX Rules: Article 20, Rules 1(d), 2, 2A and 10; and Article 22, Rule 6.

[14] *See* CHX Article 18, Rule 1(c)(2) (which is effective, but not yet operative); *see also supra* note 10.

All limit orders, except for SNAP AOOs, as defined under paragraph (h)(3), shall be deemed to have been received Cancel On Halt, which cannot be overridden by an order sender.

Amended Article 18, Rule 1(c) (Halt or Pause During the SNAP Cycle)

Current Article 18, Rule 1(c)(1) details the actions that would be taken if a trading halt is initiated on the Exchange during a SNAP Cycle.[15] With respect to the handling of orders resting on the SNAP CHX book, current Rule 1(c)(1) substantively tracks current paragraphs .02 of Article 20, Rule 1 for trading halts, pauses and suspensions that are not LULD trading pauses and Article 20, Rule 2A(c) for LULD trading pauses.[16] The Exchange now proposes to amend Rule 1(c)(1) to eliminate that distinction. As such, amended Rule 1(c)(1) provides as follows:

SNAP CHX book

(A) During stages one or two. If the market snapshot taken pursuant to paragraph (b)(2)(E) or (F) indicates that a material halt, pause or suspension is in effect, the SNAP Cycle shall be aborted and not proceed to stage three or stage five, as applicable. The Exchange shall then cancel all orders resting on the SNAP CHX book, subject to paragraph (c)(2) below.

(B) During stages three or four. If the market snapshot taken pursuant to paragraph (b)(3)(B) or (b)(4)(B) indicates that a material halt, pause or suspension is in effect for the subject security, the SNAP Cycle shall be aborted and not proceed to stage five. The Exchange shall then cancel the unexecuted remainders of all orders resting on the SNAP CHX book, subject to paragraph (c)(2) below.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[17] in that it would further enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Participants and persons associated with its Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, in furtherance of the objectives of Section 6(b)(1),[18] and 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 transaction in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and, in general, by protecting investors and the public interest, in furtherance of the objectives of Section 6(b)(5).[19]

Specifically, the Exchange believes that the proposed unification of the Exchange's procedures regarding resting orders in a security subject to a trading halt, pause or suspension on the Exchange will simplify the Exchange's operational procedures, which will remove impediments to, and perfect the mechanisms of, a free and open market, in furtherance of the objectives of Section 6(b)(5). Moreover, the Exchange believes that the proposed unification and other clarifying amendments, will simplify CHX Rules, which will further enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Participants and persons associated with its Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, in furtherance of the objectives of Section 6(b)(1).

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. To the contrary, the Exchange believes that the proposed rule change does not implicate any competitive issues as it is intended to simplify and clarify CHX operational procedures with respect to trading halts, pauses and suspensions.

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) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21]

The Exchange has requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b–4(f)(6)(iii),[22] so that the proposal may become immediately operative upon filing. The Exchange anticipates its recently approved SNAP functionality will become operative during the thirty day pre-operative waiting period for this filing.[23] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it eliminates a source of potential for confusion regarding the Exchange's rules governing SNAP-related trading halt, pause and suspension procedures. Therefore, the Commission hereby waives the thirty-day operative delay and designates the proposal effective upon filing.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File NumberSR–CHX–2015–05 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.

[15] *See* CHX Article 18, Rule 1(b) (which is effective, but not yet operative); *see also supra* note 10.

[16] *See supra* note 10.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(1).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), CHX 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.

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *See supra* note 10.

[24] For purposes 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).

All submissions should refer to File Number SR–CHX–2015–05. 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 20549–1090. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. 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–CHX–2015–05 and should be submitted on or before November 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27792 Filed 10–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76277; File No. SR–NYSE–2015–48]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Deleting Rule 410B Governing Reporting Requirements for Off-Exchange Transactions

October 27, 2015.

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 October 16, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 delete Rule 410B governing reporting requirements for off-Exchange transactions. 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 delete Rule 410B, which sets forth certain regulatory reporting requirements for member or member organizations effecting off-Exchange transactions in Exchange listed securities that are not reported to the Consolidated Tape, and to make conforming amendments to Rule 9217 to delete a reference to Rule 410B.

Background

Rule 410B

Currently, Rule 410B requires members or member organizations to report to the Exchange transactions in NYSE-listed securities effected for the account of a member or member organization, or for the account of a customer of a member or member organization, that are not reported to the Consolidated Tape. Reports prepared pursuant to the Rule must contain the following information:

- Time and date of the transaction;
- stock symbol of the listed security;
- number of shares;
- price;
- marketplace where the transaction was executed;
- an indication whether the transaction was a buy (B), sell (S) or cross (C);
- an indication whether the transaction was executed as principal or agent; and
- the name of the contra-side broker-dealer to the trade.[4]

Rule 410B was adopted in 1992. At the time, transactions in NYSE-listed stocks effected outside of business hours or in foreign markets were not reported to the Consolidated Tape and, with the exception of program trading information, were not reported to the Exchange. The Exchange (then the New York Stock Exchange, Inc.) believed that ''all transactions in NYSE-listed stocks that are not reported to the Consolidated Tape should be reported to the Exchange in order to provide an accurate record of overall trading activity in NYSE-listed stocks.''[5] The Rule 410B reporting requirement would thus ''augment and enhance'' the Exchange's ability to ''surveil for and investigate, among other matters, insider trading, frontrunning and manipulative activities'' and ''provide a more complete audit trail and depiction of member trading in each NYSE-listed stock, which should facilitate surveillance by the Exchange in NYSE-listed stocks.''[6]

Despite the significant changes to the marketplace and the regulatory landscape in the ensuing decades, Rule 410B has not been substantively amended since it was adopted.[7]

Changes to Regulatory Landscape

On July 30, 2007, the NASD, NYSE, and NYSE Regulation, Inc. (''NYSE Regulation'') consolidated their member firm regulation operations to create the Financial Industry Regulatory Authority, Inc. (''FINRA''), and entered into a plan to allocate to FINRA regulatory responsibility for common rules and common members (''17d–2

[25] 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] *See* Rule 410B.

[5] *See* Securities Exchange Act Release No. 31358 (October 26, 1992), 57 FR 1294 (January 6, 1992) (SR–NYSE–91–45) (''Rule 410B Approval Order'').

[6] *See id.,* 57 FR at 1294.

[7] Rule 410B was amended in 2007 in connection with a filing updating the definition of program trading in Rule 80A.40(b) to make conforming changes to the rule. *See* Securities Exchange Act Release No. 55793 (May 22, 2007), 72 FR 29567 (May 29, 2007) (SR–NYSE–2007–34).

Agreement'').[8] In 2008, the parties also entered into a plan to allocate regulatory responsibility over common NYSE members to NYSE Regulation for surveillance, investigation, and enforcement of insider trading with respect to NYSE-listed stocks, among others, irrespective of where the relevant trading occurred (the ''Insider Trading Plan'').[9] On June 14, 2010, FINRA was retained to perform the residual market surveillance and enforcement functions that had, up to that point, been performed by NYSE Regulation.[10] In January 2011, the SEC approved an amendment to the Insider Trading Plan whereby FINRA also assumed responsibility for performing the insider trading-related market surveillance and enforcement functions previously conducted by NYSE Regulation for its U.S. equities and options markets.[11]

Changes in Trade Reporting and Regulatory Reporting

In 1998, FINRA (then the NASD) established the Order Audit Trail System (OATS), as an integrated audit trail of order, quote, and trade information for OTC equity securities and equity securities listed and traded on The Nasdaq Stock Market, Inc. (''Nasdaq'').[12] In 2010, in order to enhance the scope of the order audit trail in the U.S. equity markets following the creation of FINRA, FINRA Rules 7410 through 7470 (the ''OATS Rules'') were amended to extend the recording and reporting requirements to all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS,[13] including NYSE-listed securities. The Exchange adopted the OATS Rules in 2011.[14] FINRA may utilize the information it collects pursuant to the OATS Rules to perform its regulatory functions.

Rule 410B also predates the establishment of a FINRA Trade Reporting Facility (''TRF''). FINRA Rule 6110 requires FINRA members to report transactions in NMS stocks [15] effected ''otherwise than on or through a national securities exchange.'' [16] Pursuant to FINRA Rules 6310A and 6310B, FINRA members may use either the FINRA/NYSE TRF or FINRA/Nasdaq TRF to report such off-Exchange transactions.[17] FINRA members using these TRFs to report off-Exchange transactions are in turn subject to FINRA Rule 7230B, which imposes transaction information reporting requirements similar to Rule 410B.[18] As a result, Dual Members must report off-Exchange transactions to a TRF and submit substantially similar reports to the NYSE and FINRA.

Proposed Rule Change

The Exchange proposes to delete Rule 410B in its entirety. Rule 410B is a regulatory rule intended to enhance audit trail quality and improve surveillance and investigation of violative activities such as market manipulation and insider trading. As noted above, since 2010, surveillance and enforcement responsibilities across markets have been consolidated at FINRA, which conducts cross-market surveillances on the Exchange's behalf utilizing various data sources, including extensive trade and other information that FINRA collects pursuant to its rules. This trade information includes reports of off-exchange transactions. All of the Exchange's member organizations, with only nine exceptions, are members of FINRA and, as such, must report all off-exchange transactions to FINRA, including transactions away from the NYSE that are not reported to the Consolidated Tape. This information is essentially duplicative of the Rule 410B reports the Exchange currently supplies to FINRA. The one exception would be transactions in dually listed securities executed on and reported to a foreign securities exchange, which is not required to be reported because such trades are executed ''on or through an exchange.'' [19] The Exchange believes

[8] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4–544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). In 2007, the parties also entered into a Regulatory Services Agreement (''RSA''), whereby FINRA was retained to perform certain regulatory services for non-common rules.

[9] *See* Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008) (File No. 4–566). *See also* Securities Exchange Act Release No. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008) (File No. 4–566).

[10] *See* note 8, *supra;* Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR–NYSE–2010–46); Securities Exchange Act Release No. 62354 (June 22, 2010), 75 FR 36730 (June 28, 2010) (SR–NYSEAmex–2010–57).

[11] *See* Securities Exchange Act Release No. 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011) (File No. 4–566).

[12] *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (SR–NASD–97–56).

[13] *See* Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044) (''OATS Extension Approval Order''). By capturing OATS information for all NMS stocks, FINRA noted that it would be able to expand its existing surveillance patterns to conduct more comprehensive cross-market surveillance in furtherance of the Exchange's outsourcing of its surveillance and other regulatory functions to FINRA. *See id.* at 70758. The Commission observed extending OATS to all NMS stocks was calculated to ''enhance FINRA's market surveillance and investigative capabilities'' and in turn ''enhance FINRA's oversight of the U.S. equities markets.'' *Id.*

[14] *See* Securities Exchange Act Release No. 65523 (October 7, 2011), 76 FR 64154 (October 17, 2011) (SR–NYSE–2011–49). The Commission noted that member and member organizations that are also FINRA members (''Dual Members'') need only report OATS information to FINRA once to meet both the FINRA and NYSE OATS requirements. *See id.* at 64155. Further, the Commission noted that NYSE member organizations that were not members of FINRA were also members of NASDAQ (this is still the case today, *see* note 21, *infra*), and, as such, were subject to certain OATS obligations for proprietary trading firms under the NASDAQ Rule 6950 Series that were ''substantially similar'' to the NASDAQ OATS requirements for the same firms. *See id.* OATS information for NYSE-only member firms is available for FINRA to utilize for regulatory purposes.

[15] As defined in Rule 600(b)(47) of SEC Regulation NMS.

[16] *See* FINRA Rule 6110. *See generally* FINRA Rule 6300A and 7200A Series (FINRA/Nasdaq TRF) and 6300B and 7200B Series (FINRA/NYSE TRF). Transactions in non-NMS stocks such as OTC Markets securities, ADRs, Canadian issues, foreign securities and non-exchange-listed DPP securities and transactions in Restricted Equity Securities pursuant to Securities Act Rule 144A are governed by the FINRA Rule 6620 and 7300 Series and must be reported to FINRA's OTC Reporting Facility or ORF. FINRA's rules expressly provide that certain types of transactions need not to be reported for publication or regulatory purposes, including transactions in foreign equity securities executed on and reported to a foreign securities exchange or executed OTC in a foreign country and reported to that country's securities regulator. *See* Trade Reporting Frequently Asked Questions, Section 500, Q/A500:1 & Section 701, Q/A701.1, available at *http://www.finra.org/industry/trade-reporting-faq.*

[17] *See* FINRA Rules 6300A & 6300B.

[18] *See* Rule 7230B. Specifically, the following information must be submitted for each transaction: (1) Security Identification Symbol of the eligible security (SECID); (2) number of shares or bonds; (3) unit price, excluding commissions, mark-ups or mark-downs; (4) time of execution expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of FINRA rules requires that a different time be included on the report; (5) a symbol indicating whether the party submitting the trade report represents the Reporting Member (denoted as the Executing Party or ''EPID'') side or the Non-Reporting Party (denoted as the Contra Party or ''CPID'') side; (6) a symbol indicating whether the transaction is a buy, sell or cross, and if applicable, a symbol indicating that the transaction is a sell short or sell short exempt trade from the Reporting Member perspective or contra side perspective, irrespective of whether the contra side is a member; (7) a symbol indicating whether the trade is as principal, riskless principal, or agent; (8) reporting side Clearing Broker (if other than normal Clearing Broker); (9) reporting side executing broker in the case of a give up agreement, as defined in Rule 6380B(g); (10) contra side executing broker; (11) contra side Introducing Broker in the case of a give up agreement, as defined in Rule 6380B(g); and (12) contra side Clearing Broker (if other than normal Clearing Broker). For any transaction for which a member has recording and reporting obligations under Rules 7440 and 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by FINRA, assigned to the order that uniquely identifies the order for the date it was received. *See* Rule 7440(b)(1).

[19] *See* Trade Reporting Frequently Asked Questions, Section 701, Q/A701.1, available at

such trades pose little regulatory risk and, given that no other exchange has a rule comparable to Rule 410B, notes that such trades are also not being reported to other equities exchanges. The Exchange therefore believes that the rationale underlying the exclusion of these foreign on-exchange trades in dually listed securities from its reporting requirements should apply equally to NYSE-listed securities in the absence of Rule 410B. Finally, only a handful of firms currently account for all of the Rule 410B activity, all of whom are also FINRA members.[20] Rule 410B is thus no longer necessary, and deleting it would eliminate essentially duplicative reporting of off-Exchange transactions by Dual Members.

The Exchange does not believe that eliminating the Rule 410B reporting requirement for the small number of NYSE-only members [21] would pose any significant regulatory risk. None of these firms has ever submitted a Rule 410B report. As noted above, a smaller number of Dual Member firms (five) account for all of the recent Rule 410B trading activity.[22] The Exchange believes that retaining a reporting requirement for firms that have never triggered the requirement serves no useful regulatory or other purpose. NYSE-only members would remain subject to federal and Exchange books and records requirements.[23] Information about any trades away from the Exchange by these firms should thus available for regulatory review if needed.

For the foregoing reasons, the Exchange believes that Rule 410B should be deleted in its entirety.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Section 6(b)(5) of the Act,[25] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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 protect investors and the public interest.

In particular, the Exchange believes that eliminating Rule 410B would remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating duplicative reporting by Dual Members of information those firms already provide to FINRA. The Exchange believes that eliminating Rule 410B reporting would not be inconsistent with the public interest and the protection of investors because FINRA would continue to receive information from Dual Members about off-Exchange transactions for incorporation in its cross-market surveillances. Further, the Exchange believes that eliminating Rule 410B reporting would not be inconsistent with the public interest and the protection of investors because the small number of NYSE-only firms that would no longer be subject to the reporting requirement have never submitted a report under the Rule.

The Exchange further believes that deleting corresponding references to Rule 410B in another rule would remove impediments to and perfects the mechanism of a free and open market by reducing potential confusion and adding transparency and clarity to the Exchange's rules, thereby ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook.

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 rule change is not intended to address competitive issues, but rather it is designed to eliminate obsolete and duplicative regulatory reporting.

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–NYSE–2015–48 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–NYSE–2015–48. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

http://www.finra.org/industry/trade-reporting-faq. See generally note 17, *supra.*

[20] Rule 410B Weekly Reports submitted to the SEC in July and August 2015 reveal that only five firms, all also FINRA members, accounted for all of the Rule 410B trading activity. Further, the list of firms that have in the past submitted Rule 410B reports does not include any non-FINRA members.

[21] These nine non-FINRA member firms do not have any public customers and are also members of Nasdaq. Under Exchange rules, member organizations must be a member of FINRA or another registered securities exchange. *See* Rule 2(b)(i).

[22] *See* note 19, *supra.*

[23] *See* 17 CFR 240.17a–3, 17 CFR 240.17a–4 & Rule 440.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–48 and should be submitted on or before November 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27796 Filed 10–30–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76274; File No. SR–C2–2015–025]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Complex Orders, as Modified by Amendment No. 1

October 27, 2015.

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 October 13, 2015, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') 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 Exchange. On October 26, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change. 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 proposed to amend Rule 6.13. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.13 regarding complex orders. The proposed rule change (1) amends the rule provisions regarding the initiation of a complex order auction (''COA''), (2) adds rule provisions regarding the impact of certain incoming orders and changes in the leg markets on an ongoing COA, and (3) amends the rule provision related to the size of COA responses. The proposed rule change also makes technical and other nonsubstantive changes.

First, the Exchange proposes to amend Rule 6.13 and Interpretation and Policy .02 regarding the initiation of a COA. Currently, C2 Rule 6.13(c)(2) provides that on receipt of a COA-eligible order[3] and request from the Participant representing the order that it be processed through COA, the Exchange will send request for response (''RFR'') message to all Participants who have elected to receive RFR messages.[4] Interpretation and Policy .02(a) states that with respect to the initiation of a COA, Participants routing complex orders directly to the complex order book (''COB'') may request that the complex orders be processed by COA on a class-by-class basis. Currently, all Participants have requested that all of their COA-eligible orders process through COA upon entry into the System. Therefore, rather than have Participants affirmatively request that their COA-eligible orders COA, the Exchange proposes to amend Rule 6.13(c)(2) to provide that incoming COA-eligible orders will COA by default.[5]

The Exchange believes Participants should still maintain flexibility to have their COA-eligible orders not COA. In order to provide Participants with this flexibility, the proposed rule change adds that, notwithstanding the foregoing, Participants may request on an order-by-order basis that a COA-eligible order not COA (referred to as a ''do-not-COA'' request). Because of this proposed rule change, the Exchange deletes the language in Interpretation and Policy .02(a) that indicates Participants may request that complex orders be processed by COA on a class-by-class basis, as it is no longer necessary.[6] While the proposed rule change will not permit Participants to not COA orders on a class-by-class basis, the Exchange believes that it will not burden Participants because they have not requested this in the past. Additionally, allowing Participants to make a do-not-COA request on an order-by-order basis will better allow them to make decisions regarding the handling of their orders based on market conditions at the time they submit their orders.

While the proposed rule change provides that Participants may include a do-not-COA request on complex orders, the proposed rule change indicates that an order with a do-not-COA request may still COA after it has rested on the COB pursuant to Interpretation and Policy .02.[7] The Exchange believes that Participants that include a do-not-COA request for an order upon entry into the System do so to receive automatic execution with the leg market or the COB, as applicable, without the delay of the COA.[8]

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''COA-eligible order'' means a complex order that, as determined by the Exchange on class-by-class basis, is eligible for a COA considering the order's marketability (defined as a number of tickets away from the current market), size, complex order type and complex order origin types. Currently, in all classes, (a) only complex orders with origin codes for public and professional customers, (b) all complex order types except for immediate-or-cancel (''IOC'') orders, and (c) marketable orders and ''tweeners'' limit orders bettering the same side of the derived net market are eligible for COA.

[4] ''RFR'' stands for a ''request for responses'' that occurs in the COA process. The RFR message will identify the component series, the size and side of the market of the COA-eligible order and any contingencies if applicable.

[5] This proposed rule change applies to all COA-eligible orders in all classes. Stock-option orders are currently not permitted on C2. The proposed rule change does not change the allocation or priority provisions of complex orders. The proposed rule change also makes a nonsubstantive change to move language regarding the System sending RFR messages to the beginning of the provision.

[6] The proposed rule change deletes Interpretation and Policy .02(a) in order to include all information regarding the initiation of a COA in subparagraph (c)(2) in the same place within the rule. As a result, the proposed rule change deletes the lettering for paragraph (b), which will be the only remaining provision in Interpretation and Policy .02. The proposed rule change makes nonsubstantive changes to Rule 6.13(c) as well, including a change to conform heading punctuation to that used in other headings and deletion of an extra space.

[7] Interpretation and Policy .02(b) (which the proposed rule change amends to become Interpretation and Policy .02) provides that the Exchange may determine on a class-by-class basis to automatically COA nonmarketable orders resting at the top of the COB if they are within a number of ticks away from the current derived net market.

[8] The current COA response time interval is 75 milliseconds.

However, if that does not occur and the order enters the COB to rest, the Exchange believes it is appropriate to COA the order after resting on the COB (if that functionality has been activated for the class) to try and obtain an execution even though the Participant initially did not want the order to COA, as the COA will not delay execution at that point.

The Exchange notes that an order with a do-not-COA request will still have execution opportunities. For example, such an order may execute automatically upon entry into the System against the leg markets or complex orders on the COB to the extent marketable (in accordance with allocation rules set forth in Rule 6.13). Additionally, pursuant to Rule 6.13(c)(8)(A), such an order on the opposite side of and marketable against a COA-eligible order may trade against the COA-eligible order if the System receives the order while a COA is ongoing. A do-not-COA request merely provides the order with the opportunity to execute upon entry into the System rather than after going through an auction; the order will be subject to the same priority and allocation rules.[9]

Second, the proposed rule change adds subparagraphs Rule 6.13(c)(8)(D) and (E) to describe additional circumstances that will cause a COA to end early.[10] Proposed subparagraph (8)(D) describes how an incoming order with a do-not-COA request or that is not COA-eligible may impact an ongoing COA. Rule 6.13(c)(8) currently describes the handling of unrelated complex orders that are received prior to the expiration of the COA Response Time Interval.[11] The proposed rule change states that if an order with a do-not-COA request or an order that is not COA-eligible is received prior to the expiration of the Response Time Interval for the original COA and is on the same side of the market and at a price better than or equal to the starting price, then the original COA will end. Similar to the current provisions regarding incoming unrelated COA-eligible orders on the same side of the COA-eligible order (and at a price better than or equal to the starting price), the processing of the original COA pursuant to subparagraphs (c)(4) through (c)(6) remains the same [12] with the addition that the priority of the original COA-eligible order and the order with the do-not-COA request or the order that is not COA-eligible, as applicable, will be according to time priority. In other words, the COA-eligible order would trade before the order with the do-not-COA request or order that is not COA-eligible, regardless of the price of each order.[13] The purpose of this proposed provision (as it is for the current provisions related to unrelated complex orders) is to prevent the order with the do-not-COA request or the order that is not COA-eligible,[14] as applicable, from executing prior to the original COA-eligible order, which, if it did not COA, may have executed or entered the COB (because it would have entered the COB first, it potentially would have priority over the incoming order to the extent the algorithm applicable to the class considered time as a factor for allocation).

For example, assume that a COA-eligible order to buy with a net limit price of $1.20 is received when the book or COB price (and thus the starting price) is a net price bid of $1.10. The System will initiate a COA at a net price of $1.10. An incoming order with a do-not-COA request to buy at a net price of $1.10 or higher causes the original COA to end. To the extent possible, the original COA-eligible order will be filled first, and then the order with the do-not-COA request will be filled (subject to the COA allocation provisions describe above).[15] Any remaining balance on the original COA-eligible order or the incoming no-COA order will route to COB. The Exchange believes this result to be appropriate, even if the incoming order with the do-not-COA request had a higher buy price than the COA-eligible order (*e.g.* $1.21), because if the COA-eligible order had not initiated a COA and was marketable at the time it was entered (for example, if the offer in the book was $1.15), it could have executed against the book before the order was entered. Providing the COA-eligible order with time priority is intended to ensure it does not miss an execution opportunity it would have otherwise received if it had not initiated a COA.

Proposed subparagraph (8)(E) provides that if the leg markets were not marketable against a COA-eligible order when the order entered the System (and thus prior to the initiation of a COA) but

[9] A complex order that COAs upon entry into the System or after resting in the COB will not miss any execution opportunities. Pursuant to current Interpretation and Policy .02(b), an order that COAs after resting on the COB will be nonmarketable and at the top of the COB (and thus is the best-priced complex order at the time). Rule 6.13(c)(8) (including as amended by this rule filing, as further discussed below) describes how incoming complex orders received during a COA impact the COA, including providing that the COA'd order (which may be an order that COAs upon entry into the System or after resting in the COB) will have time priority over the incoming order, and ultimately provides that a COA'd order will not lose execution opportunities to complex orders submitted during the COA.

[10] The proposed rule change makes corresponding changes to the heading and introductory paragraph of subparagraph (c)(8).

[11] Rule 6.13(c)(8) states that incoming complex orders that are received prior to the expiration of the response time interval for a COA-eligible order (the ''original COA'') will impact the original COA as follows: (a) Incoming complex orders that are received prior to the expiration of the response time interval for the original COA that are on the opposite side of the market and are marketable against the starting price of the original COA-eligible order will cause the original COA to end. The processing of the original COA pursuant to subparagraphs (c)(4) through (c)(6) remains the same. (The ''starting price'' means the better of the original COA-eligible order's limit price or the best price, on a net debit or credit basis, that existed in the Book or COB at the beginning of the response time interval.) (b) Incoming COA-eligible orders that are received prior to the expiration of the response time interval for the original COA that are on the same side of the market, at the same price or worse than the original COA-eligible order and better than or equal to the starting price will join the original COA. The processing of the original COA pursuant to subparagraphs (c)(4) through (c)(6) remains the same with the addition that the priority of the original COA-eligible order and incoming COA-eligible order(s) will be according to time priority. (c) Incoming COA-eligible orders that are received prior to the expiration of the response time interval for the original COA that are on the same side of the market and at a better price than the original COA-eligible order will join the original COA, cause the original COA to end, and a new COA to begin for any remaining balance on the incoming COA-eligible order. The processing of the original COA pursuant to subparagraphs (c)(4) through (c)(6) remains the same with the addition that the priority of the original COA-eligible order and incoming COA-eligible order will be according to time priority.

[12] Rule 6.13(c)(4) through (c)(6) provides that at the expiration of the response time interval, the COA-eligible order will trade with orders and quotes in the following order: (a) Individual orders and quotes residing in the book (with allocation consistent with the trading priority applicable to incoming orders in the individual leg components), (b) public customer complex orders resting in the COB before, or that are received during, the response time interval and public customer RFR responses (with allocation according to time priority), (c) nonpublic customer orders resting in the COB before the response time interval (with allocation consistent with the trading priority applicable to incoming orders in the individual leg components), and (d) nonpublic customer orders resting in the COB that are received during the response time interval and nonpublic customer responses (with allocation consistent with the trading priority applicable to incoming orders in the individual leg components). If a COA-eligible order cannot be filled in whole or in a permissible ratio, the order (or any remaining balance) will route to the COB. Thus, the unrelated no-COA order or the order that is not COA-eligible will have execution opportunities against the leg markets, complex orders in the COB and COA responses, with priority after the original COA-eligible order.

[13] This time priority is the same provided to COA-eligible orders over incoming orders in subparagraphs (c)(8)(B) and (C).

[14] Current paragraph (c)(8) currently addresses the impact of incoming COA-eligible orders on the same side of the original COA-eligible order. The proposed rule change adds detail regarding the impact of orders that are not COA-eligible and orders with a do-not-COA request. The Exchange believes this provides a more complete description in its rules regarding the impact of unrelated complex orders received during a COA.

[15] *See id.*

became marketable with the COA-eligible order prior to the expiration of the Response Time Interval, it will cause the COA to end.[16] The processing of the original COA pursuant to subparagraphs (c)(4) through (c)(6) remains the same.

For example, assume that the derived net leg market is $1.00 to $1.05. A COA-eligible order to buy at a net price of $1.02 is entered and initiates a COA. During the COA (prior to the end of the Response Time Interval), the derived net leg market offer changes to $1.01. Because this is marketable against the COA-eligible order, this change in the derived net leg markets will cause the COA to end. Assuming the derived net leg market offer price of $1.01 is the best net price at the end of the COA,[17] the COA-eligible order will execute against the leg markets at that net price, and any remainder will then trade against complex orders in the COB and auction responses. If a complex order to buy was resting on the COB (for example, at a net price of $1.01) at the initiation of the COA (for example, a do-not-COA order or an order that is not COA-eligible),[18] that order and the COA-eligible order would be allocated against the leg markets in the same manner as any other two complex orders pursuant to Rule 6.53C(c)(ii) regarding COB executions, which is by price and then pursuant to the rules of trading priority otherwise applicable to incoming orders in the individual component legs. The COA-eligible order would always have priority over the resting order, as it would always have a higher (if a buy order) or lower (if a sell order) net price than the resting order.

In the example above, if a complex order to buy at a net price of $1.01 was resting in the COB at the time the COA-eligible order to buy at a net price of $1.02 entered the System and initiated the COA, and the same change in the derived net leg markets occurs, assuming the derived net leg market offer price of $1.01 is the best net price at the end of the COA, the COA-eligible order will trade against the derived net leg offer at $1.01 first, because it was entered at (and thus willing to pay) a better net price than the resting complex order (to the extent there was insufficient size in the leg markets to fill the COA-eligible order, the remainder would then execute against complex orders in the COB and auction responses). If there is sufficient size left in the leg markets to trade against the resting complex order, then the resting order will also trade (in full or in a permissible ratio).

Third, the proposed rule amends Rule 6.13(c)(3)(A) to delete the language that RFR responses are limited to the size of the COA-eligible order for allocation purposes. If the allocation algorithm for complex orders in a class is pro-rata, the System is unable to block RFR responses that are larger than the size of the COA-eligible order. This proposed rule change will result in the rule regarding RFR responses more accurately reflecting current System functionality. The Exchange notes that RFR responses must continue to be on the opposite side of the market of the COA-eligible order and be expressed in the applicable minimum increment. RFR responses will be subject to the same allocation and priority rules. Pursuant to Rule 6.13(c)(7), RFR responses are firm with respect to the COA-eligible order for which the responses are submitted, provided that responses that exceed the size of a COA-eligible order are also eligible to trade with other incoming COA-eligible orders that are received during the Response Time Interval.[19]

Finally, the proposed rule change makes technical and other nonsubstantive changes. Currently, Interpretation and Policy .05 provides that the Exchange may determine on a class-by-class basis (and announce via Regulatory Circular) which electronic allocation algorithm from Rule 6.12 will apply to complex orders in lieu of Rule 6.13(b)(1)(B) for COB executions and/or (Rule 6.13(c)(5)(B) through (D) for COA. The proposed rule change moves that language from Interpretation and Policy .05 to those paragraphs.[20] The Exchange believes it is simpler and more convenient to have the information regarding how COB and COA executions may allocate in one place within the rules.[21] The Exchange also amends Rule 6.13(c)(5)(B) and (D) to add responses in the second sentence of each subparagraph. Those subparagraphs address the allocation of COA-eligible orders against certain orders and responses (as indicated in the initial sentence of each subparagraph), and the proposed rule change is consistent with that purpose. Additional nonsubstantive changes to Rule 6.13 are discussed above.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[22] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[23] 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

[16] This is similar to the result described in subparagraph (8)(A), which provides that an incoming complex order on the opposite side of the market as and marketable against the COA-eligible order will cause the COA to end.

[17] The leg market offer would be the best price at the end of the COA if no auction response, order resting in the COB, or order that entered the System during the COA had a better price.

[18] As previously indicated, only orders that are marketable or that improve the price on the same side of the market initiate a COA. *See supra* note 1. Thus, for there to be a situation where a complex order was already resting on the COB at the initiation of a COA, the order resting on the COB would be at a worse price than the COA-eligible order that initiated the COA. If there is a complex order resting on the COB when that is on the same side and at the same or better price than an incoming complex order, then the incoming order will not COA and will also enter on the COB.

[19] Please note that the System currently accepts RFR responses that exceed the size of COA-eligible order. The intent of the provision proposed to be deleted was to consider the size of any response that did exceed the size of the COA-eligible order to the size of that order for allocation purposes (for example, if a COA-eligible order is for 200, and a response is for 500, the System considers the size to be 500 when allocating orders and responses against the COA-eligible order, rather than considering the size to be 200). However, the System is unable to do this, and thus excess-sized responses are considered at that size for allocation purposes. However, the excess size of responses is still eligible to trade as set forth in Rule 6.13(c)(7). Additionally, Participants continue to be subject to all rules related to business conduct, including Rule 4.1 related to just and equitable principles of trade and Rule 4.7 related to manipulation (which rules are incorporated into C2's rules by reference to Chicago Board Options Exchange, Incorporated Rules 4.1 and 4.7).

[20] The proposed rule change makes a corresponding change to Interpretation and Policy .06(c), which relates to executions of stock-options orders (types of complex orders) in the COB. The proposed rule change also deletes the rule text that states that in such classes, the orders and quotes in the individual leg series legs will continue to have the same priority as set forth in Rule 6.13(b)(1)(A) for COB and Rule 6.13(c)(5)(A) for COA, as the Exchange believes this language is duplicative. Those paragraphs continue to state that complex orders that trade with orders and quotes in the Book (whether through COB or COA) will be allocated in accordance with the trading priority applicable in the individual component legs, with no discretion for the Exchange to change the allocation algorithm for those executions.

[21] The proposed rule change also deletes the language that the Exchange may announce this determination by Regulatory Circular, as Rule 6.13, Interpretation and Policy .01 indicates that the Exchange will announce by Regulatory Circular all determinations it makes under Rule 6.13, which includes the determination of allocation algorithms for COB and COA.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

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) [24] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change removes impediments to a free and open market and protects investors by providing Participants with more flexibility regarding when complex orders will not COA. The proposed rule change removes the affirmative obligation currently imposed on Participants to request that their COA-eligible orders COA on a class-by-class basis, as Participants currently request that all of their COA-eligible orders COA upon entry into the System. Therefore, the proposed rule change to have COA as the default setting for COA-eligible orders will have no impact on COA-eligible orders submitted to the Exchange. The proposed rule change will allow Participants to evaluate then-current market conditions and determine if they do not want to COA orders based on those conditions and instead want those orders to route to the COB for potential immediate execution. These orders with do-not COA requests will continue to have execution opportunities and be subject to the same priority and allocation rules. In addition, the proposed rule change promotes just and equitable principles of trade and promotes competition because another options exchange has a substantially similar rule, as further described below, which similarly allows members to designate that orders not initiate a complex order auction on that exchange.[25]

The current rules describe how COA-eligible orders received while a COA is ongoing would impact the COA. The proposed rule change also adds detail regarding how incoming orders with do-not-COA requests or that are not COA-eligible, as well as how changes in the leg markets, may impact ongoing COAs, which protects investors by enhancing the description in C2 Rules of current COA functionality and circumstances that may cause a COA to end early. Because the proposed rule change adds a provision regarding no-COA orders to the C2 Rules, the Exchange believes it is appropriate to add the provision regarding how no-COA orders would impact a COA to the C2 Rules as well to ensure investors understand how these orders may impact a COA. The Exchange believes the proposed rule change promotes just and equitable principles of trade because, if these orders cause a COA to end, any executions that occur following the COA occur in accordance with allocation principles in place, subject to an exception that the original COA-eligible order receive time priority. This exception prevents an order that was entered after the initiation of a COA from trading ahead of an order with the same price that may have executed or entered the COB if it did not COA. Similarly, the Exchange believe it is fair for a COA-eligible order that was entered at a better price than an order that was resting in the COB prior to initiation of the COA to execute against leg markets that become marketable against the COA-eligible order and resting order during the COA, because the Participant who entered the COA-eligible order was willing to pay a better price than that of the resting order. Incoming orders that do not COA and leg market changes impact a COA in a substantially similar manner as incoming COA-eligible orders; the proposed rule change just applies to different order types not covered by the current Rules. This proposed change does not substantively change the COA or allocation process.

The proposed rule change to delete the provision limiting the size of RFR responses to the size of the COA-eligible order further perfects the mechanism of a free and open market and protects investors because it more accurately describes current System functionality. RFR responses will be subject to the same allocation and priority rules, and COA will continue to function in the same manner. The Exchange notes that the rule related to the complex order auctions of another exchange does not limit responses size to the size of the auctioned order.[26] The proposed rule change to reorganize certain provisions eliminates potential confusion regarding the processing of complex orders, which further benefits and protects investors.

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, including the ability to designate orders to not COA, is available to all Participants. The Exchange believes the proposed rule change provides Participants with more flexibility with respect to the submission of their complex orders. The proposed rule change also eliminates the affirmative obligation imposed on Participants to request that COA-eligible orders COA, which they all do for all classes. While Participants may need to undertake system work to allow them to include a do-not-COA request on orders, use of this designation is voluntary. C2 believes this flexibility may promote competition by encouraging submission of complex orders to the Exchange. To the extent that proposed rule change makes C2 a more attractive marketplace to market participants on other exchanges, such market participants may elect to send orders to C2 to take advantage of the additional functionality. Additionally, other exchanges may determine to provide similar functionality and further enhance competition. The Exchange also notes that another options exchange has substantially similar provisions as the proposed rule change, as described above.

The proposed rule change to add detail to the rules regarding the impact of changes in the leg markets on a COA describes current functionality and is merely intended to enhance the description of this functionality in the Rules, and thus has no impact on competition. The nonsubstantive and technical changes have no impact on competition.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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

[24] *Id.*

[25] *See* NASDAQ OMX PHLX LLC (''PHLX'') Rule 1080, Commentary .07(a)(viii) and (e) (describing the complex order live auction (''COLA'') process and ''do not auction'' orders).

[26] *See id.*

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–C2–2015–025 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–C2–2015–025. 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 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–C2–2015–025 and should be submitted on or before November 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27794 Filed 10–30–15; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76278; File No. SR–FICC–2015–004]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Additional Details Regarding the Requirement That Members Participate in Annual Testing of Business Continuity and Disaster Recovery Plans

October 27, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 [2] thereunder, notice is hereby given that on October 26, 2015, Fixed Income Clearing Corporation (''FICC'') 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 FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) [3] of the Act and Rule 19b–4(f)(6) [4] thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a change to Rule 3 of the Clearing Rules of the Mortgage-Backed Securities Division (''MBSD,'' and its Clearing Rules, ''MBSD Rules'') of FICC and Rule 3 of the Rulebook of the Government Securities Division (''GSD,'' and its Rulebook, ''GSD Rules'') of FICC to provide additional details regarding the requirement that MBSD and GSD Members participate in annual testing of FICC's business continuity and disaster recovery plans (''BCP Testing'').[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend Rule 3 (Ongoing Membership Requirements) of the MBSD Rules and Rule 3 (Ongoing Membership Requirements) of the GSD Rules to provide additional details regarding the requirement that MBSD and GSD Members participate in FICC's annual BCP Testing. Currently, pursuant to Rule 2A (Initial Membership Requirements) of the MBSD Rules and Rule 2A (Initial Membership Requirements) of the GSD Rules, each applicant for membership of either MBSD or GSD must fulfill operational testing requirements, as established by FICC, that may be imposed to ensure the operational capability of the applicant.'' [6] Once a firm becomes a Member of GSD or MBSD, MBSD Rule 3 and GSD Rule 3 each of their respective [sic] provides that Members may be required to fulfill certain operational testing requirements that may be imposed by FICC to test and monitor the continuing operational capability of the Members.[7]

Recently, the Commission promulgated Regulation Systems Compliance and Integrity (''Reg. SCI''), which requires FICC to establish standards to designate members [8] and requires participation by such designated members in scheduled BCP Testing with FICC on an annual basis.[9] Although FICC already conducts annual BCP Testing with certain MBSD and GSD Members,[10] FICC is proposing to amend Rule 3 of the MBSD Rules and Rule 3 of the GSD Rules to further

[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).

[5] Terms not otherwise defined herein have the meaning set forth in the MBSD Rules and GSD Rules *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[6] Rule 2A, Section 2 of MBSD Rules and Rule 2A, Section 5 of GSD Rules, *supra,* note 5.

[7] Rule 3, Section 6 of MBSD Rules and Rule 3 Section 5 of GSD Rules, *supra,* note 5.

[8] 17 CFR 242.1004(a). In adopting Reg. SCI, the Commission determined not to require covered entities to notify the Commission of its designations or the standards that will be used in designating members, recognizing instead that each entity's standards, designations, and updates, if applicable, would be part of its records and, therefore, available to the Commission and its staff upon request. *See* Securities and Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (File No. S7–01–13).

[9] 17 CFR 242.1004(a) and (b).

[10] Rule 3, Section 6 of MBSD Rules and Rule 3 Section 5 of GSD Rules, *supra,* note 5.

describe the requirement with respect to BCP Testing.

The proposed amendments to Rule 3 of the MBSD Rules and Rule 3 of the GSD Rules would increase transparency regarding BCP Testing, and ensure FICC's practice with respect to such testing is consistent with Reg. SCI by setting forth FICC's rights to: (i) Designate MBSD and GSD Members required to participate in BCP Testing using established standards; (ii) determine the scope and reporting of such BCP Testing; and (iii) require MBSD and GSD Members to comply with such BCP Testing within specified timeframes. In connection with these proposed amendments, FICC would refine the factors that it currently uses to designate MBSD and GSD Members for BCP Testing. For example, while FICC would continue to rely on activity-based thresholds to mandate participation with annual BCP Testing, FICC would also take into account additional factors when designating firms for BCP Testing, including, but not limited to: (i) Significant operational issues of the MBSD or GSD Member during the past twelve months; and (ii) past performance of the MBSD or GSD Member with respect to BCP Testing. MBSD and GSD Members would be informed of the specific standards that would be used by FICC, along with any updates or changes to these standards, which would be applied on a prospective basis, through established methods of communication between FICC and the Members of MBSD and GSD. Likewise, MBSD and GSD Members would be notified in advance that they have been designated to participate in BCP Testing for the upcoming year, and would be provided details concerning the nature of such testing as the particular test plans are determined.

FICC believes the proposed rule change would have no impact on MBSD and GSD Members relative to what those Members are currently required to do. As described above, FICC already requires certain MBSD and GSD Members to participate in BCP Testing on an annual basis. The proposed rule change provides further clarity with respect to these requirements for consistency with Reg. SCI.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the MBSD Rules and GSD Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.[11]

Rule 17Ad–22(d)(2), promulgated under the Act, requires FICC to require that MBSD and GSD Members have robust operational capacity to meet obligations arising from participation in the clearing agency, to monitory that its participation requirements are met on an ongoing basis, and to have participation requirements that are objective and publicly disclosed.[12] Rule 17–22(d)(4), promulgated under the Act, requires FICC to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures, and have business continuity plans that allow for timely recovery of operations and fulfillment of the clearing agency's obligations.[13]

Rule 1004(a) and (b) of Reg. SCI requires FICC to establish standards for the designation of those MBSD and GSD Members that FICC reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, and to designate MBSD and GSD Members pursuant to those standards and require participation by such designated firms in scheduled BCP Testing annually.[14]

By facilitating the testing of how business continuity and disaster recovery plans function between FICC and the MBSD and GSD Members during an emergency, the proposed rule change would facilitate the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest consistent with of the Act. The proposed rule change would provide additional details to the MBSD Rules and GSD Rules regarding the requirement for MBSD and GSD Members to take part in its BCP Testing annually, strengthening its compliance with Rule 17Ad–22(d)(2) and (4).[15] Further, the proposed rule change would foster the objectives of the Commission under Reg. SCI by helping to ensure resilient and available markets.[16]

As such, FICC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, Rule 17Ad–22(d)(2) and (d)(4), promulgated under the Act, and Rule 1004(a) and (b) of Reg. SCI, cited above.

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change would impose any burden on competition because the proposed rule change would apply to all MBSD and GSD Members and only provides additional details regarding an existing requirement.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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)[17] of the Act and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FICC has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to FICC, the proposed rule change does not present any novel or controversial issues. Rather, FICC is merely providing additional details regarding BCP Testing requirements or adding provisions that are consistent with or required by Reg. SCI. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(d)(2).

[13] 17 CFR 240.17Ad–22(d)(4).

[14] 17 CFR 242.1004(a) and (b).

[15] 17 CFR 240.17Ad–22(d)(2) and (4).

[16] 17 CFR 242.1004(a) and (b).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the FICC to give the Commission written notice of the 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 Commission deems this requirement to have been met.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

protection of investors and the public interest as it will allow FICC to incorporate changes required under Reg. SCI prior to the November 3, 2015 compliance date. Therefore, the Commission designates the proposed rule change to be operative upon filing.[21]

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–FICC–2015–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2015–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FICC–2015–004 and should be submitted on or before November 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

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BILLING CODE 8011–01–P

[21] 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).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–239, OMB Control No. 3235–0224; Extension: Rule 17j 1]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Conflicts of interest between investment company personnel (such as portfolio managers) and their funds can arise when these persons buy and sell securities for their own accounts (''personal investment activities''). These conflicts arise because fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors. Beginning in the early 1960s, Congress and the Securities and Exchange Commission (''Commission'') sought to devise a regulatory scheme to effectively address these potential conflicts. These efforts culminated in the addition of section 17(j) to the Investment Company Act of 1940 (the ''Investment Company Act'') (15 U.S.C. 80a–17(j)) in 1970 and the adoption by the Commission of rule 17j–1 (17 CFR 270.17j–1) in 1980.[1] The Commission proposed amendments to rule 17j–1 in 1995 in response to recommendations made in the first detailed study of fund policies concerning personal investment activities by the Commission's Division of Investment Management since rule 17j–1 was adopted. Amendments to rule 17j–1, which were adopted in 1999, enhanced fund oversight of personal investment activities and the board's role in carrying out that oversight.[2] Additional amendments to rule 17j–1 were made in 2004, conforming rule 17j–1 to rule 204A–1 under the Investment Advisers Act of 1940 (15 U.S.C. 80b), avoiding duplicative reporting, and modifying certain definitions and time restrictions.[3]

Section 17(j) makes it unlawful for persons affiliated with a registered investment company (''fund'') or with the fund's investment adviser or principal underwriter (each a ''17j–1 organization''), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission's rules and regulations. Section 17(j) also authorizes the Commission to promulgate rules requiring 17j–1 organizations to adopt codes of ethics.

In order to implement section 17(j), rule 17j–1 imposes certain requirements on 17j–1 organizations and ''Access Persons''[4] of those organizations. The

[1] Prevention of Certain Unlawful Activities with Respect to Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) (45 FR 73915 (Nov. 7, 1980)).

[2] Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) (64 FR 46821 (Aug. 27, 1999)).

[3] Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (Jul. 2, 2004) (69 FR 41696 (Jul. 9, 2004)).

[4] Rule 17j–1(a)(1) defines an ''access person'' as ''Any Advisory Person of a Fund or of a Fund's investment adviser. If an investment adviser's primary business is advising Funds or other advisory clients, all of the investment adviser's directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser. All of a Fund's directors, officers, and general partners are presumed to be Access Persons of the Fund.'' The definition of Access Person also includes ''Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities.'' Rule 17j–1(a)(1).

rule prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a 17j–1 organization in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule requires each 17j–1 organization, unless it is a money market fund or a fund that does not invest in Covered Securities,[5] to: (i) Adopt a written codes of ethics, (ii) submit the code and any material changes to the code, along with a certification that it has adopted procedures reasonably necessary to prevent Access Persons from violating the code of ethics, to the fund board for approval, (iii) use reasonable diligence and institute procedures reasonably necessary to prevent violations of the code, (iv) submit a written report to the fund describing any issues arising under the code and procedures and certifying that the 17j–1 entity has adopted procedures reasonably necessary to prevent Access Persons form violating the code, (v) identify Access Persons and notify them of their reporting obligations, and (vi) maintain and make available to the Commission for review certain records related to the code of ethics and transaction reporting by Access Persons.

The rule requires each Access Person of a fund (other than a money market fund or a fund that does not invest in Covered Securities) and of an investment adviser or principal underwriter of the fund, who is not subject to an exception,[6] to file: (i) Within 10 days of becoming an Access Person, a dated initial holdings report that sets forth certain information with respect to the Access Person's securities and accounts; (ii) dated quarterly transaction reports within 30 days of the end of each calendar quarter providing certain information with respect to any securities transactions during the quarter and any account established by the Access Person in which any securities were held during the quarter; and (iii) dated annual holding reports providing information with respect to each Covered Security the Access Person beneficially owns and accounts in which securities are held for his or her benefit. In addition, rule 17j–1 requires investment personnel of a fund or its investment adviser, before acquiring beneficial ownership in securities through an initial public offering (IPO) or in a private placement, to obtain approval from the fund or the fund's investment adviser.

The requirements that the management of a rule 17j–1 organization provide the fund's board with new and amended codes of ethics and an annual issues and certification report are intended to enhance board oversight of personal investment policies applicable to the fund and the personal investment activities of Access Persons. The requirements that Access Persons provide initial holdings reports, quarterly transaction reports, and annual holdings reports and request approval for purchases of securities through IPOs and private placements are intended to help fund compliance personnel and the Commission's examinations staff monitor potential conflicts of interest and detect potentially abusive activities. The requirement that each rule 17j–1 organization maintain certain records is intended to assist the organization and the Commission's examinations staff in determining if there have been violations of rule 17j–1.

We estimate that annually there are approximately 75,497 respondents under rule 17j–1, of which 5,497 are rule 17j–1 organizations and 70,000 are Access Persons. In the aggregate, these respondents make approximately 108,305 responses annually. We estimate that the total annual burden of complying with the information collection requirements in rule 17j–1 is approximately 401,407 hours. This hour burden represents time spent by Access Persons that must file initial and annual holdings reports and quarterly transaction reports, investment personnel that must obtain approval before acquiring beneficial ownership in any securities through an IPO or private placement, and the responsibilities of Rule 17j–1 organizations arising from information collection requirements under rule 17j–1. These include notifying Access Persons of their reporting obligations, preparing an annual rule 17j–1 report and certification for the board, documenting their approval or rejection of IPO and private placement requests, maintaining annual rule 17j–1 records, maintaining electronic reporting and recordkeeping systems, amending their codes of ethics as necessary, and, for new fund complexes, adopting a code of ethics.

We estimate that there is an annual cost burden of approximately $5,000 per fund complex, for a total of $4,335,000, associated with complying with the information collection requirements in rule 17j–1. This represents the costs of purchasing and maintaining computers and software to assist funds in carrying out rule 17j–1 recordkeeping.

These burden hour and cost estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Rule 17j–1 requires that records be maintained for at least five years in an easily accessible place.[7]

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela

[5] A ''Covered Security'' is any security that falls within the definition in section 2(a)(36) of the Act, except for direct obligations of the U.S. Government, bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements, and shares issued by open-end funds. Rule 17j–1(a)(4).

[6] Rule 17j–1(d)(2) contains the following exceptions: (i) An Access Person need not file a report for transactions effected for, and securities held in, any account over which the Access Person does not have control; (ii) an independent director of the fund, who would otherwise be required to report solely by reason of being a fund director and who does not have information with respect to the fund's transactions in a particular security, does not have to file an initial holdings report or a quarterly transaction report,; (iii) an Access Person of a principal underwriter of the fund does not have to file reports if the principal underwriter is not affiliated with the fund (unless the fund is a unit investment trust) or any investment adviser of the fund and the principal underwriter of the fund does not have any officer, director, or general partner who serves in one of those capacities for the fund or any investment adviser of the fund; (iv) an Access Person to an investment adviser need not make quarterly reports if the report would duplicate information provided under the reporting provisions of the Investment Adviser's Act of 1940; (v) an Access Person need not make quarterly transaction reports if the information provided in the report would duplicate information received by the 17j–1 organization in the form of broker trade confirmations or account statements or information otherwise in the records of the 17j–1 organization; and (vi) an Access Person need not make quarterly transaction reports with respect to transactions effected pursuant to an Automatic Investment Plan.

[7] If information collected pursuant to the rule is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. See section 31(c) of the Investment Company Act (15 U.S.C. 80a–30(c)).

Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 27, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27802 Filed 10–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76276; File No. SR–NYSEMKT–2015–80]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Deleting Rule 410B Equities Governing Reporting Requirements for Off-Exchange Transactions

October 27, 2015.

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 October 16, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 delete Rule 410B—Equities governing reporting requirements for off-Exchange transactions. 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 delete Rule 410B—Equities (''Rule 410B''), which sets forth certain regulatory reporting requirements for member or member organizations effecting off-Exchange transactions in Exchange listed securities that are not reported to the Consolidated Tape, and to make conforming amendments to Rule 476A to delete a reference to Rule 410B.

Background

Rule 410B

Currently, Rule 410B requires members or member organizations to report to the Exchange transactions in NYSE-listed securities effected for the account of a member or member organization, or for the account of a customer of a member or member organization, that are not reported to the Consolidated Tape. Reports prepared pursuant to the Rule must contain the following information:

- Time and date of the transaction;
- stock symbol of the listed security;
- number of shares;
- price;
- marketplace where the transaction was executed;
- an indication whether the transaction was a buy (B), sell (S) or cross (C);
- an indication whether the transaction was executed as principal or agent; and
- the name of the contra-side broker-dealer to the trade.[4]

Rule 410B was adopted by the Exchange's affiliate the New York Stock Exchange LLC (''NYSE'') in 1992. At the time, transactions in NYSE-listed stocks effected outside of business hours or in foreign markets were not reported to the Consolidated Tape and, with the exception of program trading information, were not reported to the Exchange. The Exchange (then the New York Stock Exchange, Inc.) believed that ''all transactions in NYSE-listed stocks that are not reported to the Consolidated Tape should be reported to the Exchange in order to provide an accurate record of overall trading activity in NYSE-listed stocks.'' [5] The Rule 410B reporting requirement would thus ''augment and enhance'' the NYSE's ability to ''surveil for and investigate, among other matters, insider trading, frontrunning and manipulative activities'' and ''provide a more complete audit trail and depiction of member trading in each NYSE-listed stock, which should facilitate surveillance by the Exchange in NYSE-listed stocks.'' [6]

Despite the significant changes to the marketplace and the regulatory landscape in the ensuing decades, the Exchange adopted Rule 410B without amendment in 2008.[7]

Changes to Regulatory Landscape

On July 30, 2007, the NASD, NYSE, and NYSE Regulation, Inc. (''NYSE Regulation'') consolidated their member firm regulation operations to create the Financial Industry Regulatory Authority, Inc. (''FINRA''), and entered into a plan to allocate to FINRA regulatory responsibility for common rules and common members (''17d-2 Agreement'').[8] The Exchange was added as a party to the 17d-2 Agreement in 2009.[9] In 2008, the Exchange, NASD, NYSE, and NYSE Regulation also entered into a plan to allocate to FINRA regulatory responsibility over common FINRA members for surveillance, investigation, and enforcement of insider trading with respect to NYSE–MKT listed stocks, among others, irrespective of where the relevant trading occurred (the ''Insider Trading Plan'').[10] On June 14, 2010, FINRA was retained to perform the residual market surveillance and enforcement functions that had, up to that point, been performed by NYSE Regulation.[11] In

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rule 410B.

[5] *See* Securities Exchange Act Release No. 31358 (October 26, 1992), 57 FR 1294 (January 6, 1992) (SR–NYSE–91–45) (''Rule 410B Approval Order'').

[6] *See id.,* 57 FR at 1294.

[7] *See* Securities Exchange Act Release No. 58265 (July 30, 2008), 73 FR 46075, 46078 (August 7, 2008) (SR–Amex–2008–63).

[8] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4–544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). In 2007, the NASD, NYSE, the Exchange and NYSE Regulation also entered into a Regulatory Services Agreement (''RSA''), whereby FINRA was retained to perform certain regulatory services for non-common rules.

[9] *See* Securities Exchange Act Release No. 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (File No. 4–587).

[10] *See* Securities Exchange Act Release No. 54646 (September 12, 2008), 73 FR 54646 (September 22, 2008) (File No. 4–566). *See also* Securities Exchange Act Release No. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008) (File No. 4–566).

[11] *See* note 8, *supra;* Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729

January 2011, the SEC approved an amendment to the Insider Trading Plan whereby FINRA also assumed responsibility for performing the insider trading-related market surveillance and enforcement functions previously conducted by NYSE Regulation for its U.S. equities and options markets.[12]

Changes in Trade Reporting and Regulatory Reporting

In 1998, FINRA (then the NASD) established the Order Audit Trail System (OATS), as an integrated audit trail of order, quote, and trade information for OTC equity securities and equity securities listed and traded on The Nasdaq Stock Market, Inc. (''Nasdaq'').[13] In 2010, in order to enhance the scope of the order audit trail in the U.S. equity markets following the creation of FINRA, FINRA Rules 7410 through 7470 (the ''OATS Rules'') were amended to extend the recording and reporting requirements to all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS,[14] including NYSE MKT-listed securities. The Exchange adopted the OATS Rules in 2011.[15] FINRA may use the information it collects pursuant to the OATS Rules to perform its regulatory functions.

Rule 410B also predates the establishment of a FINRA Trade Reporting Facility (''TRF''). FINRA Rule 6110 requires FINRA members to report transactions in NMS stocks[16] effected ''otherwise than on or through a national securities exchange.''[17] Pursuant to FINRA Rules 6310A and 6310B, FINRA members may use either the FINRA/NYSE TRF or FINRA/Nasdaq TRF to report such off-Exchange transactions.[18] FINRA members using these TRFs to report off-Exchange transactions are in turn subject to FINRA Rule 7230B, which imposes transaction information reporting requirements similar to Rule 410B.[19] As a result, Dual Members must report off-Exchange transactions to a TRF and submit substantially similar reports to the NYSE and FINRA.

Proposed Rule Change

The Exchange proposes to delete Rule 410B in its entirety. Rule 410B is a regulatory rule intended to enhance audit trail quality and improve surveillance and investigation of violative activities such as market manipulation and insider trading. As noted above, since 2010, surveillance and enforcement responsibilities across markets have been consolidated at FINRA, which conducts cross-market surveillances on the Exchange's behalf utilizing various data sources, including extensive trade and other information that FINRA collects pursuant to its rules. This trade information includes reports of off-exchange transactions. All of the Exchange's member organizations, with only nine exceptions, are members of FINRA and, as such, must report all off-exchange transactions to FINRA, including transactions away from the Exchange that are not reported to the Consolidated Tape. This information is essentially duplicative of the Rule 410B reports the Exchange currently supplies to FINRA. The one exception would be transactions in dually listed securities executed on and reported to a foreign securities exchange, which is not required to be reported because such trades are executed ''on or through an exchange.''[20] The Exchange believes such trades pose little regulatory risk and, given that no other exchange has a rule comparable to Rule 410B, notes that such trades are also not being reported to other equities exchanges. The Exchange therefore believes that the rationale underlying the exclusion of these foreign on-exchange trades in dually listed securities from its reporting requirements should apply equally to NYSE-listed securities in the absence of Rule 410B. Finally, only a handful of firms currently account for all of the Rule 410B activity, all of whom are also FINRA members.[21] Rule 410B is thus no longer necessary, and deleting it would eliminate essentially duplicative reporting of off-Exchange transactions by Dual Members.

(June 28, 2010) (SR–NYSE–2010–46); Securities Exchange Act Release No. 62354 (June 22, 2010), 75 FR 36730 (June 28, 2010) (SR–NYSEAmex–2010–57). NYSE Regulation performed the regulatory functions of NYSE MKT pursuant to an intercompany RSA. *See id.,* 75 FR at 36731, n.6.

[12] *See* Securities Exchange Act Release No. 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011) (File No. 4–566).

[13] *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (SR–NASD–97–56).

[14] *See* Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044) (''OATS Extension Approval Order''). By capturing OATS information for all NMS stocks, FINRA noted that it would be able to expand its existing surveillance patterns to conduct more comprehensive cross-market surveillance in furtherance of the Exchange's outsourcing of its surveillance and other regulatory functions to FINRA. *See id.* at 70758. The Commission observed extending OATS to all NMS stocks was calculated to ''enhance FINRA's market surveillance and investigative capabilities'' and in turn ''enhance FINRA's oversight of the U.S. equities markets.'' *Id.*

[15] *See* Securities Exchange Act Release No. 65524 (October 7, 2011), 76 FR 64151 (October 17, 2011) (SR–NYSEAmex–2011–74). The Commission noted that member and member organizations that are also FINRA members (''Dual Members'') need only report OATS information to FINRA once to meet both the FINRA and NYSE OATS requirements. *See id.* at 64152. Further, the Commission noted that NYSE member organizations that were not members of FINRA were also members of NASDAQ (this is still the case today, *see* note 22, *infra*), and, as such, were subject to certain OATS obligations for proprietary trading firms under the NASDAQ Rule 6950 Series that were ''substantially similar'' to the NASDAQ OATS requirements for the same firms. *See id.* OATS information for NYSE-only member firms is available for FINRA to utilize for regulatory purposes.

[16] As defined in Rule 600(b)(47) of SEC Regulation NMS.

[17] *See* FINRA Rule 6110. *See generally* FINRA Rule 6300A and 7200A Series (FINRA/Nasdaq TRF) and 6300B and 7200B Series (FINRA/NYSE TRF). Transactions in non-NMS stocks such as OTC Markets securities, ADRs, Canadian issues, foreign securities and non-exchange-listed DPP securities and transactions in Restricted Equity Securities pursuant to Securities Act Rule 144A are governed by the FINRA Rule 6620 and 7300 Series and must be reported to FINRA's OTC Reporting Facility or ORF. FINRA's rules expressly provide that certain types of transactions need not to be reported for publication or regulatory purposes, including transactions in foreign equity securities executed on and reported to a foreign securities exchange or executed OTC in a foreign country and reported to that country's securities regulator. *See* Trade Reporting Frequently Asked Questions, Section 500, Q/A500:1 & Section 701, Q/A701.1, available at *http://www.finra.org/industry/trade-reporting-faq.*

[18] *See* FINRA Rules 6300A & 6300B.

[19] *See* Rule 7230B. Specifically, the following information must be submitted for each transaction: (1) Security Identification Symbol of the eligible security (SECID); (2) number of shares or bonds; (3) unit price, excluding commissions, mark-ups or mark-downs; (4) time of execution expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of FINRA rules requires that a different time be included on the report; (5) a symbol indicating whether the party submitting the trade report represents the Reporting Member (denoted as the Executing Party or ''EPID'') side or the Non-Reporting Party (denoted as the Contra Party or ''CPID'') side; (6) a symbol indicating whether the transaction is a buy, sell or cross, and if applicable, a symbol indicating that the transaction is a sell short or sell short exempt trade from the Reporting Member perspective or contra side perspective, irrespective of whether the contra side is a member; (7) a symbol indicating whether the trade is as principal, riskless principal, or agent; (8) reporting side Clearing Broker (if other than normal Clearing Broker); (9) reporting side executing broker in the case of a give up agreement, as defined in Rule 6380B(g); (10) contra side executing broker; (11) contra side Introducing Broker in the case of a give up agreement, as defined in Rule 6380B(g); and (12) contra side Clearing Broker (if other than normal Clearing Broker). For any transaction for which a member has recording and reporting obligations under Rules 7440 and 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by FINRA, assigned to the order that uniquely identifies the order for the date it was received. *See* Rule 7440(b)(1).

[20] *See* Trade Reporting Frequently Asked Questions, Section 701, Q/A701.1, available at *http://www.finra.org/industry/trade-reporting-faq. See generally* note 17, *supra.*

[21] Rule 410B Weekly Reports submitted to the SEC in July and August 2015 reveal that only five firms, all also FINRA members, accounted for all of the Rule 410B trading activity. Further, the list of firms that have in the past submitted Rule 410B reports does not include any non-FINRA members.

The Exchange does not believe that eliminating the Rule 410B reporting requirement for the small number of NYSE MKT-only members [22] would pose any significant regulatory risk. None of these firms has ever submitted a Rule 410B report. As noted above, a smaller number of Dual Member firms (five) account for all of the recent Rule 410B trading activity.[23] The Exchange believes that retaining a reporting requirement for firms that have never triggered the requirement serves no useful regulatory or other purpose. NYSE MKT-only members would remain subject to federal and Exchange books and records requirements.[24] Information about any trades away from the Exchange by these firms should thus available for regulatory review if needed.

For the foregoing reasons, the Exchange believes that Rule 410B should be deleted in its entirety.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[25] in general, and furthers the objectives of Section 6(b)(5) of the Act,[26] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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 protect investors and the public interest.

In particular, the Exchange believes that eliminating Rule 410B would remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating duplicative reporting by Dual Members of information those firms already provide to FINRA. The Exchange believes that eliminating Rule 410B reporting would not be inconsistent with the public interest and the protection of investors because FINRA would continue to receive information from Dual Members about off-Exchange transactions for incorporation in its cross-market surveillances. Further, the Exchange believes that eliminating Rule 410B reporting would not be inconsistent with the public interest and the protection of investors because the small number of NYSE [sic]-only firms that would no longer be subject to the reporting requirement have never submitted a report under the Rule.

The Exchange further believes that deleting corresponding references to Rule 410B in another rule would remove impediments to and perfects the mechanism of a free and open market by reducing potential confusion and adding transparency and clarity to the Exchange's rules, thereby ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook.

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 rule change is not intended to address competitive issues, but rather it is designed to eliminate obsolete and duplicative regulatory reporting.

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–NYSEMKT–2015–80 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–NYSEMKT–2015–80. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEMKT–2015–80 and should be submitted on or before November 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27795 Filed 10–30–15; 8:45 am]

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[22] These nine non-FINRA member firms do not have any public customers and are also members of Nasdaq as well as NYSE.

[23] *See* note 21, *supra.*

[24] *See* 17 CFR 240.17a–3, 17 CFR 240.17a–4 & Rule 440—Equities.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76273; File No. SR–CBOE–2015–089]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Complex Orders, as Modified by Amendment No. 1

October 27, 2015.

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 October 13, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 Exchange. On October 26, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change. 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 6.53C. The text of the proposed rule change is 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.

[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 amend Rule 6.53C regarding complex orders. The proposed rule change (1) amends the rule provisions regarding the initiation of a complex order auction (''COA''), (2) adds rule provisions regarding the impact of certain incoming orders and changes in the leg markets on an ongoing COA, and (3) updates the rule text regarding who can submit complex orders. The proposed rule change also makes technical and other nonsubstantive changes.

First, the Exchange proposes to amend Rule 6.53C and Interpretation and Policy .04 regarding the initiation of a COA. Currently, CBOE Rule 6.53C(d)(ii) provides that on receipt of (1) a COA-eligible order [3] with two legs and request from the Trading Permit Holder representing the order or the PAR operator handling the order, as applicable, that it be COA'd or (2) a complex order with three or more legs that (a) meets the class, marketability, size and complex order type parameters included in the definition of a COA-eligible order or (B) is designated as immediate-or-cancel and meets the class, marketability and size parameters included in the definition of a COA-eligible order,[4] in both cases regardless of the order's routing parameters or handling instructions (except for orders routed for manual handling), the Exchange will send a request for response (''RFR'') message to all Trading Permit Holders who have elected to receive RFR messages.[5] Interpretation and Policy .04(a) states that, with respect to the initiation of a COA, Trading Permit Holders routing complex orders directly to the complex order book (''COB'') may request that the complex orders be COA'd on a class-by-class basis, and Trading Permit Holders with resting complex orders on PAR may request that complex orders be COA'd on an order-by-order basis. Currently, all Trading Permit Holders have requested that all of their COA-eligible orders with two legs process through COA upon entry into the System. Therefore, rather than have Trading Permit Holders and PAR operators affirmatively request that their COA-eligible orders with two legs COA, the Exchange proposes to amend Rule 6.53C(d)(ii) to provide that incoming COA-eligible orders with two legs (including orders submitted for electronic processing from PAR) will COA by default.[6]

The Exchange believes Trading Permit Holders should still maintain flexibility to have these two-legged orders not COA. In order to provide Trading Permit Holders with this flexibility, the proposed rule change adds that, notwithstanding the foregoing, Trading Permit Holders may request on an order-by-order basis that a COA-eligible order with two legs not COA (referred to as a ''do-not-COA'' request). The proposed rule change adds that if a two-legged order with a do-not-COA requests rests on PAR, the PAR operator may not request that the order COA (in other words, if the PAR operator submits that order for electronic processing, the PAR operator cannot override the Trading Permit Holder's do-not-COA order request, and the order will enter the COB). Because of this proposed rule change, the Exchange deletes the language in Interpretation and Policy .04(a) that indicates Trading Permit Holders may request that complex orders be COA'd on a class-by-class basis, as it is no longer necessary.[7]

[3] A ''COA-eligible order'' means a complex order that, as determined by the Exchange on class-by-class basis, is eligible for a COA considering the order's marketability (defined as a number of tickets away from the current market), size, complex order type and complex order origin types. Currently, in all Hybrid classes, (a) only complex orders with origin codes for public and professional customers, (b) all complex order types except for immediate-or-cancel (''IOC'') orders, and (c) marketable orders and ''tweener'' limit orders bettering the same side of the derived net market are eligible for COA. In Hybrid 3.0 classes (*i.e.* SPX), (a) all complex order types (including IOC orders) and (b) only customer orders are eligible for COA. *See* Regulatory Circulars RG06–73, RG08–38 and RG08–97.

[4] This description of the current rule includes changes to Rule 6.53C proposed in SR–CBOE–2015–081, which CBOE filed for immediate effectiveness on October 2, 2015.

[5] ''RFR'' stands for a ''request for responses'' that occurs in the COA process. The RFR message will identify the component series, the size and side of the market of the COA-eligible order and any contingencies if applicable.

[6] The proposed rule change applies to all COA-eligible orders with two legs, including eligible stock-option orders, in all Hybrid and Hybrid 3.0 classes. The proposed rule change does not change the allocation or priority provisions of complex orders, nor does it impact leg order functionality described in Rule 6.53C(c)(iv), which functionality the Exchange has the authority to implement (the Exchange that leg order functionality is currently not available in any classes). The proposed rule change also makes a nonsubstantive change to move language regarding the System sending RFR messages to the beginning of the provision.

[7] The proposed rule change deletes Interpretation and Policy .04(a) in order to include all information regarding the initiation of a COA in subparagraph (d)(ii) in the same place within the rule. As a result, the proposed rule change deletes the lettering for paragraph (b), which will be the only remaining provision in Interpretation and Policy .04. The proposed rule change makes a corresponding change in subparagraph (d)(ii) to delete a reference

Continued

While the proposed rule change will not permit Trading Permit Holders to not COA orders on a class-by-class basis, the Exchange believes that it will not burden Trading Permit Holders because they have not requested this in the past. Additionally, allowing Trading Permit Holders to make a do-not-COA request on an order-by-order basis will better allow them to make decisions regarding the handling of their orders based on market conditions at the time they submit their orders.[8]

While the proposed rule change provides that Trading Permit Holders may include a do-not-COA request on complex orders with two legs, the proposed rule change indicates that an order with a do-not-COA request may still COA after it has rested on the COB pursuant to Interpretation and Policy .04.[9] The Exchange believes that Trading Permit Holders that include a do-not-COA request for an order upon entry into the System do so to receive automatic execution with the leg market or the COB, as applicable, without the delay of the COA.[10] However, if that does not occur and the order enters the COB to rest, the Exchange believes it is appropriate to COA the order after resting on the COB (if that functionality has been activated for the class) to try and obtain an execution even though the Trading Permit Holder initially did not want the order to COA, as the COA will not delay execution at that point.

The Exchange notes that an order with a do-not-COA request will still have execution opportunities. For example, such an order may execute automatically upon entry into the System against the leg markets or complex orders on the COB to the extent marketable (in accordance with allocation rules set forth in Rule 6.53C). Additionally, pursuant to Rule 6.53C(d)(viii)(1), such an order on the opposite side of and marketable against a COA-eligible order may trade against the COA-eligible order if the System receives the order while a COA is ongoing. A do-not-COA request merely provides the order with the opportunity to execute upon entry into the System rather than after going through an auction; the order will be subject to the same priority and allocation rules.[11]

Second, the proposed rule change adds subparagraphs Rule 6.53C(d)(viii)(4) and (5) to describe additional circumstances that will cause a COA to end early.[12] Proposed subparagraph (viii)(4) describes how an incoming order with a do-not-COA request or that is not COA-eligible may impact an ongoing COA. Rule 6.53C(d)(viii) currently describes the handling of unrelated complex orders that are received prior to the expiration of the COA Response Time Interval.[13] The proposed rule change states that if an order with a do-not-COA request or an order that is not COA-eligible is received prior to the expiration of the Response Time Interval for the original COA and is on the same side of the market and at a price better than or equal to the starting price, then the original COA will end. Similar to the current provisions regarding incoming unrelated COA-eligible orders on the same side of the COA-eligible order (and at a price better than or equal to the starting price), the processing of the original COA pursuant to subparagraphs (d)(iv) through (d)(vi) remains the same[14] with the addition that the priority of the original COA-eligible order and the order with the do-not-COA request or the order that is not COA-eligible, as applicable, will be according to time priority. In other words, the COA-eligible order would trade before the order with the do-not-COA request or order that is not COA-eligible, regardless of the price of each order.[15] The purpose of this proposed provision (as it is for the current provisions related to unrelated complex orders) is to prevent the order with the do-not-COA request or the order that is not COA-eligible,[16] as applicable, from executing prior to the original COA-eligible order, which, if it did not COA, may have executed or entered the COB

to making a request pursuant to Interpretation and Policy .04.

[8] For organizational purposes, the proposed rule change divides paragraph (d)(ii) into two subparagraphs (A) and (B), which address the general rule regarding when complex orders will COA and the treatment of complex orders with do-not-COA requests, respectively, and makes corresponding changes to cross-references in the rule.

[9] Interpretation and Policy .04(b) (which the proposed rule change amends to become Interpretation and Policy .04) provides that the Exchange may determine on a class-by-class basis to automatically COA nonmarketable orders resting at the top of the COB if they are within a number of ticks away from the current derived net market.

[10] The current COA response time interval is 100 milliseconds.

[11] A complex order that COAs upon entry into the System or after resting in the COB will not miss any execution opportunities. Pursuant to current Interpretation and Policy .04(b), an order that COAs after resting on the COB will be nonmarketable and at the top of the COB (and thus is the best-priced complex order at the time). Rule 6.53C(d)(viii) (including as amended by this rule filing, as further discussed below) describes how incoming complex orders received during a COA impact the COA, including providing that the COA'd order (which may be an order that COAs upon entry into the System or after resting in the COB) will have time priority over the incoming order, and ultimately provides that a COA'd order will not lose execution opportunities to complex orders submitted during the COA.

[12] The proposed rule change makes corresponding changes to the heading and introductory paragraph of subparagraph (d)(viii).

[13] Rule 6.53C(d)(viii) states that incoming complex orders that are received prior to the expiration of the response time interval for a COA-eligible order (the ''original COA'') will impact the original COA as follows: (a) Incoming complex orders that are received prior to the expiration of the response time interval for the original COA that are on the opposite side of the market and are marketable against the starting price of the original COA-eligible order will cause the original COA to end. The processing of the original COA pursuant to subparagraphs (d)(iv) through (d)(vi) remains the same. (The ''starting price'' means the better of the original COA-eligible order's limit price or the best price, on a net debit or credit basis, that existed in the EBook or COB at the beginning of the response time interval.) (b) Incoming COA-eligible orders that are received prior to the expiration of the response time interval for the original COA that are on the same side of the market, at the same price or worse than the original COA-eligible order and better than or equal to the starting price will join the original COA. The processing of the original COA pursuant to subparagraphs (d)(iv) through (d)(vi) remains the same with the addition that the priority of the original COA-eligible order and incoming COA-eligible order(s) will be according to time priority. (c) Incoming COA-eligible orders that are received prior to the expiration of the response time interval for the original COA that are on the same side of the market and at a better price than the original COA-eligible order will join the original COA, cause the original COA to end, and a new COA to begin for any remaining balance on the incoming COA-eligible order. The processing of the original COA pursuant to subparagraphs (d)(iv) through (d)(vi) remains the same with the addition that the priority of the original COA-eligible order and incoming COA-eligible order will be according to time priority.

[14] Rule 6.53C(d)(iv) through (d)(vi) provides that at the expiration of the response time interval, the COA-eligible order will trade with orders and quotes in the following order: (a) Individual orders and quotes residing in the book (with allocation consistent with the ultimate matching algorithm (''UMA'') described in Rule 6.45A or 6.45B, as applicable), (b) public customer complex orders resting in the COB before, or that are received during, the response time interval and public customer RFR responses (with allocation according to time priority), (c) nonpublic customer orders resting in the COB before the response time interval (with allocation consistent with UMA described in Rule 6.45A or 6.45B, as applicable), and (d) nonpublic customer orders resting in the COB that are received during the response time interval and nonpublic customer responses (with allocation consistent with the ultimate matching algorithm described in Rule 6.45A or 6.45B, as applicable, capped at the response size). If a COA-eligible order cannot be filled in whole or in a permissible ratio, the order (or any remaining balance) will route to the COB or back to PAR, as applicable. Thus, the unrelated order with a do-not-COA request or the order that is not COA-eligible will have execution opportunities against the leg markets, complex orders in the COB and COA responses, with priority after the original COA-eligible order.

[15] This time priority is the same provided to COA-eligible orders over incoming orders in subparagraphs (d)(viii)(2) and (3).

[16] Current paragraph (d)(viii) currently addresses the impact of incoming COA-eligible orders on the same side of the original COA-eligible order. The proposed rule change adds detail regarding the impact of orders that are not COA-eligible and orders with a do-not-COA request. The Exchange believes this provides a more complete description in its rules regarding the impact of unrelated complex orders received during a COA.

(because it would have entered the COB first, it potentially would have priority over the incoming order to the extent the algorithm applicable to the class considered time as a factor for allocation).

For example, assume that a COA-eligible order to buy with a net limit price of $1.20 is received when the book or COB price (and thus the starting price) is a net price bid of $1.10. The System will initiate a COA at a net price of $1.10. An incoming order with a do-not-COA request to buy at a net price of $1.10 or higher causes the original COA to end. To the extent possible, the original COA-eligible order will be filled first, and then the order with the do-not-COA request will be filled (subject to the COA allocation provisions describe above).[17] Any remaining balance on the original COA-eligible order or the incoming order with the do-not-COA request will route to COB or back to PAR. The Exchange believes this result to be appropriate, even if the incoming order with the do-not-COA request had a higher buy price than the COA-eligible order (*e.g.* $1.21), because if the COA-eligible order had not initiated a COA and was marketable at the time it was entered (for example, if the offer in the book was $1.15), it could have executed against the book before the order was entered. Providing the COA-eligible order with time priority is intended to ensure it does not miss an execution opportunity it would have otherwise received if it had not initiated a COA.

Proposed subparagraph (viii)(5) provides that if the leg markets were not marketable against a COA-eligible order when the order entered the System (and thus prior to the initiation of a COA) but became marketable with the COA-eligible order prior to the expiration of the Response Time Interval, it will cause the COA to end.[18] The processing of the original COA pursuant to subparagraphs (d)(iv) through (d)(vi) remains the same.

For example, assume that the derived net leg market is $1.00 to $1.05. A COA-eligible order to buy at a net price of $1.02 is entered and initiates a COA. During the COA (prior to the end of the Response Time Interval), the derived net leg market offer changes to $1.01. Because this is marketable against the COA-eligible order, this change in the derived net leg markets will cause the COA to end. Assuming the derived net leg market offer price of $1.01 is the best net price at the end of the COA,[19] the COA-eligible order will execute against the leg markets at that net price, and any remainder will then trade against complex orders in the COB and auction responses. If a complex order to buy was resting on the COB (for example, at a net price of $1.01) at the initiation of the COA (for example, a do-not-COA order or an order that is not COA-eligible),[20] that order and the COA-eligible order would be allocated against the leg markets in the same manner as any other two complex orders pursuant to Rule 6.53C(c)(ii) regarding COB executions, which is by price and then pursuant to the rules of trading priority otherwise applicable to incoming orders in the individual component legs. The COA-eligible order would always have priority over the resting order, as it would always have a higher (if a buy order) or lower (if a sell order) net price than the resting order.

In the example above, if a complex order to buy at a net price of $1.01 was resting in the COB at the time the COA-eligible order to buy at a net price of $1.02 entered the System and initiated the COA, and the same change in the derived net leg markets occurs, assuming the derived net leg market offer price of $1.01 is the best net price at the end of the COA, the COA-eligible order will trade against the derived net leg offer at $1.01 first, because it was entered at (and thus willing to pay) a better net price than the resting complex order (to the extent there was insufficient size in the leg markets to fill the COA-eligible order, the remainder would then execute against complex orders in the COB and auction responses). If there is sufficient size left in the leg markets to trade against the resting complex order, then the resting order will also trade (in full or in a permissible ratio).

Third, the proposed rule change amends Rule 6.53C(c)(ii)(3) and Interpretation and Policy .06(c) to provide that all Trading Permit Holders and PAR Officials may submit orders or quotes to trade against orders in the COB. Currently, the rule provides that market participants[21] may submit these orders or quotes. While the rules allow the Exchange to determine which order origin types (*i.e.,* public customer, Market-Makers, broker-dealers) are eligible for entry into the COB,[22] orders of the eligible origin types submitted by any Trading Permit Holders (as applicable) or PAR Officials may enter the COB.[23] The proposed rule change updates the rule text to match current System functionality.

Finally, the proposed rule change makes technical and other nonsubstantive changes. Currently, Interpretation and Policy .09 provides that the Exchange may determine on a class-by-class basis which electronic matching algorithm from Rule 6.45A or 6.45B, as applicable, will apply to COB executions in lieu of the algorithm specified in Rule 6.53C(c)(ii)(2) and (3). The proposed rule change moves that language from Interpretation and Policy .09 to both of those paragraphs.[24] The Exchange believes it is simpler and more convenient to have the information regarding how COB executions may allocate in one place within the rules. The proposed rule change also amends subparagraph (c)(ii)(3) to provide that, like subparagraph (c)(ii)(2), the allocation of complex orders submitted to trade against orders or quotes in the COB that trade against those orders or quotes (which is the trade activity to which that paragraph applies) will default to the rules of trading priority otherwise applicable to incoming electronic orders in the individual leg components. Interpretation and Policy .09 currently provides the Exchange with the authority to set this as the allocation method for subparagraph (c)(ii)(3). The proposed change merely indicates that, like the allocation of COB to COB trades as set forth in subparagraph (c)(ii)(2), the allocation method will be the same as the legs unless the Exchange provides otherwise.

[17] *See id.*

[18] This is similar to the result described in subparagraph (viii)(1), which provides that an incoming complex order on the opposite side of the market as and marketable against the COA-eligible order will cause the COA to end.

[19] The leg market offer would be the best price at the end of the COA if no auction response, order resting in the COB, or order that entered the System during the COA had a better price.

[20] As previously indicated, only orders that are marketable or that improve the price on the same side of the market initiate a COA. *See supra* note 1. Thus, for there to be a situation where a complex order was already resting on the COB at the initiation of a COA, the order resting on the COB would be at a worse price than the COA-eligible order that initiated the COA. If there is a complex order resting on the COB when that is on the same side and at the same or better price than an incoming complex order, then the incoming order will not COA and will also enter on the COB.

[21] Rules 6.45A and 6.45B define market participants as Market-Makers, Designated Primary Market-Makers with an appointment in the subject class, and floor brokers and PAR Officials representing orders in the trading crowd. Trading Permit Holders and PAR Officials as a group is larger than market participants as a group, as the term market participants does not include other types of Trading Permit Holders (such as electronic proprietary traders or brokers submitting electronic orders on behalf of customers from off of the trading floor).

[22] *See* Rule 6.53C(c)(ii).

[23] The Exchange notes that only Market-Makers may submit quotes. *See* Rule 8.7.

[24] The proposed rule change also makes a corresponding change to Interpretation and Policy .06(c), which relates to executions of stock-options orders (types of complex orders) in the COB.

In addition, the proposed rule change amends Rule 6.53C(c)(ii)(3) to provide that order and quote types (not just quote types) not eligible to rest or trade against the COB will be automatically cancelled. The first several sentences in that subparagraph reference orders and quotes eligible to rest on the COB. The Exchange intended for both non-eligible orders and quotes to be cancelled; this proposed change merely makes the language in this paragraph consistent throughout. Additional nonsubstantive changes to Rule 6.53C are discussed above.

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.[25] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[26] 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)[27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change removes impediments to a free and open market and protects investors by providing Trading Permit Holders with more flexibility regarding when complex orders will not COA. The proposed rule change removes the affirmative obligation currently imposed on Trading Permit Holders to request that their COA-eligible orders with two legs COA on a class-by-class basis, as Trading Permit Holders currently request that all of their COA-eligible orders COA upon entry into the System. Therefore, the proposed rule change to have COA as the default setting for COA-eligible orders will have no impact on COA-eligible orders submitted to the Exchange. The proposed rule change will allow Trading Permit Holders to evaluate then-current market conditions and determine if they do not want to COA orders with two legs based on those conditions and instead want those orders to route to the COB for potential immediate execution. These orders with do-not COA requests will continue to have execution opportunities and be subject to the same priority and allocation rules. In addition, the proposed rule change promotes just and equitable principles of trade and promotes competition because another options exchange has a substantially similar rule, as further described below, which similarly allows members to designate that orders not initiate a complex order auction on that exchange.[28]

The current rules describe how COA-eligible orders received while a COA is ongoing would impact the COA. The proposed rule change also adds detail regarding how incoming orders with do-not-COA requests or that are not COA-eligible, as well as how changes in the leg markets, may impact ongoing COAs, which protects investors by enhancing the description in CBOE Rules of current COA functionality and circumstances that may cause a COA to end early. Because the proposed rule change adds a provision regarding no-COA orders to the CBOE Rules, the Exchange believes it is appropriate to add the provision regarding how no-COA orders would impact a COA to the CBOE Rules as well to ensure investors understand how these orders may impact a COA. The Exchange believes the proposed rule change promotes just and equitable principles of trade because, if these orders cause a COA to end, any executions that occur following the COA occur in accordance with allocation principles in place, subject to an exception that the original COA-eligible order receive time priority. This exception prevents an order that was entered after the initiation of a COA from trading ahead of an order with the same price that may have executed or entered the COB if it did not COA. Similarly, the Exchange believe it is fair for a COA-eligible order that was entered at a better price than an order that was resting in the COB prior to initiation of the COA to execute against leg markets that become marketable against the COA-eligible order and resting order during the COA, because the Trading Permit Holder who entered the COA-eligible order was willing to pay a better price than that of the resting order. Incoming orders that do not COA and leg market changes impact a COA in a substantially similar manner as incoming COA-eligible orders; the proposed rule change just applies to different order types not covered by the current Rules. This proposed change does not substantively change the COA or allocation process.

The proposed rule change to update the term market participants to Trading Permit Holders and PAR Officials and to reorganize certain provisions eliminates potential confusion regarding the processing of complex orders. This additional information further perfects the mechanism of a free and open market and a national market system and protects investors. Additionally, updating the term market participants to Trading Permit Holders and PAR Officials further benefits investors because it more accurately describes who may enter complex orders into the System. The Exchange notes that the Trading Permit Holders and PAR Officials includes all participants included in the current market participant definition (as well as additional participants).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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, including the ability to designate orders to not COA, is available to all Trading Permit Holders. The Exchange believes the proposed rule change provides Trading Permit Holders with more flexibility with respect to the submission of their complex orders. The proposed rule change also eliminates the affirmative obligation imposed on Trading Permit Holders to request that COA-eligible orders COA, which they all do for all classes. While Trading Permit Holders may need to undertake system work to allow them to include a do-not-COA request on orders, use of this designation is voluntary. CBOE believes this flexibility may promote competition by encouraging submission of complex orders to the Exchange. To the extent that proposed rule change makes CBOE a more attractive marketplace to market participants on other exchanges, such market participants may elect to send orders to CBOE to take advantage of the additional functionality. Additionally, other exchanges may determine to provide similar functionality and further enhance competition. The Exchange also notes that other options exchanges have substantially similar

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *Id.*

[28] *See* NASDAQ OMX PHLX LLC (''PHLX'') Rule 1080, Commentary .07(a)(viii) and (e) (describing the complex order live auction (''COLA'') process and ''do not auction'' orders).

provisions as the proposed rule change, as described above.

The proposed rule change to add detail to the rules regarding the impact of changes in the leg markets on a COA describes current functionality and is merely intended to enhance the description of this functionality in the Rules, and thus has no impact on competition. The nonsubstantive and technical changes have no impact on competition.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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–CBOE–2015–089 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–CBOE–2015–089. 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–CBOE–2015–089 and should be submitted on or before November 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27793 Filed 10–30–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76281; File No. SR–C2–2015–026]

Self-Regulatory Organizations; C2 Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Certificate of Incorporation and Bylaws of Its Parent Company

October 27, 2015.

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 October 23, 2015, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') 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 proposes to amend the certificate of incorporation and bylaws of its parent Company, CBOE Holdings, Inc. (''CBOE Holdings''). The text of the proposed rule change is 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Holdings is proposing to make certain amendments to its Certificate and Bylaws.

Proposed Amendments to the Certificate

CBOE Holdings proposes to make various amendments to its Certificate. First, CBOE Holdings proposes to eliminate references that are applicable only in connection with the CBOE demutualization and CBOE Holdings initial public offering (''IPO'') in 2010. Currently, the Certificate provides for the designation, preferences and rights related to Class A–1 and Class A–2 common stock that had been authorized by the Board and CBOE Holdings' stockholders prior to the IPO. No shares of Class A–1 or Class A–2 common stock are currently outstanding, nor would CBOE Holdings be able to issue such shares at any time in the future as the current Certificate limits their use to the conversion of Class A and Class B common stock, which was issued in connection with the IPO and has been retired. Accordingly, CBOE Holdings proposes to delete obsolete provisions

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

related to the designation, rights and preferences of these series of common stock. The Exchange also proposes to remove references to the 10% ownership concentration limitation applicable before the IPO. This change would not change the current ownership concentration limitation, which is 20%. CBOE Holdings also proposes other non-substantive changes to the Certificate include referring to the ''Second'' Amended and Restated Certificate of Incorporation, clarifying that any stockholder votes on the Bylaws would be in addition to any votes required by law, and updating references to the Common Stock, as only one class of common stock will be outstanding. The Exchange notes that the proposed changes will not have any effect on the rights of a stockholder.[3]

Proposed Amendments to the Bylaws

CBOE Holdings also proposes to make various amendments to its Bylaws. First, CBOE Holdings proposes to adopt an Exclusive Forum Provision. Specifically, CBOE Holdings seeks to adopt Article 11—Forum for Adjudication of Disputes. Proposed Article 11 provides that Delaware would be the exclusive forum for any shareholder litigation against the Company. CBOE Holdings notes that the proposed adoption of Article 11 alleviates the risk of multi-forum shareholder litigation in which the same claims are litigated in different courts, which can potentially drain corporate resources, increase the distraction and hassle of litigation, and risk inconsistent rulings and judgments. CBOE Holdings also notes that exclusive forum provisions have been upheld by the Delaware Court of Chancery and that legislative amendments to the General Corporation Law of the State of Delaware (''DGCL'') related to exclusive forum provisions were recently signed into law by the Delaware governor and became effective August 1, 2015.[4]

Next, CBOE Holdings proposes to amend various sections in Article 2 to delete obsolete and/or unnecessary language, as well as reflect current best practices among Delaware corporations in the drafting of their governing documents, including changes with respect to the scheduling, notice and action at meetings and the nomination of directors. For example, Section 2.2 of the Bylaws is proposed to be amended to delete language requiring the annual meeting of stockholders to be held on the third Tuesday in May of each year, as the Exchange does not believe such requirement is necessary. Additionally, Section 2.2 is proposed to be amended to eliminate now outdated language which provides that such requirement starts the year immediately following the year in which the restructuring of CBOE is consummated. Section 2.4 of the Bylaws is proposed to be amended to add language providing that certain notice requirements of each meeting of stockholders apply except as otherwise provided by the Certificate of Incorporation or CBOE Holdings Bylaws. CBOE Holdings also proposes to add language to Section 2.4 to explicitly provide that notices of all meetings shall state the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting. CBOE Holdings notes that Section 2.1 already contemplates remote communications.[5] Section 2.7 of the Bylaws is being amended to make the Bylaw language consistent with DGCL Section 222 (c) (Notice of meetings and adjourned meetings). Section 2.10 is being proposed to be amended to make certain clarifications relating to actions at meetings. For example, CBOE Holdings proposes to clarify that a majority of the votes properly cast upon any question other than an election of directors shall decide the question, except when a ''different'' (rather than ''larger'') vote is required by the Bylaws, rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities. Additionally, CBOE Holdings proposes to explicitly clarify that ''abstentions'' and ''broker nonvotes'' are not counted as a vote case either ''for'' or ''against'' a director's election. Section 2.11 is being proposed to be amended to (i) eliminate outdated language and (ii) make minor changes related to the nomination process for election of Board of Directors in a manner similar to the practices of other Delaware corporations. For example, Section 2.11 is being amended with regards to notice requirements for director nominations in the event the annual meeting is not conducted within a certain period of time. Specifically, Section 2.11 currently provides that if the annual meeting is not held within thirty (30) days before or after the anniversary date of the preceding year's annual meeting of stockholders, the nominations must be delivered or mailed and received by the Secretary not later than the close of business on the 10th day following the date on which public announcement of the annual meeting date was made. CBOE Holdings seeks to amend Section 2.11 to permit the annual meeting to be held up to seventy (70) days after the anniversary date of the immediately preceding annual meeting without altering the deadlines regarding when the nominations must be delivered or mailed and received by apply and to also confirm that an adjournment or postponement of an annual meeting does not commence a new time period or extend any time period for a stockholder's notice. CBOE Holdings notes that the proposed change provides CBOE Holdings more flexibility with regards to scheduling the annual meeting date without altering the time periods for stockholder notices for director nominations. CBOE Holdings additionally proposes to amend Section 2.11 to clarify that stockholder notices for director nominations shall also set forth any other information relating to the stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies, as well and also explicitly provide that CBOE Holdings may require any proposed nominee to furnish any other information that CBOE Holdings may reasonable require to determine eligibility of the proposed nominee to serve as director of the Corporation.

CBOE Holdings also proposes to amend the Bylaws to make other non-substantive changes. For example, CBOE Holdings proposes to amend Section 3.4 of the Bylaws to provide that a director may resign by giving either written or electronic notice as well as

[3] For example, the Exchange notes that the proposed change in Article Fourth, subparagraph (c)(x) from ''Voting Common Stock'' to ''stock of the Corporation entitled to vote thereon'' is not intended to affect the rights of a stockholder or change which class of shares are entitled to vote to increase or decrease the number of authorized shares of Preferred Stock. Specifically, the Exchange notes that, as is currently the case, for any proposal to increase or decrease the number of authorized shares of Preferred Stock, common stock would continue to vote together with any series of Preferred Stock that is allowed to vote on such a proposal pursuant to its terms. The Exchange also notes that the provisions in Article Sixth of the Certificate which limit ownership and voting concentration continue to apply and as such, any proposal to increase or decrease the number of authorized shares of Preferred Stock, if any, would be subject to those limitations.

[4] *See e.g., Boilermakers Local 154 Retirement Fund* v. *Chevron Corporation,* 73 A.3d 934 (Del. Ch. 2013). The Chancery Court ruled that boards are statutorily empowered to adopt such bylaws so long as the specific corporate articles of organization permit director amendment of bylaws, which is generally the case. *See also* DGCL Section 115.

[5] *See* CBOE Holdings Bylaws, Section 2.1 which provides that ''all meetings of stockholders shall be held at such place, if any, within or without the State of Delaware . . .''

proposes to delete an unnecessary sentence related to the term of the Executive Committee members in Article 4, Section 4.2.[6] Additionally, CBOE Holdings proposes to make non-substantive, clarifying changes to Section 9.3 of the Bylaws including adding the term ''equity owners'' (in addition to the current terms of ''stockholders'' and ''shareholders''). CBOE Holdings also proposes to amend Section 10.1 of the Bylaws. Specifically, Section 10.1 currently provides that stockholders of CBOE Holdings may amend the Bylaws, provided that notice of the proposed change was given in the notice of the stockholders meeting at which such action is to be taken. CBOE Holdings proposes to eliminate this requirement as it does not believe it is substantive or necessary. Particularly, CBOE Holdings notes that this requirement is already provided for in Section 2.12 of the Bylaws.[7] Additionally, CBOE Holdings notes that Article Twelfth of the Certificate, which governs amendments of the Bylaws by stockholders of CBOE Holdings, does not include this requirement. Accordingly, and in order to conform Section 10.1 of the Bylaws to Article Twelfth of the Certificate, CBOE Holdings proposes to remove this language from Section 10.1. CBOE Holdings also proposes to amend Section 10.2 of the Bylaws to replace the reference of ''CBOE'' to ''Chicago Board Options Exchange, Incorporated'' to avoid any potential confusion as to what CBOE refers to.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, CBOE Holdings believes that eliminating references in the Certificate that are applicable only in connection with the 2010 IPO removes obsolete language and alleviates potential confusion. Additionally, CBOE Holdings believes the remaining changes to the Certificate are non-substantive and clarifying in nature, which makes the Certificate easier to read and also alleviates potential confusion. The alleviation of potential confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes adopting Article 11 governing the forum for adjudication of disputes alleviates the risk of multi-forum shareholder litigation in which the same claims are litigated in different courts, which can potentially drain corporate resources, increase the distraction and hassle of litigation, and risk inconsistent rulings and judgments. The Exchange believes alleviating potential drain on corporate resources allows the Exchange to direct such resources in administration of the Exchange, enhancing investor protection.

CBOE Holdings believes the remaining changes are either clarifying in nature or reflect current best practices among Delaware corporations in the drafting of their governing documents and thus enhance investor protection by making CBOE Holdings governance documents clearer and easier to understand and in line with current governance best practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the governance of CBOE Holdings and not to the operations of the Exchange, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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[11] and Rule 19b–4(f)(6)[12] thereunder. 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–C2–2015–026 on the subject line.

[6] The Exchange notes that pursuant to Section 3.2 of the Bylaws, directors are to be elected annually and thus the term for any Board committee composed exclusively of directors would be for no longer than one year. The Exchange also notes that the terms for members of other Board committees are also not explicitly referenced or included in CBOE Holdings' Bylaws. *See* Article 4, Sections 4.3 (The Audit Committee), 4.4 (The Compensation Committee) and 4.5 (The Nominating and Governance Committee).

[7] *See* Section 2.12 of the Bylaws which provides ''To be in proper written form, a stockholder's notice to the Secretary shall set forth . . . the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment . . .''

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

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–C2–2015–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–C2–2015–026 and should be submitted on or before November 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27798 Filed 10–30–15; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Regulation R, Rule 701; SEC File No. 270–562, OMB Control No. 3235–0624.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Regulation R, Rule 701 (17 CFR 247.701) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Regulation R, Rule 701 requires a broker or dealer (as part of a written agreement between the bank and the broker or dealer) to notify the bank if the broker or dealer makes certain determinations regarding the financial status of the customer, a bank employee's statutory disqualification status, and compliance with suitability or sophistication standards.

The Commission estimates that brokers or dealers would, on average, notify 1,000 banks approximately two times annually about a determination regarding a customer's high net worth or institutional status or suitability or sophistication standing as well as a bank employee's statutory disqualification status. Based on these estimates, the Commission anticipates that Regulation R, Rule 701 would result in brokers or dealers making approximately 2,000 notifications to banks per year. The Commission further estimates (based on the level of difficulty and complexity of the applicable activities) that a broker or dealer would spend approximately 15 minutes per notice to a bank. Therefore, the estimated total annual third party disclosure burden for the requirements in Regulation R, Rule 701 is 500[1] hours for brokers or dealers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@comb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 27, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27801 Filed 10–30–15; 8:45 am]

BILLING CODE 8011–01–P

[1] (2000 notices × 15 minutes) = 30,000 minutes/60 minutes = 500 hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76282; File No. SR–CBOE–2015–092]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Certificate of Incorporation and Bylaws of its Parent Company

October 27, 2015.

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 October 23, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 proposes to amend the certificate of incorporation and bylaws of its parent Company, CBOE Holdings, Inc. (''CBOE Holdings''). The text of the proposed rule change is 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

CBOE Holdings is proposing to make certain amendments to its Certificate and Bylaws.

Proposed Amendments to the Certificate

CBOE Holdings proposes to make various amendments to its Certificate. First, CBOE Holdings proposes to eliminate references that are applicable only in connection with the CBOE demutualization and CBOE Holdings initial public offering (''IPO'') in 2010. Currently, the Certificate provides for the designation, preferences and rights related to Class A–1 and Class A–2 common stock that had been authorized by the Board and CBOE Holdings' stockholders prior to the IPO. No shares of Class A–1 or Class A–2 common stock are currently outstanding, nor would CBOE Holdings be able to issue such shares at any time in the future as the current Certificate limits their use to the conversion of Class A and Class B common stock, which was issued in connection with the IPO and has been retired. Accordingly, CBOE Holdings proposes to delete obsolete provisions related to the designation, rights and preferences of these series of common stock. The Exchange also proposes to remove references to the 10% ownership concentration limitation applicable before the IPO. This change would not change the current ownership concentration limitation, which is 20%. CBOE Holdings also proposes other non-substantive changes to the Certificate include referring to the ''Second'' Amended and Restated Certificate of Incorporation, clarifying that any stockholder votes on the Bylaws would be in addition to any votes required by law, and updating references to the Common Stock, as only one class of common stock will be outstanding. The Exchange notes that the proposed changes will not have any effect on the rights of a stockholder.[3]

Proposed Amendments to the Bylaws

CBOE Holdings also proposes to make various amendments to its Bylaws. First, CBOE Holdings proposes to adopt an Exclusive Forum Provision. Specifically, CBOE Holdings seeks to adopt Article 11—Forum for Adjudication of Disputes. Proposed Article 11 provides that Delaware would be the exclusive forum for any shareholder litigation against the Company. CBOE Holdings notes that the proposed adoption of Article 11 alleviates the risk of multi-forum shareholder litigation in which the same claims are litigated in different courts, which can potentially drain corporate resources, increase the distraction and hassle of litigation, and risk inconsistent rulings and judgments. CBOE Holdings also notes that exclusive forum provisions have been upheld by the Delaware Court of Chancery and that legislative amendments to the General Corporation Law of the State of Delaware (''DGCL'') related to exclusive forum provisions were recently signed into law by the Delaware governor and became effective August 1, 2015.[4]

Next, CBOE Holdings proposes to amend various sections in Article 2 to delete obsolete and/or unnecessary language, as well as reflect current best practices among Delaware corporations in the drafting of their governing documents, including changes with respect to the scheduling, notice and action at meetings and the nomination of directors. For example, Section 2.2 of the Bylaws is proposed to be amended to delete language requiring the annual meeting of stockholders to be held on the third Tuesday in May of each year, as the Exchange does not believe such requirement is necessary. Additionally, Section 2.2 is proposed to be amended to eliminate now outdated language which provides that such requirement starts the year immediately following the year in which the restructuring of CBOE is consummated. Section 2.4 of the Bylaws is proposed to be amended to add language providing that certain notice requirements of each meeting of stockholders apply except as otherwise provided by the Certificate of Incorporation or CBOE Holdings Bylaws. CBOE Holdings also proposes to add language to Section 2.4 to explicitly provide that notices of all meetings shall state the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting. CBOE Holdings notes that Section 2.1 already contemplates remote communications.[5] Section 2.7 of the Bylaws is being amended to make the Bylaw language consistent with DGCL Section 222 (c) (Notice of meetings and adjourned meetings). Section 2.10 is being proposed to be amended to make certain clarifications relating to actions at meetings. For example, CBOE Holdings proposes to clarify that a majority of the votes properly cast upon any question other than an election of directors shall decide the question, except when a ''different'' (rather than ''larger'') vote is required by the Bylaws, rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities. Additionally, CBOE Holdings proposes to explicitly clarify that ''abstentions'' and ''broker nonvotes'' are not counted as a vote case either ''for'' or ''against'' a director's election. Section 2.11 is being proposed to be amended to (i) eliminate outdated language and (ii) make minor changes related to the nomination process for election of Board of Directors in a manner similar to the practices of other Delaware corporations. For example, Section 2.11 is being amended with regards to notice requirements for director nominations in the event the annual meeting is not conducted within a certain period of time. Specifically, Section 2.11 currently provides that if the annual meeting is not held within thirty (30) days before or after the anniversary date of the preceding year's annual meeting of stockholders, the nominations must be delivered or mailed and received by the Secretary not later than the close of business on the 10th day following the date on which public announcement of the annual meeting date was made. CBOE Holdings seeks to amend Section

[3] For example, the Exchange notes that the proposed change in Article Fourth, subparagraph (c)(x) from ''Voting Common Stock'' to ''stock of the Corporation entitled to vote thereon'' is not intended to affect the rights of a stockholder or change which class of shares are entitled to vote to increase or decrease the number of authorized shares of Preferred Stock. Specifically, the Exchange notes that, as is currently the case, for any proposal to increase or decrease the number of authorized shares of Preferred Stock, common stock would continue to vote together with any series of Preferred Stock that is allowed to vote on such a proposal pursuant to its terms. The Exchange also notes that the provisions in Article Sixth of the Certificate which limit ownership and voting concentration continue to apply and as such, any proposal to increase or decrease the number of authorized shares of Preferred Stock, if any, would be subject to those limitations.

[4] *See e.g.,* Boilermakers Local 154 Retirement Fund v. Chevron Corporation, 73 A.3d 934 (Del. Ch. 2013). The Chancery Court ruled that boards are statutorily empowered to adopt such bylaws so long as the specific corporate articles of organization permit director amendment of bylaws, which is generally the case. *See also* DGCL Section 115.

[5] *See* CBOE Holdings Bylaws, Section 2.1 which provides that ''all meetings of stockholders shall be held at such place, if any, within or without the State of Delaware . . .''

2.11 to permit the annual meeting to be held up to seventy (70) days after the anniversary date of the immediately preceding annual meeting without altering the deadlines regarding when the nominations must be delivered or mailed and received by apply and to also confirm that an adjournment or postponement of an annual meeting does not commence a new time period or extend any time period for a stockholder's notice. CBOE Holdings notes that the proposed change provides CBOE Holdings more flexibility with regards to scheduling the annual meeting date without altering the time periods for stockholder notices for director nominations. CBOE Holdings additionally proposes to amend Section 2.11 to clarify that stockholder notices for director nominations shall also set forth any other information relating to the stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies, as well and also explicitly provide that CBOE Holdings may require any proposed nominee to furnish any other information that CBOE Holdings may reasonable require to determine eligibility of the proposed nominee to serve as director of the Corporation.

CBOE Holdings also proposes to amend the Bylaws to make other non-substantive changes. For example, CBOE Holdings proposes to amend Section 3.4 of the Bylaws to provide that a director may resign by giving either written or electronic notice as well as proposes to delete an unnecessary sentence related to the term of the Executive Committee members in Article 4, Section 4.2.[6] Additionally, CBOE Holdings proposes to make non-substantive, clarifying changes to Section 9.3 of the Bylaws including adding the term ''equity owners'' (in addition to the current terms of ''stockholders'' and ''shareholders''). CBOE Holdings also proposes to amend Section 10.1 of the Bylaws. Specifically, Section 10.1 currently provides that stockholders of CBOE Holdings may amend the Bylaws, provided that notice of the proposed change was given in the notice of the stockholders meeting at which such action is to be taken. CBOE Holdings proposes to eliminate this requirement as it does not believe it is substantive or necessary. Particularly, CBOE Holdings notes that this requirement is already provided for in Section 2.12 of the Bylaws.[7] Additionally, CBOE Holdings notes that Article Twelfth of the Certificate, which governs amendments of the Bylaws by stockholders of CBOE Holdings, does not include this requirement. Accordingly, and in order to conform Section 10.1 of the Bylaws to Article Twelfth of the Certificate, CBOE Holdings proposes to remove this language from Section 10.1. CBOE Holdings also proposes to amend Section 10.2 of the Bylaws to replace the reference of ''CBOE'' to ''Chicago Board Options Exchange, Incorporated'' to avoid any potential confusion as to what CBOE refers to.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, CBOE Holdings believes that eliminating references in the Certificate that are applicable only in connection with the 2010 IPO removes obsolete language and alleviates potential confusion. Additionally, CBOE Holdings believes the remaining changes to the Certificate are non-substantive and clarifying in nature, which makes the Certificate easier to read and also alleviates potential confusion. The alleviation of potential confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes adopting Article 11 governing the forum for adjudication of disputes alleviates the risk of multi-forum shareholder litigation in which the same claims are litigated in different courts, which can potentially drain corporate resources, increase the distraction and hassle of litigation, and risk inconsistent rulings and judgments. The Exchange believes alleviating potential drain on corporate resources allows the Exchange to direct such resources in administration of the Exchange, enhancing investor protection.

CBOE Holdings believes the remaining changes are either clarifying in nature or reflect current best practices among Delaware corporations in the drafting of their governing documents and thus enhance investor protection by making CBOE Holdings governance documents clearer and easier to understand and in line with current governance best practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the governance of CBOE Holdings and not to the operations of the Exchange, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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

[6] The Exchange notes that pursuant to Section 3.2 of the Bylaws, directors are to be elected annually and thus the term for any Board committee composed exclusively of directors would be for no longer than one year. The Exchange also notes that the terms for members of other Board committees are also not explicitly referenced or included in CBOE Holdings' Bylaws. *See* Article 4, Sections 4.3 (The Audit Committee), 4.4 (The Compensation Committee) and 4.5 (The Nominating and Governance Committee).

[7] *See* Section 2.12 of the Bylaws which provides ''To be in proper written form, a stockholder's notice to the Secretary shall set forth . . . the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment . . .''

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder. 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

- Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2015–092 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–CBOE–2015–092. 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–CBOE–2015–092 and should be submitted on or before November 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27799 Filed 10–30–15; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76283; File No. SR–DTC–2015–010]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Additional Details Regarding the Requirement That Participants Participate in Annual Testing of Business Continuity and Disaster Recovery Plans

October 27, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 [2] thereunder, notice is hereby given that on October 23, 2015, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) [3] of the Act and Rule 19b–4(f)(6) [4] thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a change to DTC's Rule 2 to provide additional details regarding the requirement that Participants participate in annual testing of DTC's business continuity and disaster recovery plans (''BCP Testing''), as more fully described below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend DTC's Rule 2 (Participants and Pledgees) to provide additional details regarding the requirement that DTC Participants participate in DTC's annual BCP Testing. Currently, pursuant to DTC's Rule 2, an applicant for membership with DTC must demonstrate that it has ''adequate personnel capable of handling transactions with the Corporation and adequate physical facilities, books and records and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the Corporation, other Participants and Pledgees with necessary promptness and accuracy and to conform to any condition and requirement which the Corporation reasonably deems necessary for its protection.'' [6] Once a firm becomes a Participant of DTC, DTC Rule 2 provides that Participants may be required to fulfill certain operational testing requirements that may be imposed by DTC to test and monitor the continuing operational capability of the Participants.[7]

Recently, the Commission promulgated Regulation Systems Compliance and Integrity (''Reg. SCI''), which requires DTC to establish standards to designate members [8] and

[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).

[5] Terms not otherwise defined herein have the meaning set forth in DTC's rules, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[6] DTC Rule 2, Section 1(b), *supra,* note 5.

[7] DTC Rule 2, Section 1, *supra,* note 5.

[8] 17 CFR 242.1004(a). In adopting Reg. SCI, the Commission determined not to require covered entities to notify the Commission of its designations or the standards that will be used in designating members, recognizing instead that each entity's standards, designations, and updates, if applicable, would be part of its records and, therefore, available

Continued

requires participation by such designated members in scheduled BCP Testing with DTC on an annual basis.[9] Although DTC already conducts annual BCP Testing with certain Participants,[10] DTC is proposing to amend Rule 2 to further describe DTC's requirement with respect to BCP Testing.

The proposed amendments to Rule 2 would increase transparency regarding BCP Testing, and ensure DTC's practice with respect to such testing is consistent with Reg. SCI by setting forth DTC's rights to: (i) Designate Participants required to participate in BCP Testing using established standards; (ii) determine the scope and reporting of such BCP Testing; and (iii) require Participants to comply with such BCP Testing within specified timeframes. In connection with these proposed amendments, DTC would refine the factors that it currently uses to designate Participants for BCP Testing. For example, while DTC would continue to rely on activity-based thresholds to mandate participation with annual BCP Testing, DTC would also take into account additional factors when designating firms for BCP Testing, including, but not limited to: (i) Significant operational issues of the Participant during the past twelve months; and (ii) past performance of the Participant with respect to BCP Testing. Participants would be informed of the specific standards that would be used by DTC, along with any updates or changes to these standards, which would be applied on a prospective basis, through established methods of communication between DTC and its Participants. Likewise, Participants would be notified in advance that they have been designated to participate in BCP Testing for the upcoming year, and would be provided details concerning the nature of such testing as the particular test plans are determined.

DTC believes the proposed rule change would have no impact on DTC Participants relative to what Participants are currently required to do. As described above, DTC already requires certain Participants to participate in BCP Testing on an annual basis. The proposed rule change would provide further clarity with respect to these requirements for consistency with Reg. SCI.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that DTC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.[11]

Rule 17Ad–22(d)(2), promulgated under the Act, requires DTC to require that its Participants have robust operational capacity to meet obligations arising from participation in the clearing agency, to monitory that its participation requirements are met on an ongoing basis, and to have participation requirements that are objective and publicly disclosed.[12] Rule 17Ad–22(d)(4), promulgated under the Act, requires DTC to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures, and have business continuity plans that allow for timely recovery of operations and fulfillment of the clearing agency's obligations.[13]

Rule 1004(a) and (b) of Reg. SCI requires DTC to establish standards for the designation of those Participants that DTC reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, and to designate Participants pursuant to those standards and require participation by such designated Participants in scheduled BCP Testing annually.[14]

By facilitating the testing of how business continuity and disaster recovery plans function between DTC and its Participants during an emergency, the proposed rule change would facilitate the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest consistent with of the Act. The proposed rule change would provide additional details to DTC's rules regarding the requirement for Participants to take part in its BCP Testing annually, strengthening its compliance with Rule 17Ad–22(d)(2) and (4).[15] Further, the proposed rule change would foster the objectives of the Commission under Reg. SCI by helping to ensure resilient and available markets.[16]

As such, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, Rule 17Ad–22(d)(2) and (d)(4), promulgated under the Act, and Rule 1004(a) and (b) of Reg. SCI, cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would impose any burden on competition because the proposed rule change would apply to all Participants and only provides additional details regarding an existing requirement.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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)[17] of the Act and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

NSCC has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to NSCC, the proposed rule change does not present any novel or controversial issues. Rather, NSCC is merely providing additional details regarding BCP Testing requirements or adding provisions that are consistent with or required by Reg. SCI. Accordingly, the

to the Commission and its staff upon request. *See* Securities and Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (File No. S7–01–13).

[9] 17 CFR 242.1004(a) and (b).

[10] DTC Rule 2, Section 1, *supra,* note 5.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(d)(2).

[13] 17 CFR 240.17Ad–22(d)(4).

[14] 17 CFR 242.1004(a) and (b).

[15] 17 CFR 240.17Ad–22(d)(2) and (4).

[16] 17 CFR 242.1004(a) and (b).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires DTC to give the Commission written notice of DTC's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow NSCC to incorporate changes required under Reg. SCI prior to the November 3, 2015 compliance date. Therefore, the Commission designates the proposed rule change to be operative upon filing.[21]

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–DTC–2015–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2015–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2015–010 and should be submitted on or before November 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27800 Filed 10–30–15; 8:45 am]

BILLING CODE 8011–01–P

[21] 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).

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14501 and #14502]

South Carolina Disaster Number SC–00032

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA–4241–DR), dated 10/15/2015.

Incident: Severe Storms and Flooding.

Incident Period: 10/01/2015 through 10/23/2015.

Effective Date: 10/26/2015.

Physical Loan Application Deadline Date: 12/14/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 07/14/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of South Carolina, dated 10/15/2015, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Allendale, Beaufort, Lancaster, Marlboro.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–27847 Filed 10–30–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14501 and #14502]

South Carolina Disaster Number SC–00032

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA–4241–DR), dated 10/15/2015.

Incident: Severe storms and flooding.

Incident Period: 10/01/2015 through 10/23/2015.

Effective Date: 10/23/2015.

Physical Loan Application Deadline Date: 12/14/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 07/14/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of South Carolina, dated 10/15/2015, is hereby amended to establish the incident period for this disaster as beginning 10/01/2015 and continuing through 10/23/2015.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–27876 Filed 10–30–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14495 and #14496]

SOUTH CAROLINA Disaster Number SC–00031

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4241–DR), dated 10/05/2015.

Incident: Severe Storms and Flooding.

Incident Period: 10/01/2015 through 10/23/2015.

DATES: *Effective Date:* 10/23/2015.

Physical Loan Application Deadline Date: 12/04/2015.

EIDL Loan Application Deadline Date: 07/05/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of SOUTH CAROLINA, dated 10/05/2015 is hereby amended to establish the incident period for this disaster as beginning 10/01/2015 and continuing through 10/23/2015.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–27848 Filed 10–30–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9337]

Contingent Waiver of Certain Sanctions Related to the Joint Comprehensive Plan of Action

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Pursuant to section 11 of Annex V of the Joint Comprehensive Plan of Action (JCPOA), the Secretary of State has issued waivers and made findings with respect to relevant statutory sanctions. The contingent waivers exercised and findings made by the Secretary pertain to certain sanctions provided for in relevant sections of the Iran Freedom and Counter-Proliferation Act of 2012, the Iran Threat Reduction and Syria Human Rights Act of 2012, the National Defense Authorization Act for Fiscal Year 2012, and the Iran Sanctions Act of 1996. These waivers and findings would apply to certain transactions by non-U.S. persons involving Iran that take place after Implementation Day, as set forth in Annex V and the corresponding provisions of Annex II of the JCPOA. The transactions subject to the waivers and findings that the Secretary has issued include: Transactions with Iran's financial and banking sectors, including the Central Bank of Iran; transactions for the provision of underwriting services, insurance, or reinsurance in connection with activities consistent with the JCPOA; transactions with Iran's energy and petrochemical sectors, including the purchase or sale of petroleum, petroleum products, or petrochemicals or investment in or support to those sectors; transactions with Iran's shipping sector; trade with Iran in precious metals and other metals and software for activities consistent with the JCPOA; and trade with and support for Iran's automotive sector.

DATES: The waivers and findings included herein shall take effect upon confirmation by the Secretary of State that Iran has implemented the nuclear-related measures specified in Sections 15.1–15.11 of Annex V of the JCPOA as verified by the International Atomic Energy Agency.

FOR FURTHER INFORMATION CONTACT: Stu Huffman, Office of Economic Sanctions Policy and Implementation, Department of State, Telephone: (202) 647–8848.

SUPPLEMENTARY INFORMATION: The Secretary of State has hereby made the following determinations and certifications:

Pursuant to Sections 1244(i), 1245(g), 1246(e), and 1247(f) of the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XII of Pub. L. 112–239, 22 U.S.C. 8801 *et seq.*) (IFCA), I determine that it is vital to the national security of the United States to waive the imposition of sanctions under the following provisions, to the extent necessary to implement the Joint Comprehensive Plan of Action (JCPOA), including the U.S. commitments with respect to sanctions described in Sections 17.1–17.2 and 17.5 of Annex V of the JCPOA, effective as provided in the last paragraph below:

1. Section 1244(c)(1) of IFCA [1] for:

a. Transactions by non-U.S. persons; [2] and

b. transactions by U.S. persons for the sale of commercial passenger aircraft and spare parts and components for such aircraft, and associated services to Iran as described in Section 5.1.1 of Annex II to the JCPOA, provided that OFAC has issued any required licenses;

excluding any transactions involving persons on OFAC's list of Specially Designated Nationals and Blocked Persons [3] (hereinafter the SDN List);

2. Section 1244(d) of IFCA for transactions by non-U.S. persons, excluding any transactions involving persons on the SDN List;

3. Section 1244(h)(2) of IFCA for transactions by foreign financial institutions, excluding any transactions involving persons on the SDN List;

4. Sections 1245(a)(1)(A) of IFCA for transactions by non-U.S. persons, excluding any transactions involving persons on the SDN List;

5. Sections 1245(a)(1)(B) of IFCA for transactions by non-U.S. persons, excluding any transactions involving persons on the SDN List;

6. Section 1245(a)(1)(C) of IFCA for transactions by non-U.S. persons for the sale, supply, or transfer directly or indirectly to or from Iran of materials described in Section 1245(d), and for associated services, with respect to materials that are:

(a) To be used in connection with the energy, shipping, or shipbuilding sector of Iran, or resold, retransferred, or otherwise supplied to an end user in one or more such sectors;

[1] Pursuant to section 1244(c)(2)(C)(iii) of IFCA, the relevant sanction in Section 1244(c)(1) continues not to apply, by its terms, in the case of Iranian financial institutions that have not been designated for the imposition of sanctions in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, support for international terrorism, or abuses of human rights (as described in section 1244(c)(3)).

[2] For purposes of the waivers set forth herein, the term ''transactions by non-U.S. persons'' includes transactions by non-U.S. entities that are owned or controlled by a U.S. person (''U.S.-owned or controlled foreign entities'') to the extent U.S.-owned or -controlled foreign entities are authorized by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury to engage in such transactions.

[3] On Implementation Day of the JCPOA, individuals and entities identified in Attachment 3 to Annex II of the JCPOA will be removed from the SDN List and, as appropriate, the Foreign Sanctions Evaders List and/or the Non-SDN Iran Sanctions Act List. For transactions with individuals or entities that have been removed from the SDN List but that remain blocked solely pursuant to Executive Order 13599, this waiver applies only if and to the extent necessary to implement the JCPOA, including the U.S. commitments with respect to sanctions described in Sections 17.1–17.2 and 17.5 of Annex V of the JCPOA.

(b) sold, supplied, or transferred to any individual or entity blocked solely pursuant to E.O. 13599, or resold, retransferred, or otherwise supplied to such an individual or entity; and

(c) determined pursuant to Section 1245(e)(3) to be used as described in that section, or resold, retransferred, or otherwise supplied for use in the nuclear program of Iran;

excluding transactions involving: (i) Persons on the SDN List; (ii) the sale, supply, or transfer of materials described in section 1245(d) that have not been approved by the procurement channel established pursuant to paragraph 16 of United Nations Security Council Resolution 2231 and Section 6 of Annex IV of the JCPOA, in cases in which the procurement channel applies; or (iii) the sale, supply, or transfer of materials described in section 1245(d) if the material is sold, supplied, or transferred, or resold, retransferred, or otherwise supplied directly or indirectly, for use in connection with the military or ballistic missile program of Iran;

7. Section 1245(c) of IFCA for transactions by non-U.S. persons that are within the scope of the waivers under Section 1245(a)(1) of IFCA as described in paragraphs 4–6 above, excluding any transactions involving persons on the SDN List;

8. Section 1246(a)(1)(A) of IFCA [4] for the provision of underwriting services or insurance or reinsurance by non-U.S. persons in connection with activities involving Iran that are described in Sections 17.1–17.2 and 17.5 of Annex V of the JCPOA, excluding any transactions involving persons on the SDN List;

9. Section 1246(a)(1)(B)(i) of IFCA for the provision of underwriting services or insurance or reinsurance by non-U.S. persons, excluding any transactions involving persons on the SDN List;

10. Section 1246(a)(1)(B)(ii) of IFCA for the provision of underwriting services or insurance or reinsurance by non-U.S. persons for transactions that are within the scope of the waivers under section 1245(a)(1)(B) and (C) of IFCA as described in paragraphs 5–6 above, excluding any transactions involving persons on the SDN List;

11. Section 1246(a)(1)(C) of IFCA for the provision of underwriting services or insurance or reinsurance by non-U.S. persons to or for any individual or entity blocked solely pursuant to E.O. 13599, excluding any transactions involving persons on the SDN List;

12. Section 1246(a) of IFCA for the provision of underwriting services or insurance or reinsurance by U.S. persons for the sale of commercial passenger aircraft and related parts and services to Iran as described in Section 5.1.1 of Annex II of the JCPOA, provided that OFAC has issued any required licenses, excluding any transactions involving persons on the SDN List; and

13. Section 1247(a) of IFCA [5] to the extent required for transactions by foreign financial institutions, excluding any transactions involving persons on the SDN List.

Pursuant to section 1245(d)(5) of the National Defense Authorization Act for FY 2012 (Pub. L. 112–81), as amended, I determine that it is in the national security interest of the United States to waive the imposition of sanctions under Section 1245(d)(1) to the extent necessary to implement the JCPOA, including the U.S. commitments with respect to sanctions described in Sections 17.1–17.2 and 17.5 of Annex V of the JCPOA, for transactions by foreign financial institutions with the Central Bank of Iran, excluding any transactions involving persons on the SDN List, effective as provided in the last paragraph below.

Pursuant to sections 212(d)(1) and 213(b)(1) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112–158) (TRA) and section 4(c)(1)(A) of the Iran Sanctions Act of 1996 (Pub. L. 104–172, 50 U.S.C. 1701 note) (ISA), I find that it is vital to the national security interests of the United States to issue waivers regarding the application of sanctions under the following provisions for individuals and entities that engage in or propose to engage in the activities described in (1)-(3) below, effective as provided in the last paragraph below:

1. Section 212(a) of the TRA for transactions by non-U.S. nationals in cases where the transactions are for activities described in Sections 4.2.1, 4.3, and 4.4 of Annex II of the JCPOA and do not involve persons on the SDN List.

2. Section 213(a) of the TRA for transactions by non-U.S. nationals in cases where the transactions are for activities described in Section 4.1.5 and 4.1.7 of Annex II of the JCPOA and do not involve persons on the SDN List.

3. Section 5(a) of ISA for transactions by non-U.S. nationals in cases where the transactions are for activities described in Sections 4.2.1, 4.3.1, 4.3.2, 4.3.4, and 4.3.6 of Annex II of the JCPOA and do not involve persons on the SDN List.

The waivers and findings set forth above shall take effect upon confirmation by the Secretary of State that Iran has implemented the nuclear-related measures specified in Sections 15.1–15.11 of Annex V of the JCPOA as verified by the International Atomic Energy Agency.

End of the determinations by the Secretary of State.

Dated: October 23, 2015.

Kurt Tong,

Acting Assistant Secretary for Economic and Business Affairs.

[FR Doc. 2015–27863 Filed 10–30–15; 8:45 am]

BILLING CODE 4710–07–P

[4] Pursuant to section 1246(a)(1)(C) of IFCA, the relevant sanction in section 1246(a)(1) continues not to apply, by its terms, in the case of Iranian financial institutions that have not been designated for the imposition of sanctions in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, support for international terrorism, or abuses of human rights (as described in section 1246(b)).

[5] Pursuant to section 1247(a) of IFCA, the relevant sanction in section 1247(a) still continues not to apply, by its terms, in the case of Iranian financial institutions that have not been designated for the imposition of sanctions in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, support for international terrorism, or abuses of human rights (as described in section 1247(b)).

DEPARTMENT OF STATE

[Public Notice: 9338]

Fine Arts Committee Notice of Meeting

The Fine Arts Committee of the Department of State will meet on November 6, 2015 at 9:00 a.m. in the Thomas Jefferson Room of the Harry S. Truman Building, 2201 C Street NW., Washington, DC. The meeting will last until approximately 3:00 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on June 2, 2015 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2015 through October 31, 2015.

Public access to the Department of State is strictly controlled and space is limited. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office at (202) 647–1990 or send an email to *WallaceJA@State.gov* by October 26th to make arrangements to enter the building. The public may take part in the discussion as long as time permits, and at the discretion of the chairman.

Dated: October 20, 2015.

Marcee Craighill,

Director & Curator, Fine Arts Committee, Department of State.

[FR Doc. 2015–27871 Filed 10–30–15; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA 2015–0233]

Agency Information Collection Activities; Extension of a Currently-Approved Information Collection: Annual Report of Class I and Class II Motor Carriers of Property (OMB 2139–0004)

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, *''Annual Report of Class I and Class II Motor Carriers of Property (formerly OMB 2139–0004),* whose new designation is 2126–0032. This ICR is necessary to ensure that motor carriers comply with FMCSA's financial and operating statistics requirements at chapter III of title 49 CFR part 369 entitled, ''*Reports of Motor Carriers.*'' On August 6, 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 December 2, 2015. 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–2015–0233. 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. Jeff Secrist, Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–385–2367; email *jeff.secrist@dot.gov.* Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Annual Report of Class I and Class II Motor Carriers of Property (formerly OMB Control Number 2139–0004).

New OMB Control Number: 2126–0032.

Type of Request: Extension of a currently-approved information collection.

Respondents: Class I and Class II Motor Carriers of Property and Household Goods.

Estimated Number of Respondents: 308.

Estimated Time per Response: 9 hours.

Expiration Date: January 31, 2016.

Frequency of Response: Annually.

Estimated Total Annual Burden: 2,772 hours [308 respondents × 9 hours to complete form = 2,772].

Background: Section 14123 of title 49 of the United States Code (U.S.C.) requires certain for-hire motor carriers of property and household goods to file annual financial reports. The annual reporting program was implemented on December 24, 1938 (3 FR 3158), and it was subsequently transferred from the Interstate Commerce Commission (ICC) to the Secretary of the U.S. Department of Transportation (DOT) on January 1, 1996. The Secretary of DOT transferred the authority to administer this program to DOT's Bureau of Transportation Statistics (BTS) on December 17, 1996 (61 FR 68162). Annual financial reports are filed on Form M (for-hire property carriers, including household goods carriers) and Form MP–1 (for-hire passenger carriers). Responsibility for collection of the reports was transferred from BTS to FMCSA on August 17, 2004 (69 FR 51009), and the regulations were redesignated as 49 CFR part 369 on August 10, 2006 (71 FR 45740). FMCSA has continued to collect carriers' annual reports and to furnish copies of the reports requested under the Freedom of information Act. Motor carriers (including interstate and intrastate) subject to the Federal Motor Carrier Safety Regulations are classified on the basis of their gross carrier operating revenues.[1]

Under the Financial and Operating Statistics (F&OS) program, FMCSA collects from Class I and Class II property carriers balance sheet and income statement data along with information on safety needs, tonnage, mileage, employees, transportation equipment, and other related data. FMCSA may also ask carriers to respond to surveys concerning their operations. The data and information collected would be made publicly available and used by FMCSA to determine a motor carrier's compliance with the F&OS program requirements prescribed at chapter III of title of 49 CFR part 369.

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: October 26, 2015.

G. Kelly Regal,

Associate Administrator, Office of Research and Information Technology.

[FR Doc. 2015–27880 Filed 10–30–15; 8:45 am]

BILLING CODE 4910–EX–P

[1] For purposes of the Financial and Operating Statistics (F&OS) program, carriers are classified into the following three groups: (1) Class I carriers are those having annual carrier operating revenues (including interstate and intrastate) of $10 million or more after applying the revenue deflator formula as set forth in Note A of 49 CFR 369.2; and (2) Class II carriers are those having annual carrier operating revenues (including interstate and intrastate) of at least $3 million, but less than $10 million after applying the revenue deflator formula as set forth in 49 CFR 369.2.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0071]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 28 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for

various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before December 2, 2015. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0071 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *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:* 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.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 28 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Bruce D. Amundson

Mr. Amundson, 59, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his optometrist stated, ''Bruce Amundson definitely has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Amundson reported that he has driven straight trucks for 43 years, accumulating 215,000 miles, and tractor-trailer combinations for 15 years, accumulating 450,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terry M. Baldwin

Mr. Baldwin, 51, has had optic nerve coloboma and retinal dysplasia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2015, his optometrist stated, ''Since Mr. Baldwin has been living his entire life with this left eye vision deficit, he has obviously made compensatory adaptations to it and has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Baldwin reported that he has driven straight trucks for 12 years, accumulating 124,800 miles. He holds a Class C CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gene B. Clyde

Mr. Clyde, 52, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''In my medical opinion, this patient has been driving for over 30 years and has not had any accidents and therefore would seem his vision is sufficient for commercial driving.'' Mr. Clyde reported that he has driven straight trucks for 27 years, accumulating 675,000 miles, and tractor-trailer combinations for 8 years, accumulating 200,000 miles. He holds a Class AM CDL from New York. His driving record for the last 3 years shows no crashes and 1 conviction for a moving violation in a CMV; he failed to obey a traffic control.

Joseph Coelho Jr.

Mr. Coelho, 55, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his ophthalmologist stated, ''He has had amblyopia of the left eye throughout his life. In my medical opinion, Mr. Coelho is qualified to operate a commercial motor vehicle.'' Mr. Coelho reported that he has driven straight trucks for 38 years, accumulating 380,000 miles, and tractor-trailer combinations for 2 years, accumulating 30,000 miles. He holds a Class A CDL from Rhode Island. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Levi R. Coutcher

Mr. Coutcher, 60, has had optic nerve atrophy in his left eye since 1995. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2015, his optometrist stated, ''In my opinion Levi Coutcher has sufficient vision to perform the tasks required to operate a commercial vehicle safely.'' Mr. Coutcher reported that he has driven straight trucks for 14 years, accumulating 210,000 miles, and tractor-trailer combinations for 14 years,

accumulating 840,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Leonard H. Culbertson

Mr. Culbertson, 58, has optic neuropathy in his left eye due to a traumatic incident in 1995. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2015, his ophthalmologist stated, ''In my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Culbertson reported that he has driven straight trucks for 41 years, accumulating 410,000 miles, and tractor-trailer combinations for 9 years, accumulating 1.13 million miles. He holds a Class B CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Craig L. Dawson, Sr.

Mr. Dawson, 50, has had central scotoma in his left eye since 2008. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2015, his ophthalmologist stated, ''In my medical opinion, Mr. Dawson does have sufficient vision to operate a commercial vehicle.'' Mr. Dawson reported that he has driven straight trucks for 25 years, accumulating 500,000 miles, and tractor-trailer combinations for 25 years, accumulating 3 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jason R. Gast

Mr. Gast, 36, has a detached retina with subsequent repair in his right eye due to a traumatic incident in 2000. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''Therefore it is my medical opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gast reported that he has driven straight trucks for 14 years, accumulating 26,000 miles, and tractor-trailer combinations for 2 years, accumulating 4,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Nirmal S. Gill

Mr. Gill, 50, has had esotropia and strabismic amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''Patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gill reported that he has driven tractor-trailer combinations for 15 years, accumulating 1.2 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert C. Green, Jr.

Mr. Green, 58, has a prosthetic left eye due to a traumatic incident in 1960. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''He has sufficient vision to perform all driving tasks required to operate a commercial vehicle.'' Mr. Green reported that he has driven straight trucks for 28 years, accumulating 21,840 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Stanley Grubb

Mr. Grubb, 62, has had refractive amblyopia in his left eye since 2002. The visual acuity in his right eye is 20/25, and in his left eye, 20/800. Following an examination in 2015, his optometrist stated, ''Patient has sufficient vision to drive a commercial vehicle.'' Mr. Grubb reported that he has driven straight trucks for 43 years, accumulating 774,000 miles, and tractor-trailer combinations for 43 years, accumulating 1.29 million miles. He holds a Class DA CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Louis M. Hankins

Mr. Hankins, 53, has had a prosthetic left eye due to a traumatic incident in 2001. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his ophthalmologist stated, ''I understand he has been driving on a CDL . . . He has 110+ degrees of visual field on his right side. With side mirrors he should be able to continue to drive without difficulty.'' Mr. Hankins reported that he has driven tractor-trailer combinations for 31 years, accumulating 2.64 million miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Nathan H. Jacobs

Mr. Jacobs, 60, has had esotropia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''I certify that in my medical opinion does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Jacobs reported that he has driven tractor-trailer combinations for 34 years, accumulating 51,000 miles. He holds an operator's license from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Danny L. Keplinger

Mr. Keplinger, 55, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my professional opinion, Mr. Keplinger has sufficient vision to operate a commercial vehicle.'' Mr. Keplinger reported that he has driven tractor-trailer combinations for 14 years, accumulating 728,000 miles. He holds a Class AM CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kimber S. Krushinski

Mr. Krushinski, 58, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''US Dept. Transportation . . . Horizontal visual field is satisfactory for driving.'' Mr. Krushinski reported that he has driven straight trucks for 20 years, accumulating 680,000 miles. He holds an operator's license from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Carmelo Lana

Mr. Lana, 63, has had myopic degeneration and amblyopia in his left eye since birth. The visual acuity in his right eye is 20/25, and in his left eye, counting fingers. Following an examination in 2015, his ophthalmologist stated, ''Myopic Degeneration Left and—congenital/stable [*sic*] . . . Approved to operate commercial vehicle.'' Mr. Lana reported that he has driven straight trucks for 43 years, accumulating 2.15 million miles,

and tractor-trailer combinations for 43 years, accumulating 2.15 million miles. He holds an operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith A. Lang

Mr. Lang, 42, has a prosthetic left eye due to a traumatic incident in 1997. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''With best corrected vision of 20/20 -1 in the right eye and appropriate spectacle correction, pt. [*sic*] is able to operate a commercial vehicle.'' Mr. Lang reported that he has driven straight trucks for 6 years, accumulating 300,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Nathan D. Langham

Mr. Langham, 56, has a chorioretinal scar in his right eye due to a traumatic incident in 1990. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''I certify that Nate Langham has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Langham reported that he has driven straight trucks for 10 years, accumulating 15,000 miles, and tractor-trailer combinations for 15 years, accumulating 142,500 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael S. Lewis

Mr. Lewis, 49, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/15. Following an examination in 2015, his optometrist stated, ''It is my medical opinion that Mr [*sic*] Lewis has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lewis reported that he has driven tractor-trailer combinations for 27 years, accumulating 1.27 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Hector J. Lopez

Mr. Lopez, 60, has had macular degeneration in his left eye since 1995. The visual acuity in his right eye is 20/25, and in his left eye, 20/400. Following an examination in 2015, his optometrist stated, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle at this time.'' Mr. Lopez reported that he has driven tractor-trailer combinations for 23 years, accumulating 2.4 million miles. He holds an operator's license from North Carolina. His driving record for the last 3 years shows no crashes and 1 conviction for a moving violation in a CMV; he failed to obey a traffic sign.

John V. Narretto, Jr.

Mr. Narretto, 65, has had a retinal detachment in his left eye since 2005. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2015, his ophthalmologist stated, ''I, Dr. David Fargason, certify in my medical opinion that Mr. Narretto has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Narretto reported that he has driven straight trucks for 32 years, accumulating 384,000 miles. He holds a Class A CDL from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Branden J. Ramos

Mr. Ramos, 32, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/30. Following an examination in 2015, his optometrist stated, ''In my medical opinion, I feel Mr. Ramos has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ramos reported that he has driven tractor-trailer combinations for 3 years, accumulating 904,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Sonny Scott

Mr. Scott, 46, has had an ocular aneurysm in his right eye since 1990. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''It is my medical opinion that Mr. Scott has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Scott reported that he has driven straight trucks for 18 years, accumulating 337,500 miles. He holds an operator's license from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jarrod R. Seirer

Mr. Seirer, 31, has complete loss of vision in his left eye due to a traumatic incident in 2009. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''In my medical opinion, Mr. Jarrod Seirer has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Seirer reported that he has driven straight trucks for 1 year, accumulating 75,000 miles, and tractor-trailer combinations for 11 years, accumulating 1.71 million miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Vince A. Thompson

Mr. Thompson, 28, has had refractive amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2015, his optometrist stated, ''Due to his refractive amblyopia the best corrected acuity in the left eye is reduced, but this does not pose a problem at this time. I would recommend yearly eye exams and see no restrictions concerning his ability to safely operate a commercial motor vehicle.'' Mr. Thompson reported that he has driven straight trucks for 4 years, accumulating 120,000 miles, and tractor-trailer combinations for 4 years, accumulating 120,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel R. Viscaya

Mr. Viscaya, 53, has had a retinal detachment in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''This patient can distinguish between red and green signals and also has sufficient vision in order to operate a commercial vehicle.'' Mr. Viscaya reported that he has driven straight trucks for 18 years, accumulating 2.16 million miles, and tractor-trailer combinations for 18 years, accumulating 2.16 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Carlos Vives

Mr. Vives, 32, has had a cataract in his right eye since childhood. The visual acuity in his right eye is 20/150,

and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Although the vision in his right eye is reduced, I believe that he has enough peripheral awareness and adequate central vision in the left eye to drive a commercial vehicle safely.'' Mr. Vives reported that he has driven straight trucks for 3 years, accumulating 136,500 miles. He holds an operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Otis H. Wright Jr.

Mr. Wright, 58, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''I do not foresee any visual problems with Mr. Wright that would make him unable to operate a commercial vehicle: Also, he has stated to never have had any problems in the past when operating a commercial vehicle.'' Mr. Wright reported that he has driven straight trucks for 7 years, accumulating 84,000 miles. He holds an operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2015–0071 in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number FMCSA–2015–0071 in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: October 21, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–27879 Filed 10–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0070]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 36 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before December 2, 2015. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0070 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *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:* 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.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5

p.m., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 36 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Raymond H. Annis

Mr. Annis, 72, has had pseudophakia and macular degeneration in his right eye since 2013. The visual acuity in his right eye is 20/70, and in his left eye, 20/40. Following an examination in 2015, his ophthalmologist stated, ''The above mentioned are the results of his testing, Given these results, it is my medical opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Annis reported that he has driven straight trucks for 2 years, accumulating 30,000 miles, and tractor-trailer combinations for 29 years, accumulating 3.48 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph A. Basista

Mr. Basista, 51, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my opinion, Mr. Basista has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Basista reported that he has driven straight trucks for 26 years, accumulating 130,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James T. Bauer

Mr. Bauer, 76, has had a retinal vein occlusion in his left eye since 1994. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2015, his optometrist stated, ''In my medical opinion, Mr. Bauer has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bauer reported that he has driven straight trucks for 37 years, accumulating 444,000 miles. He holds a Class BM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Duane W. Brzuchalski

Mr. Brzuchalski, 55, has had a chronic retinal detachment in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''It is my medical opinion that Duane Brzuchalski has sufficient vision and visual ability to safely operate a commercial vehicle.'' Mr. Brzuchalski reported that he has driven straight trucks for 10 years, accumulating 450,000 miles, and tractor-trailer combinations for 24 years, accumulating 1.68 million miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John D. Burns Jr.

Mr. Burns, 51, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/30, and in his left eye, counting fingers. Following an examination in 2015, his ophthalmologist stated, ''He has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Burns reported that he has driven straight trucks for 30 years, accumulating 660,000 miles. He holds an operator's license from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Stephen J. Calandrino

Mr. Calandrino, 59, has had strabismic amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/25. Following an examination in 2015, his optometrist stated, ''He undoubtedly has sufficient vision to perform the driving tasks needed to operate a commercial vehicle.'' Mr. Calandrino reported that he has driven straight trucks for 20 years, accumulating 300,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randall S. Canedy

Mr. Canedy, 63, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my opinion when wearing his glasses Mr. Canedy has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Canedy reported that he has driven tractor-trailer combinations for 31 years, accumulating 1.4 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rufus A. Dennis

Mr. Dennis, 68, has complete loss of vision in his left eye due to a traumatic incident at birth. The visual acuity in his right eye is 20/25, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''External examination of Mr. Dennis' left eye revealed that the cornea in his left eye is opacified, his pupil is irregular, miotic, and displaced infero-nasally . . . Mr. Dennis stated that he has had a commercial drivers [sic] license for at least 30–35 years with this condition. I see no reason why he shouldn't be granted his health card at the present time.'' Mr. Dennis reported that he has driven straight trucks for 15 years, accumulating 480,000 miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David Diamond

Mr. Diamond, 44, has had refractive amblyopia in his right eye since birth. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my opinion, David has sufficient vision to perform driving tasks required to operate a commercial vehicle.''

Mr. Diamond reported that he has driven straight trucks for 22 years, accumulating 77,000 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David D. Frey

Mr. Frey, 71, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50,

and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my opinion, this patient has sufficient vision to operate a commercial vehicle.'' Mr. Frey reported that he has driven straight trucks for 25 years, accumulating 1 million miles. He holds an operator's license from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jason T. Glaude

Mr. Glaude, 41, has had a partial coloboma of optic nerve in his left eye since birth. The visual acuity in his right eye is 20/15, and in his left eye, 20/50. Following an examination in 2015, his optometrist stated, ''Jason certainly satisfies the requirements to legally drive and operate a commercial vehicle and his reduced acuity in the left eye is stable and poses no risks.'' Mr. Glaude reported that he has driven straight trucks for 15 years, accumulating 750,000 miles. He holds a Class B CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Patrick Griffin

Mr. Griffin, 39, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my opinion he does have good enough vision, visual fields, and visual sensory functioning to safely operate a commercial vehicle.'' Mr. Griffin reported that he has driven straight trucks for 18 years, accumulating 1.7 million miles. He holds an operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roger J. Hansen

Mr. Hansen, 60, has had a branch retinal artery occlusion in his left eye since 2005. The visual acuity in his right eye is 20/25, and in his left eye, 20/150. Following an examination in 2015, his ophthalmologist stated, ''In the doctor's medical opinion, Mr. Hansen has perfect vision and visual function in his right eye to drive safely and he has been driving safely in the past 10 years with some deficit in his left eye . . . If he has been granted to operate commercial vehicles in the past, I do not see a reason to not grant him to do so now.'' Mr. Hansen reported that he has driven straight trucks for 14 years, accumulating 1.19 million miles. He holds an operator's license from Wisconsin. His driving record for the last 3 years shows one crash, to which he did not contribute and for which he was not cited, and one conviction for a moving violation in a CMV; he exceeded the speed limit by 11 mph.

Elvin M. Hursh

Mr. Hursh, 71, has had a prosthetic right eye since 1995. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my opinion, Mr. Hursh has the acuity, visual field, and color vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hursh reported that he has driven straight trucks for 9 years, accumulating 27,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Tommy R. Jefferies

Mr. Jefferies, 48, has had refractive amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, ''In my medical opinion, Mr. Jefferies has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Jefferies reported that he has driven straight trucks for 19 years, accumulating 741,000 miles. He holds a Class E CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey A. Keefer

Mr. Keefer, 53, has a corneal scar in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/15. Following an examination in 2015, his optometrist stated, ''In my medical opinion, Mr. Keefer has sufficient vision to perform the driving tasks associated with driving a commercial vehicle.'' Mr. Keefer reported that he has driven straight trucks for 36 years, accumulating 162,000 miles, and tractor-trailer combinations for 30 years, accumulating 99,000 miles. He holds a Class D CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dale R. Knuppel

Mr. Knuppel, 60, has had macular edema in his right eye since 2004. The visual acuity in his right eye is 20/150, and in his left eye, 20/30. Following an examination in 2015, his optometrist stated, ''I hereby certify that in my medical opinion, the applicant has sufficient vision to perform the driving tasks required to safely operate a commercial motor vehicle (CMV).'' Mr. Knuppel reported that he has driven tractor-trailer combinations for 39 years, accumulating 1.76 million miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 14 mph.

James J. Kopesky

Mr. Kopesky, 58, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''I certify that in my professional opinion, Mr. James Kopesky has sufficient vision to perfom [sic] the driving tasks required to operate a commercial vehicle.'' Mr. Kopesky reported that he has driven straight trucks for 25 years, accumulating 1.875 million miles. He holds an operator's license from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard W. Korthanke

Mr. Korthanke, 61, has had a retinal detachment in his right eye since 2013. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''Richard has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Korthanke reported that he has driven straight trucks for 14 years, accumulating 42,000 miles, and tractor-trailer combinations for 14 years, accumulating 70,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William E. Leimkuehler

Mr. Leimkuehler, 63, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/1250. Following an examination in 2015, his optometrist stated, ''His vision is clear and sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Leimkuehler reported that he has driven straight trucks for 28 years, accumulating 1.4 million miles, and tractor-trailer combinations for 14 years, accumulating 980,000 miles. He holds a Class AM1

CDL from California. His driving record for the last 3 years shows one crash, to which he contributed to by unsafe starting, and no convictions for moving violations in a CMV.

Michael R. Letson

Mr. Letson, 54, has had complete loss of vision in his right eye since birth. The visual acuity in his right eye is no light perception, and in his left eye, 20/15. Following an examination in 2015, his ophthalmologist stated, ''He has 130 degrees of vision in the left eye, and it is my opinion that Mr. Letson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Letson reported that he has driven straight trucks for 4 years, accumulating 96,000 miles. He holds an operator's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jose A. Marco

Mr. Marco, 50, has had amblyopia secondary to a mild corneal leukoma in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''He does have amblyopia in his right eye which accounts for the visual loss secondary to a mild corneal leukoma . . . This suggests he should not be denied a commercial driver's license with the appropriate considerations listed above.'' Mr. Marco reported that he has driven straight trucks for 29 years, accumulating 1.51 million miles, tractor-trailer combinations for 29 years, accumulating 1.51 million miles, and buses for 15 years, accumulating 150,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Cole W. McLaughlin

Mr. McLaughlin, 27, has complications due to fibrovascular ingrowth in his left eye due to a traumatic incident in 2011. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2015, his ophthalmologist stated, ''In my opinion, I do believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. McLaughlin reported that he has driven straight trucks for 5 years, accumulating 1,250 miles, tractor-trailer combinations for 5 years, accumulating 40,000 miles, and buses for 5 years, accumulating 500 miles. He holds a Class A CDL from South Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Javier R. Morales

Mr. Morales, 48, has had a macular scar in his right eye since 2000. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''In my opinion he has sufficient vision to preform driving tasks required to operate a commercial vehicle.'' Mr. Morales reported that he has driven straight trucks for 23 years, accumulating 460,000 miles. He holds a Class B CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Clarence L. Ogle

Mr. Ogle, 63, has had refractive amblyopia in his right eye since birth. The visual acuity in his right eye is 20/300, and in his left eye, 20/25. Following an examination in 2015, his optometrist stated, ''It is my opinion that refractive amblyopia for Mr. Ogle does not affect his ability to drive. I think he can perform the task of operating a commercial vehicle without restriction.'' Mr. Ogle reported that he has driven straight trucks for 45 years, accumulating 562,500 miles, and tractor-trailer combinations for 18 years, accumulating 1.26 million miles. He holds a Class A CDL from South Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roy A. Quesada

Mr. Quesada, 43, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''Based on these findings and in my experience as a physician, he has sufficient vision to operate a commercial vehicle.'' Mr. Quesada reported that he has driven straight trucks for 21 years, accumulating 210,000 miles, and tractor-trailer combinations for 21 years, accumulating 210,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rafael Quintero

Mr. Quintero, 51, has had complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''He does perceive light and balance through the eye and is capable of a binocular field and should perform adequately as a truck driver.'' Mr. Quintero reported that he has driven straight trucks for 3 years, accumulating 15,000 miles, and tractor-trailer combinations for 18 years, accumulating 2.25 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 10 percent or more.

Clark M. Robinson

Mr. Robinson, 63, has had macular degeneration in his left eye since 2010. The visual acuity in his right eye is 20/25, and in his left eye, hand motion. Following an examination in 2015, his optometrist stated, ''It is my opinion at this time, that Mr. Robinson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Robinson reported that he has driven straight trucks for 40 years, accumulating 1.2 million miles, and tractor-trailer combinations for 40 years, accumulating 2 million miles. He holds an operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald L. Schoendienst

Mr. Schoendienst, 61, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated that Mr. Schoendienst does have sufficient vision to perform the driving tasks required to operate a CMV. Mr. Schoendienst reported that he has driven straight trucks for 6 years, accumulating 165,000 miles. He holds a Class B CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wesley C. Slattery

Mr. Slattery, 49, has had anisotropic amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2015, his optometrist stated, ''I feel he does have sufficient vision to perform all driving tasks required to operate a commercial vehicle.'' Mr. Slattery reported that he has driven straight trucks for 37 years, accumulating 259,000 miles, and tractor-trailer combinations for 22 years,

accumulating 308,000 miles. He holds an operator's license from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James J. Slemmer, Jr.

Mr. Slemmer, 73, has a prosthetic right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''I, Lou Mastrian OD, certify that James Slemmer has sufficient vision to perform the driving tasks required to operate a commercial vehicle based on the findings from his examination on May 7, 2015.'' Mr. Slemmer reported that he has driven straight trucks for 54 years, accumulating 350,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey W. Smith

Mr. Smith, 68, has had Best disease in the macula of his right eye since 2002. The visual acuity in his right eye is 20/100, and in his left eye, 20/25. Following an examination in 2015, his optometrist stated, ''It appears to be stable in both eyes at this time. It appears he is doing fine at this time and would be able to drive a commercial vehicle.'' Mr. Smith reported that he has driven buses for 5 years, accumulating 12,500 miles. He holds a Class C CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark R. Stevens

Mr. Stevens, 56, has aniridia, bullous keratopathy, aphakia, and exotropia in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/15. Following an examination in 2015, his ophthalmologist stated, ''In my opinion, Mr. Stevens has sufficient visual function to perform the driving tasks required to operate a commercial vehicle.'' Mr. Stevens reported that he has driven tractor-trailer combinations for 30 years, accumulating 1.5 million miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevin A. Szafranski

Mr. Szafranski, 33, has a retinal detachment in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my medical opinion, Kevin has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Szafranski reported that he has driven straight trucks for 3 years, accumulating 31,200 miles. He holds a Class B CDL from North Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerry W. Talbott

Mr. Talbott, 53, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his ophthalmologist stated, ''In my medical opinion, Mr. Talbott has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Talbott reported that he has driven straight trucks for 35 years, accumulating 3.5 million miles, and tractor-trailer combinations for 10 years, accumulating 1.25 million miles. He holds a Class AM CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Raymond W. Teemer

Mr. Teemer, 31, has hypertropia and exotropia in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his ophthalmologist stated, ''In summary, this patient is a monocular status patient, and has been operating a commercial vehicle for five years without incident.'' Mr. Teemer reported that he has driven straight trucks for 4.5 years, accumulating 42,750 miles. He holds an operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2015–0070 in the ''Keyword'' box, and click ''Search. When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. . If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number FMCSA–2015–0070 in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: October 22, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–27882 Filed 10–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2003–14223; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2011–0275; FMCSA–2011–0276; FMCSA–2011–26690; FMCSA–2013–0022; FMCSA–2013–0166; FMCSA–2013–0169]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 99 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: Each group of renewed exemptions are effective from the dates stated in the discussions below. Comments must be received on or before December 2, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–1999–5578; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2003–14223; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2011–0275; FMCSA–2011–0276; FMCSA–2011–26690; FMCSA–2013–0022; FMCSA–2013–0166; FMCSA–2013–0169], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *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:* 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.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 99 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 99 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. Each individual is identified according to the renewal date.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. The following group(s) of drivers will receive renewed exemptions effective in the month of December and are discussed below.

As of December 5, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 17 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (66 FR 17743; 66

FR 33990; 68 FR 10301; 68 FR 19596; 68 FR 35772; 68 FR 52811; 68 FR 61860; 70 FR 25878; 70 FR 33937; 70 FR 61165; 72 FR 32705; 72 FR 46261; 72 FR 54972; 72 FR 58359; 72 FR 58362; 72 FR 67344; 74 FR 26461; 74 FR 26464; 74 FR 34630; 74 FR 43217; 74 FR 53581; 74 FR 57551; 74 FR 57553; 76 FR 25766; 76 FR 34135; 76 FR 37168; 76 FR 37885; 76 FR 54530; 76 FR 64169; 76 FR 64171; 76 FR 66123; 76 FR 70212; 76 FR 75943; 78 FR 12815; 78 FR 22602; 78 FR 62935; 78 FR 65032; 78 FR 68137; 78 FR 76395; 78 FR 77782; 78 FR 78477):

Daniel F. Albers (CA)
Keith Bell (FL)
Kevin G. Clem (SD)
David N. Cleveland (ME)
David J. Comeaux (LA)
Tommy R. Crouse (LA)
Albion C. Doe, Sr. (NH)
Mark D. Kraft (IL)
Rocky J. Lachney (LA)
Chase L. Larson (WA)
Herman G. Lovell (OR)
Danny C. Pope (IL)
James B. Prunty (WV)
Rick E. Smith (IL)
Robert E. Smith (CT)
Fred L. Stotts (OK)
Randell K. Tyler (AL)

The drivers were included in one of the following dockets: Docket Nos. FMCSA–2001–9258; FMCSA–2003–14223; FMCSA–2003–15892; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2009–0121; FMCSA–2009–0206; FMCSA–2011–0092; FMCSA–2011–26690; FMCSA–2013–0022; FMCSA–2013–0166. Their exemptions are effective as of December 5, 2015 and will expire on December 5, 2017.

As of December 6, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 7 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (70 FR 57353; 70 FR 72689; 72 FR 62897; 74 FR 43217; 74 FR 57551; 74 FR 60021; 76 FR 70210; 78 FR 66099):

John E. Bell (AZ)
Henry L. Chastain (GA)
Thomas R. Crocker (SC)
Thomas C. Meadows (NC)
David A. Morris (TX)
Richard P. Stanley (MA)
Scott A. Tetter (IL)

The drivers were included in one of the following dockets: Docket No. FMSCA–2005–22194; FMCSA–2009–0206. Their exemptions are effective as of December 6, 2015 and will expire on December 6, 2017.

As of December 13, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual, Bernard T. Gillette (PA), has satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 62935; 78 FR 76395).

The driver was included in the following docket: Docket No. FMCSA–2013–0166. The exemption is effective as of December 13, 2015 and will expire on December 13, 2017.

As of December 17, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 8 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 62935; 78 FR 76395):

Herbert R. Benner (ME)
Steven M. Hoover (IL)
Lewis J. Johnson (PA)
Michael E. Miles (IL)
Carlos A. Osollo (NM)
Henry D. Smith (NC)
Kolby W. Strickland (WA)
Cesar Villa (NM)

The drivers were included in one of the following dockets: Docket No. FMCSA–2013–0166. Their exemptions are effective as of December 17, 2015 and will expire on December 17, 2017.

As of December 22, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 5 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (72 FR 58362; 72 FR 67344; 74 FR 57553; 76 FR 49528; 76 FR 61143; 76 FR 64164; 76 FR 67248; 76 FR 70212; 76 FR 75940; 76 FR 79761; 78 FR 67460):

Frank E. Johnson, Jr. (FL)
Todd A. McBrain (OK)
Robert E. Morgan, Jr. (GA)
David M. Taylor (MO)
James D. Zimmer (OH)

The drivers were included in one of the following dockets: Docket No. FMCSA–2007–29019; FMCSA–2011–0142; FMCSA–2011–0275; FMCSA–2011–0276. Their exemptions are effective as of December 22, 2015 and will expire on December 22, 2017.

As of December 24, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 38 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 64274; 78 FR 77778):

Lawrence A. Angle (MO)
Ernest J. Bachman (PA)
Wayne Barker (OK)
Eugene R. Briggs (MI)
Matthew S. Burns (OH)
Ryan J. Burnworth (MO)
Michael D. Champion (VT)
Kevin J. Cobb (PA)
Lee A. DeHaan (SD)
Bradley R. Dishman (KY)
Matthew Eck (PA)
Christopher T. Faber (FL)
Gregory K. Frazier (GA)
John E. Gannon, Jr. (NV)
Thomas G. Gholston (MS)
David B. Jones (FL)
Thomas L. Kitchen (VA)
David G. Lamborn (ND)
Luther D. Long (GA)
George Malivuk (WI)
Stephen R. Marshall (MS)
Edgar H. Meraz (NM)
Chad A. Miller (IA)
William L. Paschall (MD)
Kerry R. Powers (IN)
Glennis R. Reynolds (KY)
Noel S. Robbins (PA)
Joseph Saladino (FL)
Raymond C. Schultz (OH)
Eugene D. Self, Jr., James A. Shepard (NY)
Darren B. Shields (NV)
Roye T. Skelton (MS)
Mark P. Thiboutot (NH)
Robert Thomas (PA)
Herman D. Truewell (FL)
Donald L. Urmston (OH)
Janusz K. Wis (IL)

The drivers were included in one of the following dockets: Docket No. FMCSA–2013–0169. Their exemptions are effective as of December 24, 2015 and will expire on December 24, 2017.

As of December 27, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 17 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 53826; 66 FR 63289; 66 FR 66966; 67 FR 10471; 67 FR 19798; 68 FR 64944; 68 FR 69434; 69 FR 19611; 70 FR 48797; 70 FR 53412; 70 FR 57353; 70 FR 61493; 70 FR 67776; 70 FR 72689; 70 FR 74102; 72 FR 39879; 72 FR 52422; 74 FR 37295; 74 FR 48343; 74 FR 49069; 74 FR 60021; 76 FR 75942; 78 FR 67452):

Anthony Brandano (MA)
Stanley E. Elliott (UT)
Elmer E. Gockley (PA)
Danny R. Gray (OK)
Glenn T. Hehner (KY)
Vladmir M. Kats (NC)
Alfred Keehn (AZ)
Randall B. Laminack (TX)
Robert W. Lantis (MT)
Jerry J. Lord (PA)
Ronald S. Mallory (OK)
Eldon Miles (IN)
Neal A. Richard (LA)
Rene R. Trachsel (OR)
Stanley W. Tyler, Jr. (NC)
Kendle F. Waggle, Jr. (IN)
DeWayne Washington (NC)

The drivers were included in one of the following dockets: Docket No. FMCSA–1999–5578; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–

2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2009–0154. Their exemptions are effective as of December 27, 2015 and will expire on December 27, 2017.

As of December 31, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 6 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (66 FR 53826; 66 FR 66966; 68 FR 61857; 68 FR 69434; 68 FR 75715; 70 FR 74102; 71 FR 646; 72 FR 71993; 72 FR 71998; 74 FR 65846; 76 FR 78729; 78 FR 67454; 78 FR 67462; 79 FR 4803):

Martiniano L. Espinosa (FL)
Dustin K. Heimbach (PA)
James G. LaBair (MI)
Lonnie Lomax, Jr. (IL)
Eugene C. Murphy (FL)
John H. Voigts (AZ).

The drivers were included in one of the following dockets: Docket No. FMCSA–2001–10578; FMCSA–2003–16241. Their exemptions are effective as of December 31, 2015 and will expire on December 31, 2017.

Each of the 99 applicants listed in the groups above has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 2, 2015.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 99 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–1999–5578; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2003–14223; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2011–0275; FMCSA–2011–0276; FMCSA–2011–26690; FMCSA–2013–0022; FMCSA–2013–0166; FMCSA–2013–0169 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–1999–5578; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2003–14223; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2011–0275; FMCSA–2011–0276; FMCSA–2011–26690; FMCSA–2013–0022; FMCSA–2013–0166; FMCSA–2013–0169 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: October 21, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–27884 Filed 10–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0081; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2006 Mercedes-Benz SL Passenger Cars (Manufactured Before September 1, 2006) Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that

nonconforming 2006 Mercedes-Benz SL passenger cars (manufactured before September 1, 2006) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2006 Mercedes-Benz SL that was manufactured before September 1, 2006) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 2, 2015.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC of Baltimore (JK), Maryland (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2006 Mercedes-Benz SL passenger cars (manufactured before September 1, 2006) are eligible for importation into the United States. The vehicles which JK believes are substantially similar are 2006 Mercedes-Benz SL passenger cars (manufactured before September 1, 2006) that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2006 Mercedes-Benz SL passenger cars (manufactured before September 1, 2006) to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

JK submitted information with its petition intended to demonstrate that non-U.S. certified 2006 Mercedes-Benz SL passenger cars (manufactured before September 1, 2006), as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2006 Mercedes-Benz SL passenger cars (manufactured before September 1, 2006) are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses, 109 New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Replacement of the instrument cluster with a U.S.-model component and reprogramming the unit to activate required safety systems.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Replacement of the headlamps, side marker lamps, and tail lamps with U.S.-model components.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the

required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection and Rollaway Prevention:* Reprogramming the vehicle computer to activate safety systems.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Reprogramming of the vehicle computer.

Standard No. 138 *Tire Pressure Monitoring Systems:* Addition of OEM tire pressure monitoring system using OEM parts and programs.

Standard No. 208 *Occupant Crash Protection:* Reprogramming in order to activate audible warning system. Installation of U.S.-Model front cross member and knee bolsters.

Standard No. 209 *Seat Belt Assemblies:* Installation of U.S.-model passenger seat belt.

Standard No. 301 *Fuel System Integrity:* Inspection of all vehicles and replacement of any non U.S.-model fuel system components with U.S.-model components as necessary to conform to the requirements of the standard.

Standard No. 401 *Interior Trunk Release:* Installation of U.S.-model interior trunk release components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–27824 Filed 10–30–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2015–0209; Notice No. 15–21]

Hazardous Materials: Explosive Approvals—Compliance With Special Provision 347

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Proposed termination of explosive approvals.

SUMMARY: PHMSA proposes to terminate the explosive approvals listed herein. PHMSA, via certified mail, attempted to contact all of the below listed approval holders during the month of October 2014. The certified letters were titled ''Hazardous Materials Safety Law Division, Letter of Warning: Test Series 6(d) requirements for Division 1.4S Explosive Approvals.'' The certified letters requested that the approval holders notify PHMSA within 30 days with their intent with respect to the approvals. They were given the options to provide evidence of UN 6(d) testing, request a reassignment of the EX number to a higher compatibility group than ''S'', or request termination. To date, no correspondence has been received by PHMSA concerning the below listed explosive approval numbers.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Correspondence with respect to the below listed explosive approval numbers should be sent to *explo@dot.gov,* subject line—''UN 6(d) Testing'' or respond to the listed address for Mr. Ryan Paquet.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this notice, PHMSA's Office of Hazardous Materials Safety (OHMS) is proposing to terminate the approvals listed below for the approval holders' failure to provide PHMSA with evidence that UN 6(d) testing has been performed in accordance with 49 CFR 172.102(c)(1) (Special Provision 347) or requesting a reassignment of the EX number to a higher compatibility group other than ''S''.

II. Background

On January 19, 2011, PHMSA published a final rule (76 FR 3308; HM–215K) titled *''Hazardous Materials: Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air''.* The final rule amended Special Provision 347 to require successful testing according to UN Test Series 6(d) of Part I of the UN Manual of Tests and Criteria. This change affected explosives classified as Division 1.4S, and impacted eight UN Numbers, including: UN0323, UN0366, UN0441, UN0445, UN0455, UN0456, UN0460, and UN0500. This requirement became effective for transportation by aircraft on July 1, 2011, for transportation by vessel on January 1, 2012, and for domestic highway and rail transportation on January 1, 2014. PHMSA has no records of the required UN 6(d) testing for the below listed EX numbers.

III. Action

PHMSA will terminate the below listed approvals 30 days after this notice is published in the **Federal Register**, unless the holder requests reconsideration as outlined in 49 CFR 107.715.

IV. Approvals Scheduled for Termination

EX No.	Holder/company
EX1986060084	Overland Aviation Services Company, Inc.
EX1986060085	Overland Aviation Services Company, Inc.
EX1986060086	Overland Aviation Services Company, Inc.
EX1986060087	Overland Aviation Services Company, Inc.
EX1986060088	Overland Aviation Services Company, Inc.
EX1986060089	Overland Aviation Services Company, Inc.
EX1986060090	Overland Aviation Services Company, Inc.
EX1986060091	Overland Aviation Services Company, Inc.
EX1986060092	Overland Aviation Services Company, Inc.
EX1986060093	Overland Aviation Services Company, Inc.
EX1986060094	Overland Aviation Services Company, Inc.
EX1986060095	Overland Aviation Services Company, Inc.

EX No.	Holder/company
EX1986060096	Overland Aviation Services Company, Inc.
EX1986060097	Overland Aviation Services Company, Inc.
EX1986060098	Overland Aviation Services Company, Inc.
EX1986060099	Overland Aviation Services Company, Inc.
EX1986060100	Overland Aviation Services Company, Inc.
EX1986060101	Overland Aviation Services Company, Inc.
EX1986060102	Overland Aviation Services Company, Inc.
EX1986060103	Overland Aviation Services Company, Inc.
EX1987020126	Hi-Shear Technology Corporation.
EX1987030332A	Teledyne McCormick Selph.
EX1987060024	BAE Systems (formerly Tracor Aerospace, Inc.—Arkansas Operations).
EX1987060025	BAE Systems (formerly Tracor Aerospace, Inc.—Arkansas Operations).
EX1987070074	Morton Thiokol, Inc.—Elkton Division.
EX1987070148	Stresau Laboratory, Inc.
EX1987090043	Accurate Energetic Systems, LLC.
EX1987100321	Irvin Industries, Inc.
EX1987110222	Kidde Fenwal (formerly, Fenwal Safety Systems, Inc.).
EX1988030074	Armor Holding, Inc. Co.
EX1988030075	Armor Holding, Inc. Co.
EX1988080029	Lockheed Martin Corporation, Vought Systems (formerly LTV Missiles).
EX1989090127	Day & Zimmermann, Inc.
EX1989100085	U.S. Department of Energy.
EX1989110010	Overland Aviation Services Company, Inc.
EX1989120028	Conax Florida Corporation.
EX1990040344	Atlantic Research Corporation.
EX1990060035	Conax Florida Corporation.
EX1990060149	U.S. Department of Energy.
EX1990060150	U.S. Department of Energy.
EX1990060151	U.S. Department of Energy.
EX1990060152	U.S. Department of Energy.
EX1990060153	U.S. Department of Energy.
EX1990060154	U.S. Department of Energy.
EX1990090111	Conax Florida Corporation.
EX1990090112	Conax Florida Corporation.
EX1990090218	DuPont Chemicals.
EX1990090219	DuPont Chemicals.
EX1990090220	DuPont Chemicals.
EX1990090221	DuPont Chemicals.
EX1990090222	DuPont Chemicals.
EX1990090223	DuPont Chemicals.
EX1990090224	DuPont Chemicals.
EX1990090225	DuPont Chemicals.
EX1990090226	DuPont Chemicals.
EX1990090227	DuPont Chemicals.
EX1990090228	DuPont Chemicals.
EX1990090229	DuPont Chemicals.
EX1990090230	DuPont Chemicals.
EX1990100010	Conax Florida Corporation.
EX1990120121	U.S. Department of Energy.
EX1991010042	Hercules Aerospace Company.
EX1991010043	Hercules Aerospace Company.
EX1991040147B	Daicel Chemical Industries, Ltd.
EX1991040148	Daicel Chemical Industries, Ltd.
EX1991050265	Conax Florida Corporation.
EX1991050282	Martin Electronics, Inc.
EX1991060062	Kidde-Graviner Limited.
EX1991060237	Mecano-Tech, Inc.
EX1991060238	Mecano-Tech, Inc.
EX1991060239	Mecano-Tech, Inc.
EX1991060240	Mecano-Tech, Inc.
EX1991060241	Mecano-Tech, Inc.
EX1991060242	Mecano-Tech, Inc.
EX1991060243	Mecano-Tech, Inc.
EX1991060244	Mecano-Tech, Inc.
EX1991060245	Mecano-Tech, Inc.
EX1991060246	Mecano-Tech, Inc.
EX1991060247	Mecano-Tech, Inc.
EX1991060248	Mecano-Tech, Inc.
EX1991100087	Conax Florida Corporation.
EX1991100088	Conax Florida Corporation.
EX1991110085	Aerospatiale Helicopter Corporation.
EX1991110251	Mecano-Tech, Inc.
EX1991110252	Mecano-Tech, Inc.
EX1991110253	Mecano-Tech, Inc.

EX No.	Holder/company
EX1991110254	Mecano-Tech, Inc.
EX1992010163	Conax Florida Corporation.
EX1992010166	Conax Florida Corporation.
EX1992010167	Conax Florida Corporation.
EX1992010168	Conax Florida Corporation.
EX1992010196	U.S. Department of Energy.
EX1992020009	Applied Energy Technology Corporation.
EX1992020010	Applied Energy Technology Corporation.
EX1992020011	Applied Energy Technology Corporation.
EX1992020012	Applied Energy Technology Corporation.
EX1992070022	Conax Florida Corporation.
EX1992110059	Teledyne McCormick Selph.
EX1993050235	Royal Ordnance Plc.
EX1993080189	Mecano-Tech, Inc.
EX1993080190	Mecano-Tech, Inc.
EX1993080191	Mecano-Tech, Inc.
EX1993080192	Mecano-Tech, Inc.
EX1993080193	Mecano-Tech, Inc.
EX1993080194	Mecano-Tech, Inc.
EX1993080195	Mecano-Tech, Inc.
EX1993080196	Mecano-Tech, Inc.
EX1993080277	Mecano-Tech, Inc.
EX1993080278	Mecano-Tech, Inc.
EX1993080279	Mecano-Tech, Inc.
EX1993080280	Mecano-Tech, Inc.
EX1993080281	Mecano-Tech, Inc.
EX1993080282	Mecano-Tech, Inc.
EX1993080283	Mecano-Tech, Inc.
EX1993090038	Overland Aviation Services Company, Inc.
EX1993090039	Overland Aviation Services Company, Inc.
EX1993090040	Overland Aviation Services Company, Inc.
EX1993090041	Overland Aviation Services Company, Inc.
EX1993090042	Overland Aviation Services Company, Inc.
EX1993090043	Overland Aviation Services Company, Inc.
EX1993090044	Overland Aviation Services Company, Inc.
EX1994030058	Olin Corporation—Winchester Division.
EX1994050293	Teledyne McCormick Selph.
EX1994090107	Royal Ordnance Plc.
EX1994100002	Allied Signal, Inc.
EX1994100003	Allied Signal, Inc.
EX1994120149	Pacific Scientific/Energy Dynamics Div. (PS/EDD).
EX1995060001	Austin Powder Company.
EX1995060002	Austin Powder Company.
EX1995120030	British Aerospace Defence Limited.
EX1996080062	Water Well Redevelopers, Inc.
EX1996100133	Dynamit Nobel GmbH.
EX1996100134	Dynamit Nobel GmbH.
EX1996100135	Dynamit Nobel GmbH.
EX1996100136	Dynamit Nobel GmbH.
EX1997050058	Illinois Tool Works (ITW) SPIT.
EX1997050127	Ensign-Bickford Company.
EX1997050128	Ensign-Bickford Company.
EX1997080110	Kidde-Fenwal, Inc.
EX1997100009	Martin Electronics, Inc.
EX1997110018	Pacific Scientific/Energy Dynamics Div. (PS/EDD).
EX1998090010	Ensign-Bickford Company.
EX1998090011	Ensign-Bickford Company.
EX1998090012	Ensign-Bickford Company.
EX1998090013	Ensign-Bickford Company.
EX1998090014	Ensign-Bickford Company.
EX1998090015	Ensign-Bickford Company.
EX1998090016	Ensign-Bickford Company.
EX1998090017	Ensign-Bickford Company.
EX1998090018	Ensign-Bickford Company.
EX1998090129	Ensign-Bickford Company.
EX1998110069	Accles & Shelvoke Limited.
EX1999010089	Swartklip Products.
EX1999010221	Ensign-Bickford Company.
EX1999010222	Ensign-Bickford Company.
EX1999010223	Ensign-Bickford Company.
EX1999010224	Ensign-Bickford Company.
EX1999010225	Ensign-Bickford Company.
EX1999010227	Ensign-Bickford Company.
EX1999010228	Ensign-Bickford Company.

EX No.	Holder/company
EX1999010229	Ensign-Bickford Company.
EX1999030008	Teledyne Ryan Aeronautical—McCormick Selph Ordn.
EX1999030073	Nato Ammo Depot, Glen Douglas.
EX1999090169	Mecano-Tech, Inc.
EX1999100004	Pains-Wessex, Limited.
EX1999110049	Teledyne Ryan Aeronautical—McCormick Selph Ordn.
EX2000040159	Swartklip Products.
EX2000080028	The Boeing Company.
EX2000090072	Swartklip Products.
EX2000090120	Daicel Chemical Industries, Ltd.
EX2000120150	Swartklip Products.
EX200030318A	LifeSparc.
EX2001010178	Diplomat Freight Services.
EX2001010186	Action Manufacturing Company.
EX2001040019	Ridgeway International Limited.
EX2001050013	Somchem, division of Denel (Pty) Ltd.
EX2001050187	Pacific Scientific.
EX2001050188	Pacific Scientific.
EX2002100057A	LifeSparc.
EX2002100057B	LifeSparc.
EX2003030318	LifeSparc.
EX2003060206	Universal Propulsion Company Seating & Propulsion Systems.
EX2003060206A	Universal Propulsion Company, Inc.
EX2003060206B	Universal Propulsion Company Goodrich Corporation.
EX2003070009	Daicel Chemical Industries, Ltd.
EX2003070288	Nippon Kayaku Company, Ltd.
EX2003070293	Nippon Kayaku Company, Ltd.
EX2003080080	Dyno Nobel, Inc.
EX2003100075	Ensign-Bickford Aerospace & Defense Company.
EX2003100323	Delta Caps Canada.
EX2003120602	Schlumberger.
EX2004030230	Nippon Kayaku Company, Ltd.
EX2004030230A	Nippon Kayaku Company, Ltd.
EX2004030231	Nippon Kayaku Company, Ltd.
EX2004030231A	Nippon Kayaku Company, Ltd.
EX2004030262	QuietSplit, Inc.
EX2004050396	Dyno Nobel, Inc.
EX2004060022	Orica Canada, Inc.
EX2004060107	Cesaroni Technology, Inc.
EX2004070192	Headquarters 1st Joint Movement Group.
EX2004070194	Headquarters 1st Joint Movement Group.
EX2004080006	Nippon Kayaku Company, Ltd.
EX2004080006A	Nippon Kayaku Company, Ltd.
EX2004100158	Nippon Kayaku Company, Ltd.
EX2004100158A	Nippon Kayaku Company, Ltd.
EX2004100162	Daicel Safety Systems, Inc.
EX2004100162A	Daicel Safety Systems, Inc.
EX2004100166	Daicel Safety Systems, Inc.
EX2004100166A	Daicel Safety Systems, Inc.
EX2004100167	Daicel Safety Systems, Inc.
EX2004100167A	Daicel Safety Systems, Inc.
EX2004110267	Dyno Nobel, Inc.
EX2004110284	Yulim Materials Company, Ltd.
EX2005010241	LifeSparc.
EX2005010241A	LifeSparc.
EX2005020022	Yamato Protec Corporation.
EX2005030178	Companhia Brasileira de Cartuchos.
EX2005040440	Aircraft Interior Products Goodrich Corporation.
EX2005040499	Daicel Safety Systems, Inc.
EX2005040537	Daicel Safety Systems, Inc.
EX2005070111	Kidde Technologies, Inc.
EX2005070130	Dyno Nobel, Inc.
EX2005070342	Nippon Kayaku Co., Ltd.
EX2005070342A	Nippon Kayaku Co., Ltd.
EX2005070343	Nippon Kayaku Co., Ltd.
EX2005070343A	Nippon Kayaku Co., Ltd.
EX2005080084	LifeSparc.
EX2005090499	Dyno Nobel, Inc.
EX2005100016	PC International, Inc.
EX2005100169	Explosivos Mexicanos, S.A. de C.V.
EX2005120064	Nippon Kayaku Company, Ltd.
EX2005120064A	Nippon Kayaku Company, Ltd.
EX2006010052	German Armed Forces Command USA/CA.
EX2006020113	Pains Wessex Chemring Countermeasures.

EX No.	Holder/company
EX2006040305	Nippon Kayaku Co. Ltd.
EX2006040305A	Nippon Kayaku Co. Ltd.
EX2006050221	Cooper Power Systems Inc.
EX2006060079	Total Mission.
EX2006060080	Total Mission.
EX2006070022	Schlumberger Reservoir Completions.
EX2006070240	Hubbell Power Systems.
EX2006090244	Raytheon Missile Systems.
EX2007010612	International Launch Services.
EX2007030074	Embassy of Japan.
EX2007030076	Embassy of Japan.
EX2007030077	Embassy of Japan.
EX2007030078	Embassy of Japan.
EX2007030079	Embassy of Japan.
EX2007030081	Embassy of Japan.
EX2007030083	Embassy of Japan.
EX2007040043	LifeSparc.
EX2007040120	Embassy of Japan.
EX2007050120	Raytheon Missile Systems.
EX2007050122	Pacific Scientific.
EX2007050305	Orica USA, Inc.
EX2007060050	Aerojet General Corporation—Redmond Operations.
EX2007070083	Nippon Kayaku Co., Ltd.
EX2007070084	Nippon Kayaku Co., Ltd.
EX2007080023	Nippon Kayaku Co., Ltd.
EX2007080024	Nippon Kayaku Co., Ltd.
EX2007080367	Nippon Kayaku Co., Ltd.
EX2007080368	Nippon Kayaku Co., Ltd.
EX2007110031	Pacific Scientific.
EX2007120429	Martin-Baker Aircraft Co. Ltd.
EX2008010381	Defence Equipment & Support.
EX2008010386	Defence Equipment & Support.
EX2008010387	Defence Equipment & Support.
EX2008010412	LOGOS Imaging LLC.
EX2008020494	Kidde Technologies, Inc.—Kidde Aerospace.
EX2008040011	LifeSparc, Inc.
EX2008040023	German Armed Forces Command USA/CA.
EX2008040033	elp European Logistics Partners GmbH.
EX2008040083	Special Devices, Inc.
EX2008040204	Goodrich Corporation.
EX2008050062	Orica Canada, Inc.
EX2008050350	Martin-Baker.
EX2008060030	Lifesparc, Inc.
EX2008060098	Defence Equipment and Support.
EX2008060099	Defence Equipment and Support.
EX2008060257	Dyno Nobel.
EX2008070080	Kuwait Air Force.
EX2008120002	Daicel Safety Technologies Thailand Co., Ltd.
EX2008120003	Daicel Safety Technologies Thailand Co., Ltd.
EX2008120004	Daicel Safety Systems (Thailand) Company Ltd.
EX2008120005	Daicel Safety Systems, Inc.
EX2009050654	ELP GmbH European Logistic Partners.
EX2009090077	Universal Propulsion Company, Inc.
EX2009100152	Defence Equipment and Support.

Issued in Washington, DC, on October 27, 2015 under authority delegated in 49 CFR Part 107.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2015–27784 Filed 10–30–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 745X)]

CSX Transportation, Inc.—Abandonment Exemption—in Floyd County, KY

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 11.4 miles of railroad line between milepost COQ 0.0 near Prestonsburg and milepost COQ 10.1 near David, in Floyd County, Ky. (the Line).[1] The Line, which traverses United States Postal Service Zip Codes 41653, 41607, and 41616, includes the stations of McNally (OPSL 67056, FSAC 84079), Samson (OPSL 67057, FSAC 84083), Joyce Marie (OPSL 67057.1,

[1] The Board previously authorized CSXT to abandon most of the Line in 2004. *CSX Transp.—Aban. Exemption—in Floyd Cty., Ky.,* AB 55 (Sub-No. 645X) (STB served Feb. 9, 2004). CSXT indicates, however, that it again seeks an exemption to abandon the Line because the deadline to consummate the prior abandonment authority expired on April 23, 2008.

FSAC 84084), Beverly Ann (OPSL 67059, FSAC 84076), and David (OPSL 67060, FSAC 84075).

CSXT has certified that: (1) No freight traffic has moved over the Line for at least two years; (2) 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 either pending 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 (3) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 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 abandonment 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) has been received, this exemption will be effective on December 2, 2015, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 12, 2015. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 23, 2015, 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.

CSXT has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by November 6, 2015. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CSXT's filing of a notice of consummation by November 2, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: October 28, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–27834 Filed 10–30–15; 8:45 am]

BILLING CODE 4915–01–P

[2] Because CSXT amended its verified notice of exemption on October 13, 2015, that date is the official filing date and the basis for all subsequent dates.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 837 (Sub-No. 1X)]

The Long Island Rail Road Company—Abandonment Exemption—in Queens County, NY

On October 13, 2015, the Long Island Rail Road Company (LIRR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon the following two segments of rail line: (1) An approximately 0.69-mile segment located between milepost 0.0 and milepost 0.69, in Long Island City, NY, and traversing United States Postal Service Zip Code 11101 and (2) an approximately 0.38-mile segment located between milepost 0.82 and milepost 1.2, in Long Island City, NY, and traversing United States Postal Service Zip Code 11101.

LIRR states that the two lines segments do not contain federally granted rights-of-way. Any documentation in LIRR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 29, 2016.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than February 8, 2016, or 10 days after service of a decision granting the petition for exemption, whichever occurs first. Each OFA must be accompanied by a $1,600 filing fee.[1]

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for interim trail use/rail banking under 49 CFR 1152.29 will be due no later than November 23, 2015. Each interim trail use request must be accompanied by a $300 filing fee.[2]

All filings in response to this notice must refer to Docket No. AB 837X and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Brian K. Saltz, Assistant Deputy General Counsel, The Long Island Rail Road Company, Law Dept.—1143, Jamaica Station, Jamaica, New York 11435. Replies to the petition are due on or before November 23, 2015.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning

[1] *See* 49 CFR 1002.2(f)(25).

[2] *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2015 Update,* EP 542 (Sub-No. 23), slip op. at 17, item 27(i) (STB served July 15, 2015).

environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA typically will be within 30 days of its service.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: October 28, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2015–27837 Filed 10–30–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Council to the Internal Revenue Service; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service Advisory Council (IRSAC) will hold a public meeting on Wednesday, November 18, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds, IRSAC Program Manager, National Public Liaison, CL: NPL, 7559, 1111 Constitution Avenue NW., Washington, DC 20224. Telephone: 202–317–6851 (not a toll-free number). Email address: *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRSAC will be held on Wednesday, November 18, 2015, from 9:20 a.m. to 1:15 p.m. at the Marriott Wardman Park Hotel, 2660 Woodley Road NW., Virginia Ballroom, Washington, DC 20008. Issues to be discussed include, but not limited to: *The IRS Needs Sufficient Funding to Operate Efficiently and Effectively, Provide Timely and Useful Guidance and Assistance to Taxpayers, and Enforce Current Law, so that Respect for our Voluntary Tax System is Maintained, Identity Authentication of 1040 Forms, Review of Offer in Compromise (OIC) Form and Booklet 656–B, and Collection Information Forms 433–A, 433–B, and 433–F to Improve Taxpayer Compliance and Successful Utilization, Improving Penalty Administration—General Comments and Recommendations, Application of Qualified Amended Return Rules to Regularly Examined Taxpayers in a Post-CIC Environment, Continuity of Independence, Strength, and Visibility of the Office of Professional Responsibility, Applications of Appraisal Standards Consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).* Last minute agenda changes may preclude advanced notice. The meeting room accommodates approximately 80 people, IRSAC members and Internal Revenue Service officials inclusive. Due to limited seating, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at 202–317–6851. Attendees are encouraged to arrive at least 30 minutes before the meeting begins. Should you wish the IRSAC to consider a written statement, please write to Internal Revenue Service, Office of National Public Liaison, CL:NPL:7559, 1111 Constitution Avenue NW., Washington, DC 20224, or email *PublicLiaison@irs.gov.*

Dated: October 26, 2015.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. 2015–27809 Filed 10–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506–A

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 4506–A, Request for Public Inspection or Copy of Exempt or Political Organization IRS Form.

DATES: Written comments should be received on or before January 4, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael A. Joplin, 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: Request for Public Inspection or Copy of Exempt or Political Organization IRS Form.

OMB Number: 1545–0495.

Form Number: 4506–A.

Abstract: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

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: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Responses: 20,000.

Estimated Time per Response: 57 minutes.

Estimated Total Annual Burden Hours: 19,400.

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: October 19, 2015.

Michael A. Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–27808 Filed 10–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Consumer Tipping Survey Study

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 the consumer tipping survey study.

DATES: Written comments should be received on or before January 4, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consumer Tipping Survey Study.

OMB Number: 1545–2261.

Form Number: Survey.

Abstract: The IRS is charged with collecting revenue legally owed to the federal government. One important category of income comes in the form of tips. Previous empirical research has shown income from tips to be significantly underreported, limiting the IRS's ability to collect the proper amount of tax revenue. The IRS believes a new study of consumer tipping practices is needed in order to better understand current tip reporting behavior so tax administrators and policy makers can make the tax system fairer and more efficient. Therefore, the IRS wishes to develop updated estimates of consumer tipping revenue across numerous services where tipping is prevalent.

In support of this mission, IRS is seeking a standard clearance to conduct a minimum, one-year fielding of a nation-wide consumer tipping survey. The sample that would be used for this study, Ipsos' non-probability online panel, was only selected after a pilot study was conducted which compared the results from this vendor to another panel source (GfK KnowledgePanel, a probability-based online panel) and an independent source of tipping data in order to determine which method yielded the most accurate results while reducing respondent burden and cost to the IRS. The findings from the pilot study demonstrated that there were no consistent differences in the results gathered from the panels when compared against each other or when compared against the 3rd party source of data. As such, the decision was made to use the non-probability panel due to the reduced cost per completed survey, which will allow for a larger data collection and more precise estimates of tipping behavior for certain, low-incidence services.

This initiative flows from Goal 1 of the IRS Strategic Plan for FY 2014–2017: Deliver high quality and timely service to reduce taxpayer burden and encourage voluntary compliance.

Current Actions: The main goal for this survey effort is to generate statistically valid estimates of tipped income in a variety of services for which no such estimates exist, in addition to providing information on other correlates of tipped income and behavior including, but not limited to, regional or seasonal fluctuations in tipped income. As such, this survey effort requests a full-fielding of the previously tested pilot survey for the course of calendar year 2016. This will result in an estimated burden increase of 6,427 hours. This form is being submitted to update the current OMB approval.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or Households.

The burden hour estimates breakdown as follows:

NON-PROBABILITY SAMPLE

Category of respondent/activity	Number of respondents	Participation time (minutes)	Burden hours
Read Invitation Email	461,540	0.5	3,846
Read Reminder Email *	431,540	0.25	1,798
Complete Survey	60,000	** 5.5	5,500
Total Burden Hours			11,144

* The estimate for the Reminder emails is based on the assumption that 50% of the needed respondents will complete the survey online in time to not receive the Reminder email.

** Participant time is based on mean completion time for non-probability panel members during pilot survey fielding.

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.

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: October 27, 2015.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2015–27810 Filed 10–30–15; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 170

Pesticides; Agricultural Worker Protection Standard Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR 170

[EPA–HQ–OPP–2011–0184; FRL–9931–81]

RIN 2070–AJ22

Pesticides; Agricultural Worker Protection Standard Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing updates and revisions to the existing worker protection regulation for pesticides. This final rule will enhance the protections provided to agricultural workers, pesticide handlers, and other persons under the Worker Protection Standard (WPS) by strengthening elements of the existing regulation, such as training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and the providing of supplies for routine washing and emergency decontamination. EPA expects this final rule to prevent unreasonable adverse effects from exposure to pesticides among agricultural workers and pesticide handlers, vulnerable groups (such as minority and low-income populations, child farmworkers, and farmworker families) and other persons who may be on or near agricultural establishments, and to mitigate exposures that do occur. In order to reduce compliance burdens for family-owned farms, in the final rule EPA has expanded the existing definition of ''immediate family'' and continued the existing exemption from many provisions of the WPS for owners and members of their immediate families.

DATES: This final rule is effective January 1, 2016. Agricultural employers and handler employers will be required to comply with most of the new requirements on January 2, 2017, as provided in 40 CFR 170.2. Agricultural employers and handler employers will be required to comply with certain new requirements on January 1, 2018 or later, as provided in 40 CFR 170.311(a)(3), 170.401(c)(3), 170.501(c)(3) and 170.505(b).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0184, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Jeanne Kasai, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–3240; email address: *kasai.jeanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What is the Agency's authority for taking this action?

This action is issued under the authority of sections 2 through 35 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y, and particularly section 25(a), 7 U.S.C. 136w(a).

B. What is the purpose of the regulatory action?

EPA is revising the existing Worker Protection Standard (WPS), 40 CFR part 170, to reduce occupational pesticide exposure and incidents of related illness among agricultural workers (workers) and pesticide handlers (handlers) covered by the rule, and to protect bystanders and others from exposure to agricultural pesticide use. This regulation, in combination with other components of EPA's pesticide regulatory program, is intended to prevent unreasonable adverse effects of pesticides among workers, handlers and other persons who may be on or near agricultural establishments, including vulnerable groups, such as minority and low-income populations.

C. What are the major changes from the proposal to the final rule?

This final rule revises the existing WPS. Some significant changes are described in this Unit. Units V. through XIX. discuss in more detail the proposed rule, public comments submitted, EPA's responses to the public comments, and final regulatory requirements.

In regard to training, the final rule retains the proposed content expansions (including how to protect family members and reduce take-home exposure) and the requirement for employers to ensure that workers and handlers receive pesticide safety training every year. Employers are required to retain records of the training provided to workers and handlers for two years from the date of training. The final rule eliminates the training ''grace period,'' which allowed employers to delay providing full pesticide safety training to workers (for up to 5 days under the existing rule and for up to two days under the proposal) from the time worker activities began, if the workers received an abbreviated training prior to entering any treated area.

In regard to notification, the final rule retains the proposed requirements for employers to post warning signs around treated areas in outdoor production when the product used has a restricted-entry interval (REI) greater than 48 hours and to provide to workers performing early-entry tasks, *i.e.,* entering a treated area when an REI is in effect, information about the pesticide used in the area where they will work, the specific task(s) to be performed, the personal protective equipment (PPE) required by the labeling and the amount of time the worker may remain in the treated area. The final rule does not include the proposed requirement for employers to keep a record of the information provided to workers performing early-entry tasks. The final rule retains the existing requirements concerning the sign that must be used when posted notification of treated areas is required.

In regard to hazard communication, the final rule requires employers to post pesticide application information and a safety data sheet (SDS) for each pesticide used on the establishment (known together as pesticide application and hazard information) at a central location on the establishment (the ''central display''), a departure from the proposal to eliminate the existing requirement for a central display of pesticide application-specific information. The final rule also requires the employer to maintain and make available to workers and handlers, their designated representatives, and treating medical personnel upon request, the pesticide application-specific information and the SDSs for pesticides used on the establishment for two years. The final rule does not include the proposed requirement for the employer to maintain copies of the labeling for each product used on the establishment for two years.

In regard to protections during pesticide applications, the final rule designates the area immediately surrounding the application equipment as the area from which workers and other persons must be excluded. This ''application exclusion zone'' differs

from the proposed ''entry-restricted areas,'' which would have extended a specified distance around the entire treated area during application based on the application equipment used. The final rule requires handlers to suspend application, rather than cease application, if they are aware of any person in the application exclusion zone other than a properly trained and equipped handler involved in the application.

In regard to establishing a minimum age for handlers and workers performing early-entry tasks, the final rule requires that handlers and workers performing early-entry tasks be at least 18 years old, rather than the proposed minimum age of 16 years old. This minimum age does not apply to an adolescent working on an establishment owned by an immediate family member. The final rule does not require the employer to record workers' or handlers' birthdates as part of the training record, but does require the employer to verify they meet the minimum age requirements.

In regard to PPE, the final rule cross-references certain Occupational Safety and Health Administration's (OSHA) requirements for respirator use that employers will be required to comply with, *i.e.,* fit test, medical evaluation, and training for handlers using pesticides that require respirator use. The final rule expands the respirators subject to fit testing beyond the proposal to include filtering facepiece respirators. The final rule maintains the existing exception from the handler PPE requirements when using a closed system to transfer or load pesticides, and adopts a general performance standard for closed systems, which differs from the specific design standards based on California's existing standard for closed systems discussed in the proposal.

D. What are the incremental impacts of the final rule?

EPA has prepared an economic analysis (EA) of the potential impacts associated with this rulemaking (Ref. 1). This analysis, which is available in the docket, is summarized in greater detail in Unit II.C., and the following chart provides a brief outline of the costs and impacts.

Category	Description	Source
Monetized Benefits Avoided (Acute Pesticide Incidents).	$0.6–2.6 million/year after adjustment for underreporting of pesticide incidents	EA Chapter 4.5.
Qualitative Benefits	Willingness to pay to avoid acute effects of pesticide exposure beyond cost of treatment and loss of productivity.	EA Chapter 4.
	Reduced latent effects of avoided acute pesticide exposure	
	Reduced chronic effects from lower chronic pesticide exposure to workers, handlers, and farmworker families, including a range of illnesses such as Non-Hodgkins lymphoma, prostate cancer, Parkinson's disease, lung cancer, chronic bronchitis, and asthma.	
Monetized Costs	$60.2–66.9 million/year	EA Chapter 3.3.
Small Business Impacts	No significant impact on a substantial number of small entities	EA Chapter 3.5.
	The rule will affect over 295,000 small farms, nurseries, and greenhouses, and commercial entities that are contracted to apply pesticides.	
	Impact less than 0.1% of the annual value of sales or revenues for the average small entity.	
Impact on Jobs	The rule will have a negligible effect on jobs and employment	EA Chapter 3.4.
	The marginal cost of a typical farmworker is expected to increase $5/year	
	The marginal cost for a more skilled pesticide handler is expected to increase by $50 per year, but this is less than 0.2% of the cost of a part-time employee.	

II. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you work in or employ persons working in crop production agriculture where pesticides are applied. 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:

• Agricultural Establishments (NAICS code 111000), *e.g.,* establishments or persons, such as farms, orchards, groves, greenhouses, and nurseries, primarily engaged in growing crops, plants, vines, or trees and their seeds.

• Nursery and Tree Production (NAICS code 111421), *e.g.,* establishments or persons primarily engaged in (1) growing nursery products, nursery stock, shrubbery, bulbs, fruit stock, sod, and so forth, under cover or in open fields and/or (2) growing short rotation woody trees with a growth and harvest cycle of 10 years or less for pulp or tree stock.

• Timber Tract Operations (NAICS code 113110), *e.g.,* establishments or persons primarily engaged in the operation of timber tracts for the purpose of selling standing timber.

• Forest Nurseries and Gathering of Forest Products (NAICS code 113210), *e.g.,* establishments or persons primarily engaged in (1) growing trees for reforestation and/or (2) gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.

• Farm Workers (NAICS codes 11511, 115112, and 115114), *e.g.,* establishments or persons primarily engaged in providing support activities for growing crops; establishments or persons primarily engaged in performing a soil preparation activity or crop production service, such as plowing, fertilizing, seed bed preparation, planting, cultivating, and crop protecting services; and establishments or persons primarily engaged in performing services on crops, subsequent to their harvest, with the intent of preparing them for market or further processing.

• Pesticide Handling on Farms (NAICS code 115112), *e.g.,* establishments or persons primarily engaged in performing a soil preparation activity or crop production service, such as seed bed preparation, planting, cultivating, and crop protecting services.

• Farm Labor Contractors and Crew Leaders (NAICS code 115115), *e.g.,* establishments or persons primarily engaged in supplying labor for agricultural production or harvesting.

• Pesticide Handling in Forestry (NAICS code 115310), *e.g.,* establishments or persons primarily providing support activities for forestry, such as forest pest control.

• Pesticide Manufacturers (NAICS code 325320), *e.g.,* establishments primarily engaged in the formulation and preparation of agricultural and household pest control chemicals (except fertilizers).

• Farm Worker Support Organizations (NAICS codes 813311, 813312, and 813319), *e.g.,* establishments or persons primarily engaged in promoting causes associated with human rights either for a broad or specific constituency; establishments or persons primarily engaged in promoting the preservation and protection of the environment and wildlife; and establishments primarily engaged in social advocacy.

• Farm Worker Labor Organizations (NAICS code 813930), *e.g.,* establishments or persons primarily engaged in promoting the interests of organized labor and union employees.

• Crop Advisors (NAICS codes 115112, 541690, 541712) *e.g.,* establishments or persons who primarily provide advice and assistance to businesses and other organizations on scientific and technical issues related to pesticide use and pest pressure.

B. What action is the Agency taking?

EPA is finalizing changes to the WPS. The WPS is a regulation primarily intended to reduce the risks of injury or illness resulting from agricultural workers' and handlers' use and contact with pesticides on farms, forests, nurseries and greenhouses. The rule primarily seeks to protect workers (those who perform hand-labor tasks in pesticide-treated crops, such as harvesting, thinning, pruning) and handlers (those who mix, load and apply pesticides). The rule does not cover persons working with livestock. The existing regulation has provisions requiring employers to provide workers and handlers with pesticide safety training, posting and notification of treated areas, and information on entry restrictions, as well as PPE for workers who enter treated areas after pesticide application to perform crop-related tasks and handlers who mix, load, and apply pesticides.

The final rule takes into consideration comments received from the public in response to the proposed rule (Ref. 2), as well as additional information such as reported incidents of pesticide-related illness or injury.

EPA believes that the changes to the WPS offer targeted improvements that will reduce risk through protective requirements and improve operational efficiencies. Among other things, EPA expects the changes to:

• Improve effectiveness of worker and handler training.

• Improve protections to workers during REIs.

• Improve protections for workers during and after pesticide applications.

• Expand the information provided to workers, thus improving hazard communication protections.

• Expand the content of pesticide safety information displayed to improve the display's effectiveness.

• Improve the protections for crop advisor employees.

• Increase the amounts of decontamination water available, thus improving the effectiveness of the decontamination process.

• Improve the emergency response when workers or handlers experience pesticide exposures.

• Improve the organization of the WPS, thus making it easier for employers to understand and comply with the rule.

• Clarify that workers and handlers are covered by the rule only if they are employed, directly or indirectly, by the establishment (*i.e.,* receiving a salary or wage).

• Protect adolescents by establishing a minimum age for handlers and for workers who enter a treated area during an REI, but adding an exemption to the minimum age requirement for adolescents who work on an establishment owned by an immediate family member.

• Improve flexibility for small farmers and members of their immediate family by expanding the definition of immediate family members to be more inclusive and retaining the exemptions from almost all WPS requirements for owners and their immediate family members.

C. What are the costs and benefits of the rule?

EPA estimates the incremental cost of the revisions to the WPS to be between $60.2 and $66.9 million per year, given a three percent discount rate. Using a seven percent discount rate, the rule is estimated to cost between $56.2 and $66.9 million per year. The majority of the costs, $53.0 to $62.2 million per year, are borne by farms, nurseries, and greenhouses that hire labor and use pesticides, which account for about 20 percent of all farms producing crops in the United States. The approximately 2,000 commercial pesticide handling establishments, which are contracted to apply pesticides on farms, may collectively see an incremental cost of about $1.9 million per year. Family-owned farms that use pesticides and do not hire labor may collectively bear costs of about $1.4 million per year. Total costs amount to an average expenditure of about $30 per year per farm worker. Benefits, in terms of reduced illness from exposure to pesticides, are likely to exceed $64 million per year in terms of avoided costs associated with occupational pesticide incidents and with reductions in chronic diseases associated with occupational pesticide exposure, although the amount EPA can quantify is much less. The estimated quantified benefits from reducing acute worker and handler exposure to pesticides total between $0.6 million and $2.6 million annually.

The changes to the current WPS requirements are expected to lead to an overall reduction in incidents of unsafe pesticide exposure and to improve the occupational health of the nation's agricultural workers and pesticide handlers. This section provides an overview of the qualitative benefits of the proposal and the estimated benefits that would accrue from avoiding acute pesticide exposure in the population protected by the WPS. It also provides an estimate of the number of chronic illnesses with a plausible association with pesticide exposure that would have to be prevented by the rule changes in order for the total estimated benefits to meet the estimated cost of the proposal.

A sizeable portion of the agricultural workforce may be exposed occupationally to pesticides and pesticide residues. These exposures can pose significant long- and short-term health risks. It is difficult to quantify a specific level of risk and project the risk reduction that would result from this rule, because workers and handlers are potentially exposed to a wide range of pesticides with varying toxicities and risks. However, there is strong evidence that workers and handlers may be exposed to pesticides at levels that can cause adverse effects and that both the exposures and the risks can be substantially reduced. EPA believes the provisions in the final rule will reduce pesticide exposures and the associated risks.

The estimated quantified benefits from reducing acute worker and handler exposure to pesticides total between $0.6 million and $2.6 million annually (Ref. 1). This conservative estimate includes only the avoided costs in medical care and lost productivity to workers and handlers and assumes that just 10% of acute pesticide incidents are reported. It does not include quantification of the reduction in chronic effects of pesticide exposure to workers and handlers, reduced effects of exposure, including developmental impacts, to children and pregnant

workers and handlers or willingness to pay to avoid symptoms of pesticide exposure. Because the chronic effects of pesticide exposures are seldom attributable to a specific cause, and thus are unlikely to be recorded in pesticide poisoning databases, EPA is not able to quantify the benefits expected to accrue from the final WPS changes that are expected to reduce chronic exposure to pesticides. However, associations between pesticide exposure and certain cancer and non-cancer chronic health effects are well documented in the peer-reviewed literature, and reducing these chronic health effects is an important FIFRA goal.

Even if the lack of quantitative data impairs the reliability of estimates of the total number of chronic illnesses avoided, it is reasonable to expect that the proposed changes to the WPS will reduce pesticide exposure, and thereby reduce the incidence of chronic disease associated with pesticide exposure. Therefore, EPA conducted a ''break even'' analysis to consider the plausibility of the changes to the WPS reducing the incidence of chronic disease enough to cause the net benefits of the proposed rule to exceed its anticipated costs. Under this analysis, EPA looked at the costs associated with non-Hodgkin's lymphoma, prostate cancer, Parkinson's disease, lung cancer, bronchitis, and asthma and their frequency among agricultural workers, and found that reducing the incidence of lung cancer by 0.078% and the incidence of the other chronic diseases by 0.78% per year (about 44 total cases per year among the population of workers and handlers protected under the WPS) would produce quantified benefits sufficient to bridge the gap between the quantified benefits from reducing acute incidents and the final rule's estimated high-end cost of $66.9 million. Overall, the weight of evidence suggests that the requirements will result in long-term health benefits to agricultural workers and pesticide handlers in excess of the less than 1% reduction in just six diseases that corresponds with the break-even point for the final rule, not only by reducing their daily risk of pesticide exposures, but also by improving quality of life throughout their lives, resulting in a lower cost of health care and a healthier society.

The changes to the current WPS requirements, specifically improved training on reducing pesticide residues brought from the treated area to the home on workers' and handlers' clothing and bodies and establishing a minimum age for handlers and early entry workers, other than those covered by the immediate family exemption, mitigate the potential for children to be exposed to pesticides directly and indirectly. The unquantified benefit to adolescent workers and handlers, as well as children of workers and handlers is great; reducing exposure to pesticides could translate into fewer sick days, fewer days missed of school, improved capacity to learn, and better long-term health. Parents and caregivers reap benefits by having healthier families, fewer missed workdays, and better quality of life.

By finalizing several interrelated exposure-reduction measures, the rule is expected to avoid or mitigate approximately 44 to 73% of annual reported acute WPS-related pesticide incidents. EPA believes the final rule will substantially reduce for these workers and handlers the potential for adverse health effects (acute and chronic) from occupational exposures to such pesticides and their residues. These measures include requirements intended to reduce exposure by:

- Ensuring that workers and handlers are informed about the hazards of pesticides—the final rule changes the content and frequency of required pesticide safety training, as well as making changes to ensure that the pesticide safety training is more effective.
- Reducing exposure to pesticides—among other things, the final rule changes and clarifies the requirements for personal protective equipment. It also makes changes to the timing of applications when people are nearby. These and other provisions should directly reduce exposure in the agricultural workforce.
- Mitigating the effects from exposures that occur—some accidental exposures are inevitable. EPA expects the final rule will mitigate the severity of health impacts by updating and clarifying what is required to respond to exposures.

Further detail on the benefits of this proposal is provided in the document titled ''Economic Analysis of the Agricultural Worker Protection Standard Revisions'' which is available in the docket for this rulemaking (Ref. 1).

III. Introduction and Procedural History

The existing WPS was published in 1992 and implemented fully in 1995. Since implementation, EPA has sought to ensure that the rule provides the intended protections effectively and to identify necessary improvements. To accomplish this, EPA engaged diverse stakeholders, individually and collectively through organized outreach efforts, to discuss the rule and get feedback from affected and interested parties. Groups with which EPA engaged included, but were not limited to, farmworker organizations, health care providers, state regulators, educators and trainers, pesticide manufacturers, farmers, organizations representing agricultural commodity producers and crop advisors. EPA engaged these groups formally through the National Assessment of the Pesticide Worker Safety Program (*http://www.epa.gov/pesticides/safety/workshops.htm*), public meetings (*e.g.,* National Dialogue on the Worker Protection Standard), federal advisory committee meetings (*e.g.,* Pesticide Program Dialogue Committee, *http://www.epa.gov/pesticides/ppdc/*) and a Small Business Advocacy Review Panel (Ref. 3). EPA also engaged stakeholders informally, as individual organizations and in small groups.

Using feedback from stakeholders, along with other information, EPA developed proposed changes to the WPS and published them for public comment (Ref. 2). EPA received substantial feedback on the proposal, including about 2,400 written comments with over 393,000 signatures. Commenters included farmworker advocacy organizations, state pesticide regulatory agencies (states) and organizations, public health organizations, public health agencies, growers and grower organizations, agricultural producer organizations, applicators and applicator organizations, pesticide manufacturers and organizations, PPE manufacturers, farm bureaus, crop consultants and organizations, and others. The comments received covered a wide range of issues and took diverse positions. Overall, the comments were thoughtful and demonstrated a high level of interest in ensuring the protection of workers and handlers, while minimizing burden on employers and regulatory agencies. This document discusses some of the significant comments received and EPA's responses. A full summary of comments received and EPA's responses are available in the docket for this rulemaking (Ref. 4).

While considering stakeholder feedback and suggestions in developing the final rule, EPA also gathered additional information, such as updated demographic information for farmworkers, new data from the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service, information on other federal rules (*e.g.,* respirator standards, anti-retaliatory provisions), and more recent data on

incidents related to occupational pesticide exposure in agriculture. EPA reviewed the methodology used to estimate the number of acute pesticide-related incidents in agriculture and used the updated information to revise the estimated number of incidents that could be prevented under the final rule. EPA also revised the Economic Analysis for the final rule to include more recent information from the National Agricultural Statistics Service and with input from public comments.

IV. Context and Goals of This Rulemaking

A. Context for This Rulemaking

1. Statutory authority. Enacted in 1947, FIFRA established a framework for the pre-market registration and regulation of pesticide products; since 1972, FIFRA has prohibited the registration of pesticide products that cause unreasonable adverse effects. FIFRA makes it unlawful to use a pesticide in a manner inconsistent with the labeling and gives EPA's Administrator authority to develop regulations to carry out the Act. FIFRA's legislative history indicates that Congress specifically intended for FIFRA to protect workers and other persons from occupational exposure directly to pesticides or to their residues (Ref. 5).

Under FIFRA's authority, EPA has implemented measures to protect workers, handlers, other persons, and the environment from pesticide exposure in two primary ways. First, EPA includes specific use instructions and restrictions on individual pesticide product labeling. These instructions and restrictions are the result of EPA's stringent registration and reevaluation processes and are based on the risks of the particular product. Since users must comply with directions for use and restrictions on a product's labeling, EPA uses the labeling to convey mandatory requirements for how the pesticide must be used to protect people and the environment from unreasonable adverse effects of pesticide exposure. Second, EPA enacted the WPS to expand protections against the risks of agricultural pesticides without making individual product labeling longer and much more complex. The WPS is a uniform set of requirements for workers, handlers and their employers that are generally applicable to all agricultural pesticides and are incorporated onto agricultural pesticide labels by reference. Its requirements complement the product-specific labeling restrictions and are intended to minimize occupational exposures generally.

2. EPA's regulation of pesticides. EPA uses a science-based approach to register and re-evaluate pesticides, in order to protect human health and the environment from unreasonable adverse effects that might be caused by pesticides. The registration process begins when a manufacturer submits an application to register a pesticide. The application must contain required test data, including information on the pesticide's chemistry, environmental fate, toxicity to humans and wildlife, and potential for human exposure. EPA also requires a copy of the proposed labeling, including directions for use and appropriate warnings.

Once an application for a new pesticide product is received, EPA conducts an evaluation, which includes a detailed review of scientific data to determine the potential impact on human health and the environment. EPA considers the risk assessments and results of any peer review, and evaluates potential risk management measures that could mitigate risks that exceed EPA's level of concern. In the registration process, EPA evaluates the proposed use(s) of the pesticide to determine whether it would cause adverse effects on human health, non-target species, and the environment. In evaluating the impact of a pesticide on occupational health and safety, EPA considers the risks associated with use of the pesticide (occupational, environmental) and the benefits associated with use of the pesticide (economic, public health, environmental). However, FIFRA does not require EPA to balance the risks and benefits for each audience. For example, a product may pose risks to workers, but risk may nevertheless be reasonable in comparison to the economic benefit of continued use of the product to society at large.

If the application for registration does not contain evidence sufficient for EPA to determine that the pesticide meets the FIFRA registration criteria, EPA communicates to the applicant the need for more or better refined data, labeling modifications, or additional use restrictions. Once the applicant has demonstrated that a proposed product meets the FIFRA registration criteria and any applicable requirements under the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 321 *et seq.,* EPA approves the registration subject to any risk mitigation measures necessary to meet the FIFRA registration criteria. EPA devotes significant resources to the regulation of pesticides to ensure that each pesticide product meets the FIFRA requirement that pesticides not cause unreasonable adverse effects to the public and the environment.

When EPA approves a pesticide, the labeling generally reflects all risk mitigation measures required by EPA. The risk mitigation measures may include requiring certain engineering controls, such as the use of closed systems for mixing pesticides and loading them into application equipment to reduce potential exposure to those who handle pesticides; establishing conditions on the use of the pesticide by specifying certain use sites, maximum application rate or maximum number of applications; or establishing REIs during which entry into an area treated with the pesticide is generally prohibited until residue levels have declined to levels unlikely to cause unreasonable adverse effects. Because users must comply with the directions for use and use restrictions on a product's labeling, EPA uses the labeling to establish and convey mandatory requirements for how the pesticide must be used to protect the applicator, the public, and the environment from pesticide exposure.

Under FIFRA, EPA is required to review periodically the registration of pesticides currently registered in the United States. The 1988 FIFRA amendments required EPA to establish a pesticide reregistration program. Reregistration was a one-time comprehensive review of the human health and environmental effects of pesticides first registered before November 1, 1984 to make decisions about these pesticides' future use. The 1996 amendments to FIFRA require that EPA establish, through rule making, an ongoing ''registration review'' process of all pesticides at least every 15 years. The final rule establishing the registration review program was signed in August 2006 (Ref. 16). The purpose of both re-evaluation programs is to review all pesticides registered in the United States to ensure that they continue to meet current safety standards based on up-to-date scientific approaches and relevant data.

Pesticides reviewed under the reregistration program that met current scientific and safety standards were declared ''eligible'' for reregistration. The results of EPA's reviews are summarized in Reregistration Eligibility Decision (RED) documents. The last RED was completed in 2008. Often before a pesticide could be determined ''eligible,'' additional risk reduction measures had to be put in place. For a number of pesticides, measures intended to reduce exposure to handlers and workers were needed and are reflected on pesticide labeling. To

address occupational risk concerns, REDs include mitigation measures such as: Voluntary cancellation of the product or specific use(s); limiting the amount, frequency or timing of applications; imposing other application restrictions; classifying a product or specific use(s) for restricted use only by certified applicators; requiring the use of specific PPE; establishing specific REIs; and improving use directions. During this process, EPA also encouraged registrants to find replacements for the inert ingredients of greatest concern. As a result of EPA's reregistration efforts, current U.S. farm workers are not exposed to many of the previously used inert ingredients that were of the greatest toxicological concern.

EPA's registration review program is a recurring assessment of products against current standards. EPA will review each registered pesticide at least every 15 years to determine whether it continues to meet the FIFRA standard for registration. Pesticides registered before 1984 were reevaluated initially under the reregistration program. These and pesticides initially registered in 1984 or later are all subject to registration review.

In summary, EPA's pesticide reregistration and registration reviews assess the specific risks associated with particular chemicals and ensure that the public and environment do not suffer unreasonable adverse effects from those risks. EPA implements the risk reduction and mitigation measures identified in the pesticide reregistration and registration review programs through amendments to individual pesticide product labeling.

3. WPS. The WPS regulation is incorporated by reference on certain pesticide product labeling through a statement in the agricultural use box. The WPS provides a comprehensive collection of pesticide management practices generally applicable to all agricultural pesticide use scenarios in crop production, complementing the product-specific requirements that appear on individual pesticide product labels.

The risk reduction measures of the WPS may be characterized as being one of three types: Information, protection and mitigation. To ensure that employees will be informed about exposure to pesticides, the WPS requires that workers and handlers receive training on general pesticide safety, and that employers provide access to information about the pesticides with which workers and handlers may have contact. To protect workers and handlers from pesticide exposure, the WPS prohibits the application of pesticides in a manner that exposes workers or other persons, generally prohibits workers and other persons from being in areas being treated with pesticides, and generally prohibits workers from entering a treated area while an REI is in effect (with limited exceptions that require additional protections). In addition, the rule protects workers by requiring employers to notify them about areas on the establishment treated with pesticides, through posted and/or oral warnings. The rule protects handlers by ensuring that they understand proper use of and have access to required PPE. Finally, the WPS has provisions to mitigate exposures if they do occur by requiring the employer to provide to workers and handlers with an ample supply of water, soap and towels for routine washing and emergency decontamination. The employer must also make transportation available to a medical care facility if a worker or handler may have been poisoned or injured by a pesticide and provide information about the pesticide(s) to which the person may have been exposed.

EPA manages the risks and benefits of each pesticide product primarily through the labeling requirements specific to each pesticide product. If pesticide products are used according to the labeling, EPA does not expect use to cause unreasonable adverse effects. However, data on incidents of adverse effects to human health and the environment from the use of agricultural pesticides show that users do not always comply with labeling requirements. Rigorous ongoing training, compliance assistance and enforcement are needed to ensure that risk mitigation measures are appropriately implemented in the field. The framework provided by the WPS is critical for ensuring that the improvements brought about by reregistration and registration review are realized in the field. For example, the requirement for handlers to receive instruction on how to use the pesticide and the application equipment for each application is one way to educate handlers about updated requirements on product labeling to ensure they use pesticides in a manner that will not harm themselves, workers, the public or the environment. In addition, the REIs are established through individual product labeling, but action needs to be taken at the use site to ensure that workers are aware of areas on the establishment where REIs are in effect and given directions to be kept out of the treated area while the REI is in effect. The changes to the WPS are designed to enhance the effectiveness of the existing structure of protections and to better realize labeling-based risk mitigation measures at the field level.

B. Goals of This Rulemaking

Discussions with stakeholders over many years, together with EPA's review of incident data, led EPA to identify several shortcomings in the current regulation that will be addressed by this final rule. As discussed in Unit IV.A., EPA uses both product-specific labeling and the WPS to effectuate occupational protections for workers and handlers. EPA engages in ongoing reviews and reassessments of pesticide products to ensure they continue to meet the standard of not causing unreasonable adverse effects to human health and the environment. The WPS must be updated to ensure that the rule continues to complement the labeling-based protections and to address issues identified through experience with the WPS, and review of incident data and stakeholder engagement.

1. Purpose of the WPS. The WPS is intended to reduce the risks associated with occupational pesticide exposure to workers, handlers and their families, and to protect others and the environment from risks of pesticide use in agricultural production. The rule makes employers of workers and handlers responsible for providing protections to workers and handlers on their establishments. By imposing this obligation, EPA seeks to ensure those who make pesticide use decisions (employers) internalize the effects of their decisionmaking rather than passing on the costs associated with these decisions (risks of pesticide exposure) to others (workers and handlers).

As noted in Unit IV.A., the components of the WPS generally can be grouped into three categories: Information, protection, and mitigation. Employers must provide workers and handlers with information needed to protect themselves, others, and the environment from pesticides and pesticide residues through pesticide safety training, pesticide application and hazard information, and access to labeling. Employers must provide protections to workers and handlers during and after applications in order to minimize potential for exposure. Finally, employers must be prepared to mitigate exposures that do occur by providing supplies for washing and emergency decontamination, and emergency transportation to a medical facility if necessary. These elements are

necessary to implement product-specific labeling requirements effectively. For example, pesticide safety training informs workers that areas treated with pesticides are off limits for entry for a certain period after the application, *i.e.,* a product-specific REI, and that their employers will inform them of where and when REIs are in effect and entry into the treated areas is prohibited. In some instances, employers must provide further protection by posting warning signs at treated areas while REIs are in effect to remind workers to keep out of the treated areas. For handlers, training informs them about basic pesticide safety and handling precautions and reducing the potential to expose themselves or others. In addition, the employer must provide information for each application, informing the handler about the product-specific labeling restrictions and requirements.

In summary, the WPS works in conjunction with product labeling to protect workers and handlers from occupational pesticide exposure. The rule imposes on the employer the responsibility for providing protections to workers and handlers and to ensure they have access to information necessary to protect themselves and others during and after pesticide application.

2. Surveillance data. When EPA promulgated the existing rule, it used existing data on occupational pesticide-related incidents to estimate that that approximately 10,000 to 20,000 incidents of physician-diagnosed (not hospitalized) pesticide poisonings occurred in the WPS-covered workforce annually. For this rulemaking, EPA estimates that about 1,810 to 2,950 acute pesticide exposure incidents occur annually on agricultural establishments that potentially could be prevented by the WPS. This substantial drop in the estimated number of incidents shows that the existing rule and efforts by employers, workers and handlers have made great accomplishments in reducing pesticide exposure for workers and handlers. Pesticide use in agriculture is safer than it was 20 years ago.

Current occupational health incident surveillance data show, however, that avoidable incidents continue to occur. For example, some of the occupational pesticide illnesses reported to state health agencies have occurred when workers entered a treated area before the REI expired. Although employers are obligated to warn workers to keep out of treated areas and to ensure that workers receive training on and information about treated areas, incidents continue to occur. Another example of potentially avoidable exposure is spray drift. Labeling instructs handlers to apply pesticides in a manner that does not contact other persons, but pesticide drift continues to cause exposure incidents. In addition to surveillance data, studies also show that pesticide residues are brought home by workers and handlers on their bodies and clothing (known as ''take-home exposure''), creating an exposure pathway for family members.

This rulemaking is intended to reduce avoidable incidents by improving information, protections, and mitigations for workers and handlers without imposing unreasonable burdens on employers. Although EPA cannot quantify the specific reduction in incidents from any single change to the regulation, taken together, EPA estimates that the final rule will result in an annual reduction of between 540 and 1,620 acute, health-related incidents. In addition, EPA expects that the final rule will help reduce chronic health problems among workers and handlers by reducing daily pesticide exposures, and thereby improving quality of life throughout their lives, resulting in a lower cost of health care and a healthier society. (See Unit II.C.) Units V. through XIX. describe the final regulatory requirements and their potential to reduce avoidable incidents. The Economic Analysis for this rulemaking provides an estimate of the costs of the requirements and a quantitative and qualitative discussion of the potential benefits, including avoiding acute pesticide-related illnesses in workers and handlers (Ref. 1).

3. Demographics of workers and handlers. In addition to the complexity of the science issues involving pesticide use, variability of pesticide use patterns and incomplete information about occupational pesticide-related illnesses and injuries, the diversity of the labor population at risk and the tasks they perform makes it challenging to ensure that workers and handlers are adequately protected.

According to the most recent public data set available from the Department of Labor's (DOL) National Agricultural Worker Survey (NAWS) for 2011–2012, 64% of agricultural workers in the United States were born in Mexico and 6% in Central and South America (Ref. 6). A majority (69%) of all survey respondents speak Spanish as their primary language (Ref. 6). Approximately 65% of this population speaks a little or no English; 38% cannot read English at all and another 30% can only read English ''a little'' (Ref. 6). Many have received only some formal education; on average, the highest grade completed by foreign-born workers was seventh grade (Ref. 6).

Approximately 17% of the survey respondents were classified as migrant, having traveled at least 75 miles in the previous year to find a job in agriculture (Ref. 6). Only 17% of respondents lived in housing provided by their employer and 55% rented housing from someone other than their employer (Ref. 6). In general, agricultural workers surveyed by NAWS do not have access to employer-provided health insurance—in 2011–2012, only 21% of farmworkers reported having the option for employer-provided health insurance (Ref. 6). USDA research, based on NAWS data, also reports that workers have difficulty entering the health care system to receive treatment (Ref. 7). Cost was a significant barrier for two-thirds of farmworkers, while about a third listed language barriers as an impediment to receiving care. Most workers fear that seeking treatment will result in losing their job because someone will replace them while they are getting treatment or the employer will label them as troublemakers and dismiss them. The problem is more severe among undocumented workers because they fear seeking treatment will lead to deportation or other adverse legal action (Ref. 7). A USDA report indicates that the factors mentioned previously contribute to the disadvantaged status of hired workers in agriculture (Ref. 7).

The NAWS found that 19% of workers and handlers surveyed earned less than $10,000 annually from agricultural work, and another 39% earn between $10,000 and $20,000 annually. Over 55% of respondents reported a total family income below $22,500 (Ref. 6).

Both the existing WPS and the changes included in the final rule seek to eliminate some of the potential barriers to achieving effective protection of these persons by requiring training in a manner that workers and handlers can understand, requiring the employer to ensure that handlers understand relevant portions of the labeling before handling a pesticide, and expanding training to provide information on seeking medical care in the event of a pesticide exposure and highlighting the anti-retaliation provisions of the WPS.

4. Summary of the final rule. The final rule amends the WPS by:

- Requiring pesticide safety training at one-year intervals and amending the existing pesticide safety training content.
- Requiring recordkeeping for pesticide safety training.

• Eliminating the ''grace period'' that allowed workers to enter a treated area to perform WPS tasks before receiving full pesticide safety training.

• Establishing a minimum age of 18 for handlers and for workers who enter an area under an REI.

• Establishing requirements for specific training and notification for workers who enter an area under an REI.

• Restricting persons' entry into certain areas surrounding application equipment during an application.

• Clarifying requirements for supplies for routine washing and emergency decontamination.

• Requiring employers to post warning signs around treated areas when the product applied has an REI greater than 48 hours and allowing the employer to choose to post the treated area or give oral notification when the product applied has an REI of 48 hours or less (unless the labeling requires both types of notification).

• Requiring employers to maintain and make available copies of the SDSs for products used on the establishment.

• Requiring employers to provide application information and SDSs to designated representatives making the request on behalf of workers or handlers.

• Adding elements to the requirement to maintain application-specific information.

• Adopting by cross reference certain OSHA requirements for employers to provide training, fit testing and medical evaluations to handlers using products that require use of respirators.

• Requiring employers to provide supplies for emergency eye flush at all pesticide mixing and loading sites when handlers use products that require eye protection.

• Maintaining the immediate family exemption and ensuring it includes an exemption from the new minimum age requirements for handlers and early-entry workers.

• Expanding the definition of ''immediate family'' to allow more family-owned operations to qualify for the exemptions to the WPS requirements.

• Revising definitions to improve clarity and to refine terms.

• Restructuring the regulation to make it easier to read and understand.

Units V. through XVIII. discuss the final rule requirements and elements considered in the proposal but not included in the final rule. Unit XIX. discusses implementation of the final regulatory requirements. Each of these Units generally describes the existing rule, proposal and final regulatory requirements (where appropriate), and summarizes the major comments received and EPA's responses. A separate document summarizing the comments received that were relevant to the proposal and EPA's responses has also been prepared and is available in the docket for this rulemaking (Ref. 4).

EPA has grouped the discussion of the final rule and elements considered in the proposal but not included in the final rule as follows:

• Unit V: Pesticide Safety Training for Workers and Handlers.

• Unit VI: Notification.

• Unit VII: Hazard Communication.

• Unit VIII: Information Exchange Between Handler and Agricultural Employers.

• Unit IX: Drift-Related Requirements.

• Unit X: Establish Minimum Age for Handling Pesticides and Working in a Treated Area while an REI is in Effect.

• Unit XI: Restrictions on Worker Entry into Treated Areas.

• Unit XII: Display of Pesticide Safety Information.

• Unit XIII: Decontamination.

• Unit XIV: Emergency Assistance.

• Unit XV: Personal Protective Equipment.

• Unit XVI: Decision not to Require Monitoring of Handler Exposure to Cholinesterase-Inhibiting Pesticides.

• Unit XVII: Exemptions and Exceptions.

• Unit XVIII: General Revisions.

• Unit XIX: Implementation.

V. Pesticide Safety Training for Workers and Handlers

A. Shorten Retraining Interval for Workers and Handlers

1. Current rule and proposal. The existing WPS requires employers to ensure that workers and handlers are trained once every five years. EPA proposed to establish an annual retraining interval for workers and handlers in order to improve the ability of workers and handlers to protect themselves and their families from pesticide exposure.

2. Final rule. In the final rule, EPA has adopted the proposed requirement for workers and handlers to receive full pesticide safety training annually. The final regulatory text for these requirements is available at 40 CFR 170.401(a) and 170.501(a).

3. *Comments and responses.*

Comments. Several farmworker advocacy groups and public health organizations supported full, annual training, stating that the more frequent training would improve workers' and handlers' ability to protect themselves and their families, and that annual training would be simple to track administratively. Agricultural producer organizations, pesticide producers, and the Small Business Administration's Office of Advocacy recommended an initial in-depth training for new workers followed annually by a shortened ''refresher'' training. A similar suggestion was to require initial in-depth training for workers and handlers, followed by four years of refresher training, with an in-depth training every fifth year. Some states suggested training every two or three years, or allowing each state to set its own training interval, to parallel the state's pesticide applicator recertification interval. A few states recommended a system where the training timeframe is based on the calendar year, to allow flexibility for employers. For example, under this proposal, an employee trained in March 2014 could be retrained as late as December 2015. This suggestion would extend the permitted interval between worker and handler trainings to as long as two years. Comments from pesticide industry organizations suggested that the frequency of worker safety training be commensurate with an individual workers' tasks, previous training, and experience.

EPA Response. EPA considered the alternatives described for training frequency, and agrees with the comments that annual training, in some form, is the appropriate interval to ensure that workers and handlers receive more frequent reinforcement of the safety principles. EPA rejected the suggestion for a limited refresher training based on the difficulty both employers and regulators would face in tracking multiple levels of training among a mobile workforce, the burdens of maintaining multiple forms of training materials and providing different trainings where employees are on differing cycles for full and refresher training, and the fact that very little of the substantive content of the required training appears to be material that would not need to be brought to employees' attention annually.

The suggestions for biennial or triennial training and allowing the states to base the frequency of training for workers and handlers on their pesticide applicator recertification requirements would present similar administrative problems with tracking trainings and introduce the possibility that workers or handlers would miss information needed to protect themselves. Finally, the alternative to establish the frequency of training based on the calendar year presents similar issues with tracking training and needed frequency of repetition.

The recommendation for training to be tailored to the individual workers' tasks, experience, and prior training was rejected based on the difficulty in tracking the specific training needs with a mobile workforce, the need for multiple forms of training materials, and the potential burden on employers to determine specific needs for each employee. In addition, the training gives practical information that is useful to everyone who works with or around agricultural pesticides.

B. Establish Recordkeeping Requirements To Verify Training for Workers and Handlers

1. Current rule and proposal. The existing WPS does not specify how an employer must verify that a worker or handler has received pesticide safety training. EPA proposed to eliminate the existing voluntary training verification card system and to require employers to maintain records of WPS worker and handler training for two years. EPA proposed that the training record include, among other things, the employee's birthdate to verify minimum age for early-entry worker or handler activities. EPA proposed to require the employer to provide a copy of the record to each worker or handler upon completion of the training.

2. Final rule. EPA has finalized the proposed requirement for employers to maintain records of worker and handler training for two years. Required information for the record of worker and handler training includes the trained worker's or handler's name and signature, the date of training, the trainer's name, evidence of the trainer's qualification to train, the employer's name, and which EPA-approved training materials were used. EPA has not included in the final rule the proposed requirement for the employer to record or retain birthdate of the employee. The final rule does not require employers to automatically provide a copy of the training record to each worker and handler; instead, the final rule only requires the employer to provide a copy of the training record to the trained employee upon the employee's request. The final regulatory text for the worker and handler training recordkeeping requirements appears at 40 CFR 170.401(d) and 170.501(d), respectively.

3. *Comments and responses.*

Comments—compliance monitoring. Comments in support of a requirement for recordkeeping stated that it would ensure employees received the training and that it would improve enforcement and compliance.

EPA Response. EPA agrees with these commenters that recordkeeping is necessary for the purpose of compliance monitoring.

Comments—burden. Commenters stated that the proposed requirement to distribute the record to every trained worker or handler would be burdensome and that most workers or handlers would not take or keep the records.

EPA Response. EPA agrees with these commenters and has modified the requirement. The final rule requires employers to provide training records to the trained employee only on the employee's request. This will reduce the burden on employers while ensuring that interested employees will be able to demonstrate to future employers that they were appropriately trained.

Comments—birthdate. There were a number of comments, particularly from states, related to the proposed requirement that employers include the trained employee's birthdate among the information to be recorded to document training. EPA proposed including the trained employee's birthdate in the recordkeeping in order to facilitate its use to verify that workers or handlers met the proposed minimum age requirement for handling pesticides or entering treated areas while under an REI as allowed under the early entry exceptions. States noted that a person's birthdate can be considered confidential and personal information, the distribution of which can lead to identity theft.

EPA Response. EPA has decided the advantages of requiring the employer to record the birthdate of the trained worker or handler are outweighed in this instance by the concerns for protecting confidential and personal information. Under the final rule, the employer is responsible for determining that each employee has met the minimum age requirement. The final rule does not include the proposed requirement for the employer to collect or retain specific documentation of the employee's birthdate or age.

C. Establish Trainer Qualifications for Workers and Handlers

1. Current rule and proposal. The existing WPS allows workers and handlers to be trained by a variety of persons, including pesticide applicators certified to use restricted use pesticides (RUPs) under 40 CFR part 171, persons identified by the agency with jurisdiction for pesticide enforcement as a trainer of certified applicators, or persons having completed an approved pesticide safety train-the-trainer course. In addition, persons trained as handlers under the WPS are also eligible to train workers.

EPA proposed to limit eligible trainers of workers to those who complete an EPA-approved train-the-trainer program or are designated by EPA or an appropriate state or tribal agency as trainers of certified applicators; being a certified applicator or trained as a handler under the WPS would not automatically qualify a person to train workers under the proposal. EPA did not propose to change the qualifications for trainers of handlers.

2. Final rule. In the final rule, EPA has expanded the class of persons qualified to train workers relative to the proposed rule. Under the final rule, qualified trainers of workers include persons who: Have completed a pesticide safety train-the-trainer program approved by EPA, are designated as a trainer of certified applicators, handlers or workers by EPA or a state or tribal agency responsible for pesticide enforcement, or are certified pesticide applicators under 40 CFR part 171. Unlike the proposal, certified applicators are considered qualified to train workers under the final rule. However, consistent with the proposal, the persons trained as handlers under the WPS are not considered qualified to train workers under the final rule.

The final rule does not make any changes from the existing rule and proposal related to who is qualified to provide training to handlers.

The final regulatory text for worker and handler trainer qualifications is available at 40 CFR 170.401(c)(4) and 170.501(c)(4), respectively.

3. *Comments and responses.*

Comments. Many of the comments advised EPA to retain certified applicators as trainers of workers in the final rule. Several commenters stated that without certified applicators providing worker training, resources such as cooperative extension trainers would be severely strained and there might not be adequate resources to provide annual training for workers. Several states and others noted that certified applicators possess the necessary competence to provide training to workers; in some states, they must receive training specifically for the purpose of training workers in order to meet their certification requirements. Commenters also questioned how a certified applicator could be considered qualified to train handlers, but not workers, as many handlers have the same demographic profile as workers.

There were few comments in support of retaining handlers as trainers for workers. One comment suggested that handlers could be required to take an

approved train-the-trainer course to ensure they can adequately train workers.

EPA Response. EPA is persuaded by the comments that it is reasonable to expect that certified applicators can competently train workers, as well as handlers. Commenters note that certified applicators possess knowledge of pesticide safety from their certification training and pesticide handling experience. The commenters stated that the additional burden from the proposed requirement for annual training in combination with the elimination of certified applicators as trainers would severely strain trainer resources and potentially result in fewer workers receiving annual training. This concern persuaded EPA to include certified applicators as qualified to train workers in the final rule.

EPA agrees with the comment that handlers who have gone through a train-the-trainer course should be eligible to train workers. Under the final regulation, any person, including a handler, is qualified to train workers after successfully completing an approved train-the-trainer course.

D. Expand the Content of Worker and Handler Pesticide Safety Training

1. Current and proposed rule. The existing WPS requires employers to provide pesticide safety training covering specific content to workers and handlers. Under the existing rule, worker safety training content must include the following 11 points:

• Where and in what form pesticides may be encountered during work activities.

• Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

• Routes through which pesticides can enter the body.

• Signs and symptoms of common types of pesticide poisoning.

• Emergency first aid for pesticide injuries or poisonings.

• How to obtain emergency medical care.

• Routine and emergency decontamination procedures, including emergency eye flushing techniques.

• Hazards from chemigation and drift.

• Hazards from pesticide residues on clothing.

• Warnings about taking pesticides or pesticide containers home.

• Requirements of the WPS designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

Under the existing rule, pesticide handler safety training must include the following 13 basic safety training points:

• Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.

• Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

• Routes through which pesticides can enter the body.

• Signs and symptoms of pesticide poisoning.

• Emergency first aid for pesticide injuries or poisonings.

• How to get emergency medical care.

• Routine and emergency decontamination procedures.

• Need for and appropriate use of PPE.

• Prevention, recognition, and first aid treatment of heat-related illness.

• Safety requirements for handling, transporting, storing, and disposing of pesticides.

• Environmental concerns.

• Warnings about taking pesticides or pesticide containers home.

• Training on the requirements of the regulation related to handling.

EPA proposed additional content in worker pesticide safety training including, among other things, information on the requirements for early-entry notification and emergency assistance, how to reduce pesticide take-home exposure, the availability of hazard communication materials for workers, the minimum age requirements for handling and early entry, and the obligations of agricultural employers to provide protections to workers.

EPA proposed additional content in handler pesticide safety training, including the requirement for handlers to cease application if they observe a person, other than another trained and properly equipped handler, in the area being treated or the entry-restricted area, and information about the requirement for OSHA-equivalent training on respirator use, fit-testing of respirators, and medical evaluation in the event a handler must wear a respirator.

2. Final rule. EPA has finalized the proposed additions to and expansions of the worker and handler pesticide safety training. The final regulatory text for the content of worker and handler pesticide training is available at 40 CFR 170.401(c)(2)–(3) and 170.501(c)(2)–(3).

The final rule requires employers to ensure that workers are trained on the following topics after EPA has announced the availability of training materials (see Unit XIX. for information on the timing of implementation):

• The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been trained on pesticide safety, providing pesticide safety and application information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.

• How to recognize and understand the meaning of the warning sign used for notifying workers of restrictions on entering pesticide-treated areas on the establishment.

• How to follow directions and/or signs about keeping out of pesticide-treated areas subject to an REI and application exclusion zones.

• Where and in what form pesticides may be encountered during work activities and potential sources of pesticide exposure on the agricultural establishment. This includes exposure to pesticide residues that may be on or in plants, soil, tractors, application and chemigation equipment, or used PPE, and that may drift through the air from nearby applications or be in irrigation water.

• Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

• Routes through which pesticides can enter the body.

• Signs and symptoms of common types of pesticide poisoning.

• Emergency first aid for pesticide injuries or poisonings.

• Routine and emergency decontamination procedures, including emergency eye flushing techniques, and if pesticides are spilled or sprayed on the body, to use decontamination supplies to wash immediately or rinse off in the nearest clean water, including springs, streams, lakes, or other sources, if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

• How and when to obtain emergency medical care.

• When working in pesticide-treated areas, wear work clothing that protects

the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

• Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide-treated areas.

• Potential hazards from pesticide residues on clothing.

• Wash work clothes before wearing them again and wash them separately from other clothes.

• Do not take pesticides or pesticide containers used at work to your home.

• Safety data sheets provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with.

The responsibility of agricultural employers to do all of the following: Display safety data sheets for all pesticides used on the establishment, provide workers and handlers information about the location of the safety data sheets on the establishment, and provide workers and handlers unimpeded access to safety data sheets during normal work hours.

• The rule prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

• The responsibility of agricultural employers to provide specific information to workers before directing them to perform early-entry activities. Workers must be 18 years old to perform early-entry activities.

• Potential hazards to children and pregnant women from pesticide exposure.

• Keep children and nonworking family members away from pesticide-treated areas.

• After working in pesticide-treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

• How to report suspected pesticide use violations to the state or tribal agency responsible for pesticide enforcement.

• The rule prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this rule, or because the worker or handler has provided, caused to be provided, or is about to provide information to the employer or to the EPA or its agents regarding conduct that the employee reasonably believes violates this part, and/or has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this rule.

The final rule requires employers to ensure that handlers are trained on the following topics after EPA has announced the availability of training materials (see Unit XIX. for information on the timing of implementation):

• All content for worker training.

• Information on proper application and use of pesticides.

• Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.

• Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.

• Need for and appropriate use and removal of all PPE.

• How to recognize, prevent, and provide first aid treatment for heat-related illness.

• Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

• Environmental concerns, such as drift, runoff, and wildlife hazards.

• Handlers must not apply pesticides in a manner that results in contact with workers or other persons.

• The responsibility of handler employers to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.

• Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.

• Handlers must be at least 18 years old.

• The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.

• The responsibility of agricultural employers to post treated areas as required by this rule.

EPA intends to develop the training materials that meet the final training requirements and to publish in the **Federal Register** a notice of their availability. To allow time for the completion and distribution of revised training materials and to allow time for trainers to become familiar with them and begin training workers and handlers, the rule extends the implementation period for training on the new requirements for two years, or until six months after EPA has made the revised training materials available, whichever is longer.

The final requirements for the content of worker and handler pesticide safety training are available at 40 CFR 170.401(c)(2)–(3) and 170.501(c)(2)–(3), respectively.

3. Comments and responses.

Comments. Farmworker advocacy organizations, many states, and public health organizations provided support for the expanded training topics, in particular information about preventing take home exposure and medical evaluation, fit testing and training on respirator use for handlers who need to wear respirators. Some farmworker advocacy organizations commented on the importance of information about worker rights.

Agricultural producer organizations expressed concern for the additional burden of the lengthier training. Some states asserted that several of the handler training points are beyond the scope of the WPS and should be addressed in applicator certification only. Specifically, they requested that EPA eliminate training on environmental concerns from pesticide use; proper application and use of pesticides; and requirements for handlers to understand the format and meaning of all information contained on pesticide labels and labeling, and to follow all pesticide label directions. These commenters stated that these training points are appropriate for persons who work under the supervision of certified applicators, but they do not relate directly to worker or handler safety. Two states recommended a revision to language in the handler training topics requiring that ''all'' information on the pesticide label would be required to be covered, stating that all labeling information may not be relevant to a given application.

EPA Response. EPA does not agree with comments from states that the handler training topics related to environmental concerns from pesticide use, proper application and use, requirements for handlers to understand the format and meaning of information on labels and to follow label directions are beyond the scope of the WPS and may expand the liability of handlers. First, the ''Worker Protection Standard'' title is descriptive, and not jurisdictional. The WPS is, in essence, a codification of material that EPA would otherwise have to require to

appear on the labels of agricultural pesticides. Thus its potential scope is as broad as EPA's labeling authority. While there may be some point at which a prospective provision might be so tangentially related to the rest of the WPS that its inclusion in the WPS would cause excessive confusion that is not the case with the provisions included in this final rule.

In addition, this is not the first time that requirements included in the WPS have served purposes beyond the protection of agricultural workers and handlers. Section 170.210(a) of the existing rule requires that ''The handler employer and the handler shall assure that no pesticide is applied so as to contact, either directly or through drift, any worker *or other person,* other than an appropriately trained and equipped handler'' (emphasis added). Section 170.234(c) of the existing rule requires that, among other things, when application equipment is sent to non-handlers for repair, the handler employer must assure that pesticide residues have been removed, or else warn the person who would perform the repair. The handler training point on environmental concerns from pesticide use already appears in the existing rule at 40 CFR 170.230(c)(4)(xi). In response to a similar comment on the proposal that resulted in the existing regulation, EPA stated:

One comment questioned the relevancy of environmental information in worker protection training. The Agency believes such training is relevant to worker protection. Many environmental concerns are applicable not only to the organisms in the environment, but also to workers and other persons who may be in that environment. Ground and surface water warnings, for example, are designed not to protect only aquatic organisms, but to protect workers and other persons who may be using the water for drinking, cooking, bathing, etc. The Agency notes that FIFRA defines ''environment'' as including ''water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these (Ref. 8).''

The final rule retains the requirement for handler training on environmental concerns related to pesticide use from the current WPS.

EPA does not agree that the training topic requiring handlers to receive instruction on proper application and use of pesticides is only appropriate for noncertified applicators making application under the direct supervision of a certified applicator. First, handlers routinely apply pesticides, and misapplication of pesticides can result in injury to persons covered by the WPS, including workers and handlers. Training on proper use can help prevent such misapplication and consequent exposure to people. Second, relying solely on the training of noncertified applicators under direct supervision would cover only applicators using Restricted Use Products (RUPs), and many agricultural use products covered by the WPS are not RUPs. To ensure that handlers under the WPS have the training to apply pesticides properly, it is necessary for them to be trained on proper use. The final rule includes the handler training topic requiring information on proper application and use of pesticides.

EPA does not agree with the commenters that requirements for handlers to understand the format and meaning of information on labels and to follow labeling directions are only appropriate for noncertified applicators applying under the supervision of certified applicators. To properly handle agricultural pesticides covered by the WPS rule, handlers need to understand the information on the labeling related to safe use of the pesticide and follow the use instructions. Use of a product in a manner inconsistent with the labeling may cause injury or illness to the handler and to others. For a more detailed discussion of the comments and EPA's responses on issues related to labeling, see Unit XVIII.A.

E. Exception to Full Pesticide Safety Training for Workers Prior to Entry Into Treated Areas (Grace Period)

1. Current rule and proposal. Except in regard to workers entering treated areas during an REI, the existing WPS permits the agricultural employer to delay providing full pesticide safety training until the end of the fifth day after the worker's entry into a treated area, often called the ''grace period,'' provided that the worker receives training in a basic set of two safety points before entering the treated area (*i.e.,* an area that has been treated or where an REI has been in effect within the last 30 days). Under this exception, the worker must receive the full safety training on the content outlined in the rule prior to the sixth day of entry into a treated area. EPA proposed to shorten the ''grace period'' to two days, require that full training take place before the third day of entry into a treated area, and expand the basic set of safety information to be provided prior to the worker's first entry into a treated area under the ''grace period.''

2. Final rule. EPA has eliminated the ''grace period'' entirely. The final rule requires employers to ensure that workers receive full pesticide safety training before entering a treated area (*i.e.,* an area that has been treated or where an REI has been in effect within the last 30 days).

3. Comments and responses.

Comments. Few commenters supported the proposed two day grace period coupled with the expanded basic safety points prior to first entry. Many agricultural producer organizations and the Small Business Administration's Office of Advocacy requested that EPA retain the five day grace period in the existing rule, stating it is needed for flexibility in scheduling training sessions as workers arrive at various times on the establishment. Several farmworker advocacy organizations and two states recommended elimination of the grace period entirely. One state recommended, as an alternative, adoption of the two day grace period with reduced material relative to the proposal required prior to first entry. Farmworker advocacy organizations that supported the elimination of the grace period cited the importance of workers having full safety information prior to entering an area with pesticide residues. One state that supported the elimination of the grace period expressed concern that this change would heighten concerns about the number of qualified trainers in the event that EPA would follow through on its proposal to make certified applicators ineligible to train workers.

EPA Response. While EPA recognizes the flexibility that the grace period offers agricultural employers in scheduling training sessions for workers, and the economic importance of that flexibility, EPA remains convinced that the elimination of the grace period is reasonable. The full pesticide safety training provides information that workers need to have before their exposure to pesticide treated areas so they can protect themselves. Under OSHA, training must take place at the time of the employee's initial assignment. EPA has decided that the cost of eliminating the grace period is reasonable when compared to the benefit from workers receiving the complete pesticide safety training before their first exposure to pesticides.

EPA acknowledges concerns raised by agricultural producer organizations and states that eliminating the ''grace period'' combined with the proposal to limit who is qualified to conduct worker training could result in an inadequate number of people available to provide worker training. The final rule continues to allow certified applicators to be trainers of workers (see Unit V.D.).

As a result, EPA expects that there will be an adequate number of trainers to provide full pesticide safety training for workers prior to their entry into treated areas.

F. Training Program Administration Requirements

1. Current rule and proposal. Under the existing WPS, pesticide safety training must be presented either orally from written materials or in audiovisual format. The information must be presented in a manner that the worker or handler can understand, and the trainer must respond to questions, but the existing rule does not require the trainer to be present for the entire training period. EPA proposed to retain the requirement to provide training in an oral and audiovisual format, to require that the trainer remain present throughout the training session, and to require that the training be presented in a place that is conducive to learning and reasonably free of distractions.

2. Final rule. EPA has finalized the proposed requirements for the presentation of training. Trainers of workers and handlers must remain present during training sessions to respond to questions. The training environment must be conducive to training and be reasonably free of distractions, to help ensure training quality. The final rule retains the existing requirement for pesticide safety training to be delivered either orally from written materials or by audiovisual means.

The final regulatory text for these requirements is available at 40 CFR 170.401(c)(1) and 170.501(c)(1).

3. Comments and responses.

Comments on use of videos. Some farmworker advocacy organizations endorsed the use of videos, stating that when used they enhance understanding of the material, especially when combined with hands-on activities or other kinds of learning approaches. Other farmworker advocacy organizations stated that there is a lack of interaction between the trainer and the employees trained using a video, resulting in reduced information transfer. Agricultural producer organizations and states also supported the use of the video, citing ease of use, and effectiveness. Many commenters from each category urged EPA to update the videos; a few suggested EPA evaluate different media presentations.

EPA Response. EPA agrees with the commenters who consider videos to be effective and useful training material. EPA recognizes that a video is a passive form of training, and has added the requirement for the trainer to be present to answer questions during the entire session to mitigate this problem. EPA also expects the requirement for the training to be in a location reasonably free of distractions to improve the ability of workers and handlers to absorb and retain information.

Comments on the requirement for trainers to remain present during entire training session. Farmworker advocate organizations and another commenter supported the proposal for trainers to remain present during the entire training, citing the need for them to be interactive with workers to enhance the training and facilitate discussion. One commenter, experienced in providing pesticide safety training, noted that the interaction with trainees, through hands-on training and sharing of experiences, was effective. Agricultural producer organizations opposed the requirement, stating that it would be distracting for the video to be interrupted for questions, and there would be lost time for the trainer. One commenter suggested it would lead to larger training conferences that would discourage post-video interaction. Some states opposed the requirement for the trainer to be present throughout the training; one state recommended that the trainer only needs to be available before and after the training if a video is used.

EPA Response. EPA agrees that having trainers present during the entire training program could facilitate discussion and promote interaction. EPA disagrees that the questions for the trainer would be disruptive to the training. A 2006 study (Burke) cited interactive training activities as a best practice for supporting training transfer. EPA is convinced that the trainer's presence during the video enhances the training by enabling questions and discussion during the presentation (Ref. 9).

Comments on the requirement for the training environment to relatively free of distractions and conducive to learning. The commenters were mostly in agreement that the learning environment needs to have minimal distractions and be conducive to learning. Farmworker advocacy organizations and public health organizations supported the proposed requirement as a way to improve the learning environment. Two farm bureaus suggested allowing the trainer to be absent during the video, and to have a supervisor present to ensure the quality of the training environment. One state supported the proposed requirement for the training to be conducted in an environment free of distractions. Finally, one agricultural organization described the environment where their workers receive training as taking place either on or outside their transportation bus or in the field, and noted that the low number of incidents is evidence that the training is effective.

EPA Response. EPA agrees that the requirement for the training environment to be reasonably free from distractions and conducive to training would make it easier for workers and handlers to learn. As discussed in the previous response, EPA disagrees with comments requesting that EPA eliminate the requirement for the trainer to be present throughout the training. The proposal and final rule establish requirements for the training location; the ultimate responsibility for ensuring the requirements are met rests with the employer. EPA recognizes that there are challenges in locating environments in agriculture that are quiet and present few distractions; classrooms are rarely convenient. However, EPA is requiring employers to provide a training environment that is reasonably free from distractions and conducive to training. EPA notes that the final rule does not prohibit providing training in any specific location, such as outdoors or on a bus, as long as the environment is reasonably free from distraction and conducive to training.

G. Require Employers To Provide Establishment-Specific Information to Workers and Handlers

1. Current rule and proposal. The existing WPS does not clearly require employers to provide to workers and handlers establishment-specific information on the location of decontamination supplies or hazard information as part of their pesticide safety training. EPA proposed that in addition to required pesticide safety training, employers must provide workers and handlers with establishment-specific information about the location of decontamination supplies and pesticide safety and hazard information, as well as how to obtain medical assistance. EPA proposed that agricultural and handler employers would be required to provide this establishment-specific information to all workers and handlers, including those previously trained on other establishments.

2. Final rule. EPA has finalized the proposed requirement for employers to provide establishment-specific information to workers and handlers. The final rule requires employers to provide establishment-specific information for workers and handlers when they enter the establishment and before beginning WPS tasks in areas

where within the last 30 days a product requiring compliance with the WPS has been applied or an REI has been in effect. Content for the establishment-specific information includes the location of the pesticide safety information, the location of pesticide application and hazard information, and the location of decontamination supplies. Employers are required to provide this information in a manner that the worker or handler can understand, such as through a translator, and prior to the worker or handler performing activities covered by the WPS. Lastly, this information is required even if the employer can verify that the worker or handler has already received the general pesticide safety training on another establishment, because the information required is specific to each establishment. The final regulatory text for these requirements is available at 40 CFR 170.403 and 170.503(b).

3. Comments and responses.

Comments. Commenters largely supported the addition of the establishment-specific training, with some noting that it is currently being provided voluntarily.

EPA Response. EPA agrees with the commenters that the establishment-specific training is necessary for workers and handlers to know where to find information on the establishment to protect themselves from pesticides and their potential effects. EPA notes that some of this information is required under the existing rule. However, EPA is convinced that consolidating the requirements for establishment-specific training will make them easier for employers to find and comply with, resulting in a higher likelihood that workers and handlers will receive the necessary information.

H. Costs and Benefits of Revisions to Pesticide Safety Training

1. Costs. EPA estimates the cost of changes to pesticide safety training for workers and handlers, including increased frequency, expanded content, recordkeeping, eliminating the ''grace period,'' changing who is qualified to conduct training, and amending training program administration requirements would be $29.9 million annually and range from approximately $62 to $80 per agricultural establishment per year. For a complete discussion of the costs see the ''Economic Analysis of Final Revisions to the Worker Protection Standard'' (Ref. 1).

2. Benefits. While EPA can estimate the costs of the changes to pesticide safety training for workers and handlers, quantifying the benefits is more difficult. Nonetheless, as explained in the NPRM, it is reasonable to expect that more frequent training would lead to better retention of information by workers and handlers, ultimately resulting in fewer incidents of pesticide exposure and illness in workers and handlers, improved decontamination procedures, reduced take-home exposure, and better protection of children. Similarly, providing workers with training before they enter a treated area will give them tools they need to protect themselves before they encounter pesticides as part of their occupation. Improving the quality of worker training by limiting trainers to persons who have completed a train-the-trainer course, are certified applicators under Part 171, or have been designated by the regulatory agency responsible for pesticide enforcement as a trainer of workers, handlers or certified applicators is expected to advance worker comprehension of the safety principles and result in better self-protection. Finally, enhancing the quality of the training environment and ensuring that there is a knowledgeable person available throughout the training session to respond to questions will improve the ability of the trainee to retain the information.

The expansion of information provided in the training will enable workers and handlers to better protect themselves and their families, by increasing their knowledge of how to reduce take-home residues from treated areas. The training gives practical information that is useful to everyone who works with or around agricultural pesticides.

The requirement for recordkeeping is an important element of the training requirement. Although in itself not a protective factor, it will support the determination of compliance when partnered with worker and employer interviews and therefore promote adherence to the requirements. In the final rule the employer must provide the record to the worker or handler upon request. The burden of providing copies of training records will be offset by the reduction in the number of trainings that would otherwise have to be provided to workers and handlers who have already been trained at another establishment.

VI. Notification

A. Posted Notification Timing and Oral Notification

1. Current rule and proposal. The current WPS requires agricultural employers to notify workers about pesticide applications and areas on the agricultural establishment subject to an REI. Notification is required when workers are on the establishment during application or the REI and will pass within one-quarter mile of the treated area. On farms, and in forests and non-enclosed nurseries (referred to as ''outdoor production'' in the proposal) the agricultural employer may choose either to post warning signs at the usual points of entry around the treated area or to notify workers orally about applications that will take place on the establishment. In greenhouses and some other enclosed spaces (referred to as ''enclosed space production'' in the proposal), the agricultural employer must post warning signs for all applications, regardless of the product's REI. In cases where the product labeling requires both written and oral notification of workers, the WPS also requires this ''double notification.''

For outdoor production, EPA proposed requiring agricultural employers to post warning signs where the pesticide to be applied has an REI greater than 48 hours, and to allow the option of oral warning or posted notification for products with an REI of 48 hours or less. For enclosed space production, EPA proposed requiring posting of warning signs only when the product applied has an REI greater than four hours, and to allow the option of oral warning or posted notification for products with an REI of four hours or less.

2. Final rule. EPA has finalized the proposed requirements to post warning signs for all ''outdoor production'' when a product with an REI longer than 48 hours is used, and to allow either oral or posted warnings for ''enclosed space production'' when a product with an REI of 4 hours or less is used. The final regulatory text for these requirements is available at 40 CFR 170.409(a)(1)(ii)–(v). The final rule modifies the existing requirement for employers to take down posted warning signs within three days of the expiration of the REI by prohibiting worker entry into the area until the posted warning signs have been removed (except for early entry pursuant to 40 CFR 170.603). The final regulatory text for this prohibition is available at 40 CFR 170.409(b).

3. *Comments and Responses.*

Comments. Many states and some farmworker advocacy organizations and public health organizations supported the ''field posting'' and notification requirements as proposed. They noted the potential benefit to workers and employees of crop advisors of mandatory posting for the most toxic pesticides. They agreed with EPA's assessment that additional posting

would provide added protection for workers while placing a minimal burden on employers.

Several grower associations and farm bureaus supported the proposed change in notification requirements for indoor production but opposed the proposal for additional posting for outdoor production. They noted that signs can be destroyed, removed, or relocated and that agricultural producers may not return to some fields more than once per week. One grower association specifically requested that EPA clarify how enforcement would address these challenges without inappropriately penalizing agricultural employers. This group stated that workers are fully capable of understanding oral notification and suggest focusing instead on reinforcing the existing oral notification. Several grower organizations also did not agree that EPA justified the cost of the proposal with the benefits.

Farmworker advocacy organizations suggested a number of alternatives, including requiring both posting signs and providing oral warnings for all pesticide applications, or at a minimum for those pesticides with an REI of 12 hours or more. Some farmworker advocacy organizations suggested mandatory posting of any treated area subject to an REI greater than 24 hours, and others requested that EPA require mandatory posting of any treated area subject to an REI. They reiterated EPA's rationale that oral notification of pesticide application information is difficult to recall over multiple days, that oral notification may not be clearly communicated due to multiple language barriers and that it is difficult to verify whether oral notification was in fact given.

EPA Response. EPA considered the comments submitted and agrees that increasing workers' awareness of treated areas will lead to an overall reduction in occupational pesticide-related illnesses at reasonable cost.

EPA disagrees with comments that suggest oral notification alone would provide sufficient notification to workers and agrees with comments that support increased posting requirements. As noted in the proposal for this rule, research has shown that oral instruction alone may not be an effective method of safety instruction. EPA is aware that compliance with the posting requirement for outdoor production could require some establishments to change their business practices or monitor posted fields more often.

EPA considered additional posting requirements presented by farmworker advocacy organizations and was not convinced that the increased cost to employers to post all treated areas, or to post areas treated with products with REIs of 12 hours or greater, or 24 hours or greater would result in significantly more increased protections than the requirement to post areas treated with products with an REI longer than 48 hours. EPA concluded that it is reasonable to expect workers to remember oral warnings regarding REIs for two work days, or about 48 hours total, and reasonable to require visual reminders for longer periods.

4. Costs and benefits. EPA estimates the annual cost of posting treated areas under an REI of more than 48 hours and allowing oral notification for indoor production applications of products with an REI of 4 hours or less to be $10.4 million annually, with the per establishment cost of $33, and finds this cost to be reasonable in comparison to the benefit to workers to avoid pesticide illness by remaining out of treated areas under an REI.

B. Revise Content of Warning Sign

1. Current rule and proposal. The existing WPS requires agricultural employers to post warning signs with the words ''DANGER,'' ''PELIGRO,'' ''PESTICIDES'' and ''PESTICIDAS,'' at the top of the sign, and the words ''KEEP OUT'' and ''NO ENTRE'' at the bottom of the sign. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. EPA proposed replacing ''KEEP OUT'' and ''NO ENTRE'' with ''Entry Restricted'' and ''Entrada Restringida,'' and changing the shape containing the face and hand to an octagon (similar to a stop sign).

2. Final rule. EPA has decided not to change the text or graphic of the existing warning sign. The final regulatory text for the warning sign content is available at 40 CFR 170.409(b)(2).

3. *Comments and responses.*

Comments. Two states and several grower organizations supported the proposed changes on the grounds that ''Entry Restricted'' would be less confusing to workers than ''KEEP OUT,'' since entry is allowed under certain circumstances. Many more state, farmworker advocacy organizations, and public health organizations opposed changing the existing warning sign. Those commenters asserted that ''KEEP OUT'' sends a much clearer message than ''Entry Restricted,'' particularly to people with lower levels of literacy. They noted that the term ''Entrada Restringida'' is not common in Spanish, which is the first language of the majority of farmworkers in the U.S., whereas ''KEEP OUT'' is simple and well understood even by people who do not speak or read English. Commenters pointed to standard readability test results confirming that ''KEEP OUT'' is easily understood by most six-year-olds, while ''Entry Restricted'' is placed at the grade 12–13 reading level and would be beyond the reading and comprehension level of the majority of farmworkers in the U.S.

A number of states commented that the existing sign is sufficient. They noted that although ''Entry Restricted'' is more accurate, it would be a costly change for growers that may lead to confusion and not be more protective than the language on the existing warning sign. States also commented that 20 years of training and experience with the current sign is what makes it effective for keeping workers out of fields under an REI. The states and farmworker advocacy organizations agreed that for the predominantly low-literacy population of farmworkers, a simpler message, along with training on the message, is more protective than the proposed wording for the warning sign.

EPA Response. EPA was persuaded that the proposed changes to the warning sign would be costly for employers and not increase protections for workers as much as expected. A significant factor in EPA's decision was the additional information presented in public comments regarding the potential lack of understanding of the term ''Entrada Restringida.'' EPA was convinced that eliminating the existing language, ''KEEP OUT,'' in favor of a technically more accurate sign would be less protective for the majority of workers. The goal of the warning sign is to keep workers out of areas that are treated with certain pesticides. Entry into these areas is prohibited while the REI is in effect with a few narrow exceptions. Workers that are directed to enter treated areas under an REI and/or areas where the warning sign is posted must have received pesticide safety training, be provided additional protections, and be informed that their entry is subject to the limitations established for early entry exceptions in the regulation. Because EPA expects that the majority of workers would never enter treated areas during an REI, because 20 years of training and experience have familiarized workers with the message and intent of the sign, and because EPA has added additional training and protection for workers entering treated areas while an REI is in effect, EPA agrees with commenters that the easily understood message of ''KEEP OUT'' is most appropriate.

4. Costs and benefits. Since the final rule does not change the requirement in

the existing rule, there are no costs associated with this decision.

C. Warning Sign Location Revisions

1. Current rule and proposal. Under the existing rule, when signs are required for applications in outdoor production, they ''shall be visible from all usual points of worker entry to the treated area, including at least each access road, each border with any labor camp adjacent to the treated area, and each footpath and other walking route that enters the treated area.'' EPA proposed maintaining the existing posting requirement for outdoor production and clarifying the language to require posting be visible from ''each border with any worker housing area within 100 feet of the treated area,'' rather than ''labor camps adjacent to the treated area.''

2. Final rule. EPA has finalized the proposed changes to the warning sign location requirements for outdoor production. The final regulatory text for this requirement is available at 40 CFR 170.409(b)(3)(ii).

3. *Comments and responses.*

Comments. Several states, grower organizations, and farmworker advocacy organizations supported the proposal and agreed that it would support EPA's goal of increasing clarity of the rule and enhance the ability of employers to understand their responsibilities under the regulation. Commenters in support of the change noted that ''adjacent'' is a vague term that may be interpreted differently by different people and that ''labor camp'' is too limited and does not technically include worker housing. They noted that clearer posting requirements could lead to better compliance and thus be a better system for keeping people living in close proximity to treated fields safe.

Some pesticide manufacturers opposed the proposal on the grounds that it is an overly prescriptive, costly, and unnecessary provision which would not provide additional protection above that already provided by the label and existing WPS.

A public health organization proposed adding pesticide application information and REIs to the posting requirement near worker housing areas. One state suggested revising the language by stating ''Each border with any worker housing area provided by this establishment/employer within 100 feet of the treated area.''

EPA Response. EPA was not persuaded by the comments that the requirement would be a significant additional burden on employers. The requirement only clarifies where employers need to post warning signs but does not increase posting requirements beyond what was intended in the existing regulation. EPA agrees with commenters who noted that increased clarity on posting requirements will lead to better compliance and increase awareness of treated fields by workers who live near treated areas.

4. Costs and benefits. Because this change only clarifies an existing requirement, the cost, if any, would be negligible.

VII. Hazard Communication

A. Hazard Information—Location and Accessibility

1. Current rule and proposal. The existing WPS requires employers to display certain information about pesticide applications at a central location on the establishment when workers or handlers are present and an application of a pesticide requiring compliance with the WPS has been made or an REI has been in effect within the past 30 days (referred to as the ''central display'' requirement).

EPA proposed to replace the existing requirement for the application information to be located at the central display with a requirement for employers to make the application information and additional hazard information accessible upon request by workers, handlers or their authorized representatives.

2. Final rule. EPA has decided not to finalize the proposal. The final rule generally retains the existing requirement related to the location of, and accessibility for workers and handlers to, the pesticide application information, makes some changes to the content of the required information, requires display of hazard information, and includes the accessibility requirements proposed for workers, handlers, and their designated representatives (''authorized representatives'' in the proposal). The employer must display the information at a place on the establishment where workers or handlers are likely to pass by (the ''central display''). The information must be displayed when workers or handlers are on the establishment and an application of a WPS-covered pesticide has been made or an REI has been in effect within the past 30 days. After this time, the information must be kept on the establishment for two years and made available to workers, handlers, or their designated representatives or any treating medical personnel. The final rule contains more specificity than the proposal, particularly in reference to the designated representative, where details are drawn from OSHA's rule at 29 CFR 1910 (Ref. 17).

The designated representative must provide written evidence of such designation, including the name of the worker or handler being represented, a description of the specific information being requested, including dates of employment of the employee, the dates for which the records are requested, the type of work conducted by the worker or handler during that period, a statement indicating that the representative is designated by the worker or handler, the specific application and/or hazard information requested, a statement designating the representative to request the information on the worker's or handler's behalf, the date of the designation, and the printed name and contact information for the designated representative. If the information is to be sent to the requester, direction for where that information must be sent is to be included. When the employer is presented a request that contains all of the necessary information specified in the regulations, the employer must provide a copy of, or access to, all of the requested information that is applicable within 15 working days from the receipt of the request. Failure to respond to the request would be a violation of the rule. The final regulatory text for this requirement is available at 40 CFR 170.311(b)(9).

Workers and handlers who worked on the establishment may request, orally or in writing, the pesticide-specific information retained by the employer. The information must have been displayed while the worker or handler worked on the establishment. The employer must provide access to, or a copy of, the information within 15 days of the request. The regulatory text for this requirement is available at 40 CFR 170.311(b)(7).

Under the requirements to provide records to workers, handlers, and designated representatives, EPA also added language similar to that found in OSHA regulations (see 29 CFR 1910.1020(e)(1)(v)) to ensure that whenever a record has been previously provided without cost to a worker, handler, or their designated representative, the agricultural employer may charge reasonable, non-discriminatory administrative costs (*i.e.,* search and copying expenses but not including overhead expenses) for a request by the worker or handler for additional copies of the same record.

Medical personnel or persons acting under their supervision may also request the pesticide-specific

information required to be retained in 170.311(b)(6) to inform diagnosis or treatment of workers or handlers who were employed on the establishment during the time the information was required to be displayed. The request may be provided orally or in writing to the agricultural employer, and the employer must respond promptly to the request. The regulatory text for this requirement is available at 40 CFR 170.311(b)(8).

Lastly, the final rule makes some changes to the content of the required pesticide application information and when it must be posted, as explained in Units VII.C. and VII.D. The final regulatory text for this requirement is available at 40 CFR 170.311(b).

3. Comments and responses.

Comments. The overwhelming majority of commenters requested EPA to keep the existing central display requirement. Many comments from farmworker advocacy organizations, public health organizations, states, and some members of Congress noted that they thought it was unreasonable and unrealistic to think a vulnerable population such as workers and handlers would request hazard information from their employers. These commenters cited many reasons for this position, including barriers (*e.g.,* language differences, concern about compromising their immigration status, and fear of retribution, retaliation or job loss) and the power and social dynamics between employer and employee. These commenters were adamant that workers and handlers needed ready, anonymous, unhampered access to hazard information as currently provided through the central display requirement.

Most of these commenters supported the inclusion of a designated representative who could request the hazard information on behalf of a worker or handler, including farmworker advocacy organizations citing OSHA's requirements at 29 CFR 1910.1020(e)(1) that establish access to exposure records for workers in other industries. Comments in support of including access to hazard information by workers' or handlers' designated representatives note that workers and handlers may be reluctant to request the information for themselves due to their inability to communicate effectively with, or fear of, their employer, or because they may not be able to understand the information without help. One comment described a situation where a farmworker advocacy organization requested such information from an employer on behalf of two ill workers, but their request was denied because the workers themselves did not make the request.

In contrast, there was significant opposition from the agricultural industry to the proposal for the authorized representative, including growers, pesticide manufacturers, and their organizations, some states, and the Small Business Administration's Office of Advocacy. Comments from these groups centered on the additional burden on employers to provide the records. Commenters also expressed concerns that allowing access to pesticide application information by designated representatives could be abused by anti-pesticide organizations, who could send people onto the establishment requesting information purportedly on behalf of a worker or handler. In addition, some farm bureau comments stated that the requirement for providing the information to a representative is a violation of farmer's legal and privacy rights, stating that the representative could demand all information related to pesticides on that establishment.

Some commenters provided recommendations to improve the proposed requirement for a designated representative. Suggested improvements included limiting the designated representative requirement to current workers and handlers or to employees who worked on the establishment within two years of the request, limiting access to medical personnel only, or limiting the request to a specific incident. Many commenters recommended that the request be in written form, and include designation of the representative by the worker or handler. One state recommended defining a time frame for provision of the information to the requester. Another state suggested that the request clearly identify the information required to be provided to the authorized representative, and the purpose of the request or intended use of the information.

Many of the commenters in favor of keeping the existing central display requirement explained that a central display requirement that provides information about general pesticide safety, including symptoms of pesticide illness, and the specific pesticides used on the establishment, is necessary to protect the health of workers and handlers. First, having information available in non-emergency situations could help workers and handlers be aware of symptoms before they occur, help them avoid exposure, and possibly enhance the reporting of illnesses. Secondly, they stated that emergency medical personnel would not have to lose critical time tracking down information instead of treating the ill or injured person if they could rely on accessing the information quickly from the central display.

EPA also received comments from one pesticide manufacturer organization, a couple of states and some farm bureaus in favor of the proposal to eliminate the existing requirement for a central display of pesticide application information. These commenters agreed with EPA's observations in the preamble to the proposal that this requirement imposes a paperwork burden and that states often cite employers for technical violations of the display requirement. The commenters stated it is difficult to keep the displayed information current when application plans change, especially on large establishments. They also noted the difficulty keeping information legible when it is displayed at a central location subject to weather conditions. These commenters encouraged EPA to eliminate the existing central display requirement, not to finalize the proposed requirement to provide hazard communication information to workers, handlers, or their designated representative, and to require employers to only keep records of pesticide applications on their establishment.

EPA Response. EPA agrees with those commenters who argued that workers and handlers must have relatively unhindered access to pesticide-specific information, and has decided to retain the central display requirement. Although the extent and type of barriers and employer-employee dynamics are unique to each situation, EPA recognizes that a significant number of workers and handlers face disadvantages that can reasonably be expected to make them hesitant to ask their employers for information relating to their pesticide exposure. Consequently, EPA believes that it is not reasonable to make an employee's task of obtaining this information more difficult, particularly given the potential usefulness of the information if an employee may have been harmed by a pesticide. Therefore, EPA has decided to retain the requirement for the pesticide application information to be displayed at a place on the establishment where workers and handlers are likely to pass by or congregate and has added the requirement that the SDS must also be displayed at that location. In addition, in the final rule, workers and handlers and their designated representative may request either a copy of or access to the pesticide-specific information that was required to be displayed while the worker or handler was employed on the

establishment. The records of application and SDSs must be retained for two years after the application. Access to the SDSs after the display period will afford workers and handlers information about the pesticides they may have been exposed to, and the hazards they may present.

EPA recognizes, however, that there can be difficulties in complying with the central display requirement. In response to comments about the difficulty of keeping accurate information posted, EPA has attempted to simplify the central display requirement by changing the required time frame for posting the application-specific information (see Unit VII.D.). EPA expects this modification to the requirement for the timing to post the application information will reduce the burden on employers, while providing employees with ready access to accurate information. In response to the comments about the difficulty of maintaining a legible central display when it is subject to weather conditions, EPA notes that the central display requirement does not mandate that employers post the information outdoors. The information must be displayed ''where workers and handlers are likely to pass by and congregate and where it can be readily seen and read'' and workers and handlers must be able to access the information at all times during work hours. This does not preclude the central display from being maintained in a location sheltered from weather conditions, such as a bathroom, break area, or changing area, as long as the requirements of this section are met.

EPA has been convinced by comments in support to retain the option for a designated representative to access hazard information (application information and SDS) on behalf of a worker or handler. EPA agrees that including in the rule a requirement, based on OSHA's rule at 29 CFR 1910.1020, for employers to provide the information to a representative who has been designated to act on the behalf of the worker or handler would give workers and handlers more access to information related to pesticides used in their workplace. Also, EPA is aware that California and Texas regulations include requirements for employee representatives' to be given access to hazard information for farmworkers, and comments from the Texas Department of Agriculture encouraged EPA to require the designation in writing and to limit access to records to the retention timeframe of two years. EPA is unaware of issues related to worker representatives in those states.

In response to the many comments opposing the establishment of the authorized or designated representative based on concerns for the potential for anti-chemical activists fraudulently acquiring records, the final rule includes a requirement for the representative to provide to the employer documentation (written authorization) signed by the worker or handler that clearly designates that person to act as his or her designated representative. The information that can be obtained is limited to the application and hazard information that is required by § 170.311(b) of the final rule that was required to be displayed while the worker or handler was on the establishment, and for the dates applicable to the worker's or handler's dates of employment on the establishment. The employer must provide the information regardless of the worker's or handler's employment status on that establishment at the time of the request.

EPA was convinced by comments about the need for the pesticide specific information by medical personnel treating workers or handlers who may have been exposed to pesticides on the establishment, and has added a requirement that employers promptly provide the information to the requesting medical personnel or persons they supervise. The information would help ensure that the medical considerations would include the possibility that a pesticide exposure was involved in the worker's or handler's illness.

B. Pesticide-Specific Hazard Communication Materials—General

1. Current rule and proposal. The existing WPS requires employers to provide workers and handlers with specific pesticide application information, but not pesticide-specific hazard information on the pesticides they may be exposed to in the workplace.

EPA proposed to require employers to provide workers and handlers with access to the SDSs and pesticide labeling for products that have been applied on the establishment and to which workers and handlers may be exposed, in addition to the pesticide application information already required to be made available.

2. Final rule. EPA has finalized the requirement for agricultural employers to display at a central location pesticide application information and SDSs for pesticide products used on the establishment (referred to as ''pesticide application and hazard information'' in the final rule). EPA has not finalized the proposal to require employers to provide access to pesticide labeling. The final regulatory text for this requirement is available at 40 CFR 170.311(b).

3. Comments and responses.

Comments on providing safety data sheets and pesticide labeling. EPA received many comments in favor of the proposed requirement. Although many farmworker advocacy organizations expressed support for a requirement that employers maintain both labeling and SDS and make them available to workers and handlers, few discussed the merits or drawbacks. Many farmworker advocacy organizations, public health organizations and academics, a grower organization and others supported a requirement to maintain and provide SDSs. Some of these commenters indicated that the information on a SDS would be helpful for the correct diagnosis and treatment of pesticide-related illnesses. Farmworker advocacy organizations explained that workers want more information on what pesticides are used and what they are exposed to, along with possible side effects. On the other hand, a few grower organizations, a farm bureau, a pesticide manufacturer organization and a couple of states were against a requirement to provide SDSs. These commenters argued that EPA had not made a case strong enough to justify why workers need SDSs. They also opposed display of SDSs on the grounds that while the pesticide product label poses legally enforceable requirements on users, SDSs do not.

Some farmworker advocacy organizations, public health organizations, a grower organization, a farm bureau and others thought it would not be much of a burden on agricultural employers to acquire the SDSs of pesticide products because they are easily available online or can be requested from the pesticide manufacturer or distributor. One farmworker advocacy organization gave the Washington State Employer Hazard Communication rule (EHC rule) as an example of a requirement for employers to make SDSs available to employees that is feasible. *http://www.lni.wa.gov/IPUB/413-012-000.pdf*. The Washington State EHC rule applies to employers with one or more employees who either handle or are potentially exposed to hazardous chemicals, including pesticides, in their workplace. It requires employers to make SDSs for each chemical that employees may encounter readily accessible and easily obtained without delay during each work shift, and to ensure that employees traveling between workplaces during a work shift can immediately obtain the

SDS in an emergency. In contrast, a couple of grower associations stated that it is overly burdensome for agricultural employers to get SDSs. One state thought it would be difficult for employers to locate the correct SDS for pesticide products. They also noted that small businesses and private applicators will have the most difficulty since they are not already accustomed to keeping SDSs.

EPA received some comments both for and against providing pesticide product labeling. Many farmworker advocacy groups supported a requirement for the employer to provide the labeling. These commenters maintained that workers and handlers want more information on chemicals to which they may be exposed. On the other hand, farm bureaus, growers and grower organizations and states opposed a requirement to provide the labeling. These commenters expressed concern that EPA is expanding its mandate by requiring agricultural employers to provide the product ''labeling'' when it should be limited only to the WPS portions of the ''label.'' These commenters argued that an agricultural employer could easily violate this requirement by not having the most current or correct version of the labeling, such as a specimen or technical label.

EPA Response. After consideration of the comments, EPA remains convinced that access to SDSs offers significant health and safety benefits to workers and handlers. SDSs contain information that is not generally included in pesticide labeling regarding chronic, developmental, and reproductive toxicity that can be valuable to exposed and potentially exposed workers, and to medical personnel and others who provide treatment to an ill or injured person. Moreover, given the ubiquity of chemicals subject to the OSHA Hazard Communication Standard that mandates the development and distribution of SDSs, it is likely that many health care professionals are more familiar with SDSs than pesticide labeling. Requiring the SDS as part of the central display facilitates a quicker identification of the pesticide product used in case of an incident and may assist in diagnosis. The SDS contains information about symptoms expected in a person exposed to the chemical (immediate, delayed and chronic effects) as well as recommended treatment, whereas the label may not include detailed information on symptoms or treatment. EPA recognizes that state pesticide regulatory agencies do not review, approve, or take enforcement action based on the information in SDSs. However, comments from worker advocates indicate that workers and handlers want to have more information on health effects, which is available on SDSs and generally not available on the pesticide labeling. OSHA is requiring that all SDSs be in a standard format, making it easier to locate health information (Ref. 17). Accordingly, EPA concludes that a requirement to post SDSs is an effective way to communicate pesticide hazard information important to workers and handlers. EPA notes that under the final rule workers and handlers will learn during pesticide safety training about SDSs, the information they contain, and their availability at central display locations. This addition to the training will further reinforce workers' and handlers' awareness and potential use of SDSs.

EPA is persuaded that access to SDSs is not a significant obstacle to requiring agricultural employers to keep and display SDSs for pesticide products used on the establishment. Agricultural employers can obtain SDSs from the distributor of the pesticide, online, or upon request from the product manufacturer. For example, employers in industries other than agriculture—including retailers and wholesalers of agricultural chemicals—are required by the OSHA Hazard Communication Standard to make available SDSs to their employees.

Upon consideration of the comments, EPA has decided not to require agricultural employers include the pesticide product label or labeling as part of the central display requirement. EPA recognizes the burden on employers to provide both the SDS and label or labeling in addition to the pesticide application information. As noted previously, the SDS contains the health-related information requested in comments by worker advocates, and that would be most useful to persons providing treatment to those who may have been exposed to pesticides. EPA agrees that if necessary, the labeling for a product used for a specific application can be located using the application-specific information that employers are also required to post. See Unit XVIII.A. for a complete discussion of comments related to labels and labeling.

Comments on the extent of the requirement. EPA received comments both to narrow and to expand the scope of the proposal requiring employers to maintain SDSs and make them available to employees. Among the suggestions to narrow the scope of the proposal, one state suggested EPA keep a central repository of SDSs for agricultural employers to access and require employers to keep the SDS only while the associated pesticide product remains on the establishment. Farmworker advocacy organizations and public health organizations recommended expanding the proposed requirement to a full Hazard Communication Standard as required by the Washington State ECHC for all hazardous chemicals, which requires employers to develop a written Hazard Communication program, maintain availability and access to SDSs, provide information and training on hazards in the workplace, translate certain documents upon request, and keep and provide access to exposure records for at least 30 years.

Many farmworker advocacy organizations suggested that EPA require SDSs to be available in multiple languages and provided two examples of similar requirements. First, one farmworker advocacy organization cited the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801, *et seq.*), administered by the DOL, which requires written information on the terms of employment to be provided in English, Spanish or other language common to workers. Second, one farmworker advocacy organization claimed that in Washington State, agricultural employers are required to provide translated documents if requested. Farmworker advocacy organizations asserted that it would be easy to translate SDSs because of the standard format required by OSHA's adoption of the Globally Harmonized System of Classification and Labeling of Chemicals. One pesticide manufacturer organization was opposed to translating the SDS because of the many indigenous languages present among workers.

EPA Response. After reviewing the comments, EPA has decided on an approach that will provide workers and handlers with more information about the potential health effects associated with the pesticides to which they may be exposed without overly burdening agricultural employers. Obtaining the SDSs for products used on the establishment should not be overly burdensome to employers; SDSs are available from pesticide dealers and the internet. An EPA-managed repository of the SDSs of all WPS pesticides would not significantly improve access and would be a significant burden for EPA because of the number of pesticides included. Stakeholders such as grower organizations are free to voluntarily develop SDS repositories with assistance from members. Voluntary programs of this sort would involve limited subsets of all WPS-scope pesticide products and could possibly

be accomplished within a short period in comparison to a national, full-scale repository program.

EPA has decided not to reduce the amount of time the SDS must be available. The cost of retaining the SDS, once obtained, is negligible. Employees and medical personnel could benefit from access to the health effects information in the SDS in case of symptoms that develop sometime after the application has been completed.

EPA disagrees with commenters' request to adopt a full hazard communication proposal as required by the Washington State ECHC for all hazardous chemicals. The full set of the WPS requirements in the final rule provide protections similar to those provided to workers in other industries under OSHA's Hazard Communication Standard program, while recognizing differences between agriculture and other industries. As discussed in the Agency's 1992 proposed rule on the Worker Protection Standard; Hazard Information (Ref. 18), in response to numerous concerns about potential overlap or conflict between EPA's July 1988 proposed WPS (Ref. 18) and OSHA's August 1988 proposed Hazard Communications Standard (Ref. 19), EPA committed to work with OSHA to minimize confusion and avoid duplication between the two agencies' requirements. Rather than require agricultural establishments that may not routinely use the same pesticides to develop and maintain a written Hazard Communication Standard plan listing all chemicals that will be used in the workplace, EPA's approach, in both the 1992 proposed rule on Hazard Information (Ref. 20) and this final rule, has been to identify specific requirements, tailored to fit the context of pesticide use in agricultural production that serve a purpose similar to the Hazard Communication Standard requirements in other industries. These requirements include pesticide safety training, display of basic pesticide safety information, notification or posting of treated areas, and access to information about pesticides used in the workplace at a central location. EPA notes that the WPS does not exempt employers with 10 or fewer employees, unlike OSHA's Hazard Communication Standard. EPA also notes that the cost of a developing and implementing a full hazard communication program specific to each establishment could be burdensome to small agricultural establishments.

Lastly, although EPA is not requiring that SDSs be translated at this time, EPA encourages and supports employers to display this information in such a way that workers and handlers can understand, including translation. EPA is open to conferring with stakeholders on the need for translation and identifying content to be translated, if necessary. EPA notes that some pesticide manufacturers already make pesticide product SDSs available in Spanish and EPA encourages employers to display Spanish SDSs where available and appropriate.

Comments on other forms of hazard communications materials. Many farmworker advocacy organizations suggested EPA develop and provide crop sheets, booklets, or other types of materials that describe the health effects of pesticides, either in lieu of or in addition to the SDS. These commenters identified a need for a pictorial booklet designed for low-literacy audiences on the health effects from exposure to pesticides, based on the information in SDSs. One state suggested that a small booklet with basic pesticide exposure symptoms by classes of chemicals or modes of action, described in layman's terms would be more helpful to workers than SDSs. One pesticide manufacturer organization opposed the development of crop sheets.

EPA Response. EPA agrees with the basic concept of providing workers and handlers with information on the health effects of pesticides for workers and handlers in a manner they can understand. Pesticide safety training and the pesticide information display provide workers and handlers with information on the symptoms that may be associated with exposure to different pesticides. If workers or handlers need information about the specific effects of a pesticide with which they have worked, they can consult the SDS. However, EPA does not agree with the commenters' request to require crop sheets or similar materials because, in EPA's judgment, the benefits of such a requirement would not justify the substantial costs associated with creating, updating, translating and distributing materials for every crop, growing region, and WPS-scope pesticide product. As noted in the proposal for this rule, crop sheets and other types of material have been developed in the past, with very limited success. For example, one state's crop sheet program proved to be expensive and labor intensive, and the crop sheets were left as litter in the fields, unused. SDSs already contain information about the potential health effects (acute, delayed, and chronic) associated with use of pesticide products and will be readily available in a uniform format, including provide hazard information in words and in pictograms.

Comments on inconsistencies in information between labels and SDSs. A pesticide manufacturer organization opposed any requirement by EPA to provide SDSs to worker and handlers upon request. This commenter expressed concern about the confusion that may be caused by inconsistencies between pesticide labels and SDSs. OSHA requires manufacturers to use GHS terms and chemical classification criteria on SDSs whereas EPA does not require their use on pesticide product labels. As a result, SDSs and pesticide product labels could have different hazard statements, pictograms and signal words.

EPA Response. EPA has not finalized the proposed requirement for the employer to make available pesticide product labeling upon request. Instead, the final rule requires the employer to display only pesticide application information and SDSs for pesticide products used on the establishment. The SDS provides succinct information about the known health hazards of the product that typically is not presented as part of the product label or labeling. Such information can be invaluable to medical professionals for the diagnosis and treatment of certain pesticide-related illnesses and injuries. Because EPA is not requiring the employer to display the labeling, EPA does not expect issues with a perception of conflict between labeling and SDSs. The persons who wear PPE and have access to the label are pesticide handlers who receive more thorough training than workers. If pesticide handlers encounter conflicting information on labeling and SDSs, such as the PPE identified, they should know they must follow the instructions on the pesticide labeling, as they are trained to do. For information on OSHA's adoption of the Globally Harmonized System of Classification and Labeling of Chemicals for SDSs and the pesticide product labeling, see EPA's Pesticide Registration (PR) Notice 2012–1, ''Material Safety Data Sheets as Pesticide Labeling'' (*http://www2.epa.gov/sites/production/files/2014-04/documents/pr2012-1.pdf*).

C. Pesticide Application Information—Content of Pesticide Application Information

1. Current rule and proposal. In the existing WPS, the agricultural employer must record and display the following information about each pesticide application: The location and description of the area to be treated, the product name, EPA registration number and active ingredient(s) of the pesticide product, time and date the pesticide is to be applied, and REI for the pesticide.

EPA proposed to require the agricultural employer to record and make available, in addition to the information required in the existing regulation: The specific crop or site treated, the start and end dates and times of the application, and the end date and duration of the REI.

2. Final rule. EPA has finalized the proposed requirements for the contents of pesticide application information, with one change. The final rule requires agricultural employers to record and display the following pesticide application information: Product name, EPA registration number, and active ingredient(s) of the pesticide product applied; the crop or site treated and the location and description of the treated area; the date(s) and times the application started and ended; and the duration of the REI. The final rule does not require the employer to record the end date of the REI. The final regulatory text for this requirement is available at 40 CFR 170.311(b)(1)(ii)–(v).

The agricultural employer must record and display the information about the crop or site treated and the location of the treated area. EPA encourages employers to display the information in such a way that workers and handlers can understand and distinguish each treated area from all other areas on the establishment; in some cases, a map or diagram may be appropriate.

EPA encourages and supports the provision and display of the application information so it is most useful to workers and handlers on the establishment. One such option is to separate the information about treated areas, so those areas where an REI is in effect are distinct from those where the REI has expired, allowing the viewer to more quickly identify areas where entry is restricted. Similarly, maps highlighting areas where an REI is in effect and those where the REI has expired could also present the information in a user friendly, pictorial manner. EPA also sees an opportunity for employers to provide information of this nature through texting and other electronic means to their employees, and encourages such communication, in addition to the requirement for maintaining this information as part of the central display.

3. Comments and responses.

Comments. Many farmworker advocacy organizations, a few pesticide regulatory agencies, a grower organization and others supported the proposed expansion of the content requirement for pesticide application information records. According to these commenters, it would be a small burden to require additional application information, such as crops treated, that could help workers proactively avoid exposure to pesticides. One state asked EPA to parallel the information required by USDA to avoid confusion, while another suggested that more information be required in addition to the information proposed to assist state pesticide regulatory personnel in determining compliance.

Several farm bureaus, one grower organization and several states opposed any changes. These commenters asserted that the content required by the existing regulation is already too burdensome. Several farm bureaus opposed EPA's proposed expansion of the content of records stating that EPA had not justified it with quantifiable benefits. A few states, two farmworker advocacy organizations and other commenters suggested various combinations of records limited to three or fewer pieces of information. One grower organization argued that only a record of the active ingredient is needed for medical treatment, while another questioned how a record of the REI benefits the health and safety of workers. Lastly, these commenters maintained that recordkeeping of general use pesticide applications is not required by law, the proposed requirement is duplicative of state and federal requirements, and commercial applicators already keep records.

EPA Response. EPA agrees with the comments that adding more information to application records is a small burden compared to the benefits of determining compliance and giving workers and handlers information to verify the location of treated areas. The crop or site treated, start and end times and date(s) of the application, and duration of the REI are important for protecting worker and handlers and useful for determining compliance. Agricultural employers, compliance officers, workers, handlers and others will be able to calculate the end date and time of the REI by having the end date and time of the application and the duration of the REI included in the pesticide application information. The combined information will also help workers and handlers identify the areas where an REI is in effect. EPA did not propose requiring more information because the proposed content of application records fits the needs of stakeholders to determine compliance and to give workers and handlers the ability to discern which area had been treated. An arbitrary limit of only three or fewer pieces of information may not achieve the same benefits.

The WPS requires agricultural employers to maintain records because those records provide information that is important for the protection of their employees. While a significant number of agricultural employers may also be certified as private pesticide applicators, their status as private applicators does not exempt them from the WPS recordkeeping required of agricultural employers. The WPS does not require private applicators to maintain records on account of their status as private applicators.

The risks of concern under the WPS include both RUPs and non-RUPs, while certification requirements at the federal level, including recordkeeping, only apply to those using RUPs. Neither the USDA application record requirements for private applicators of RUPs, nor state application record requirements for commercial applicators fully cover the information needed under the WPS for the protection of workers and handlers. The USDA required information does not include the active ingredients, duration of the REI or the start and end dates and times of applications, nor does it apply to applications of non-RUP pesticides. Commercial applicators would have to record the information required by the state pesticide regulatory agency, which must at a minimum include the kinds, amounts, uses, dates and places of RUP applications. 40 CFR 171.7(b)(1)(iii)(E). Also, state pesticide regulatory agencies may or may not require records of non-RUP applications. Therefore, it is unlikely that all states' commercial applicator RUP application records will match exactly the record requirements of the WPS. Because the records required to be maintained by USDA and the states do not include all of the information needed for protection of workers and handlers, it is appropriate to require such recordkeeping through the WPS.

D. Pesticide Application and Hazard Information—When Information Must Be Made Available

1. Current rule and proposal. In the existing rule, the agricultural employer must record and display the pesticide application information before the application takes place, if workers or handlers are present on the establishment before the application begins. Otherwise, the information must be recorded and displayed at the beginning of any worker's or handler's first work period. If the employer posts warning signs for a treated area, the pesticide application information must be displayed at the same time as, or earlier than, the warning signs. The

information must remain on display when workers are on the establishment and from the time of the application until 30 days after the REI expires or until 30 days after the application end date if the REI is 0 hours (or in the rare instance where a label might not have an REI).

EPA proposed to require the agricultural employer to provide the pesticide application information, the SDS and labeling upon request during normal work hours, no later than the end of the day.

2. Final rule. The final rule requires the agricultural employer to display the pesticide application information and the SDS (pesticide application and hazard information) at the central display no later than 24 hours after the application is complete. Also, the employer must display the pesticide application and hazard information for each treated area before any worker is permitted to enter the treated area, even if the applicable REI has expired. If workers will be in the area, they must be notified of the application before it starts, by posted signs or orally, and warned not to enter the area. The application information and SDS must remain posted for 30 days from the expiration date of the REI or from the application end date if the REI is 0 hours (or in the rare instance where a label might not have an REI). EPA did not finalize the proposed requirement for the agricultural employer to make available the pesticide application information and the SDS no later than the end of the day of the application. The final rule eliminates the existing requirement to display the application information before or at the same time a warning sign is posted at a treated area. The final regulatory text for this requirement is available at 40 CFR 170.311(b)(5) and 40 CFR 170.309(l).

3. Comments and responses.

Comments. Several farmworker advocacy organizations and one public health organization requested that EPA keep the existing requirement to make information available before the application so workers and handlers would be able to connect symptoms to an application if the exposure occurred during the application. While many farmworker advocacy groups supported the display of information before an application, some expressed concern about the accuracy of the pesticide application information displayed when information about the application changed from what was planned and the displayed information was not updated. One farm bureau and one pesticide manufacturer organization requested that EPA require employers to make the information available after the application.

EPA Response. EPA agrees with the commenters that it is important to provide workers and handlers with accurate information about pesticide applications. Displaying the information after the application is complete benefits workers and handlers because they can be confident the information is correct, and the employer no longer has to change the information when application plans change. Under the final rule, EPA expects all displays of pesticide application information will contain accurate information. The final rule retains the requirement for workers to receive oral notification, or to see posted warning signs, or both before an application begins, informing them to stay out of an area before an application begins.

E. Pesticide Application and Hazard Information—Retention of Records

1. Current rule and proposal. The existing WPS requires employers to maintain pesticide application information at the central display from the time of application until 30 days after the REI expires. There is no requirement for the employer to retain the pesticide application information in any form after that time.

EPA proposed to require employers to retain, for each application of a WPS-covered pesticide, the pesticide application information, labeling and SDS, for two years from the date of the end of the REI for each product applied.

2. Final rule. The final rule requires agricultural employers to retain the pesticide application information and the SDS for the product used (pesticide application and hazard information) for two years from the date of expiration of the REI applicable to the application conducted. EPA has not included the proposed requirement for the employer to retain the pesticide labeling in the final rule. The final regulatory text for this requirement is available at 40 CFR 170.311(b)(6).

3. Comments and responses.

Comments. EPA received comments supporting a two year recordkeeping requirement from several states and one grower organization. One state commented that it did not have a need for the information after one year, but that two years was not much more of a burden. Many farmworker advocacy and public health organizations requested EPA to require recordkeeping ranging from more than two years to as many as 30 years to help with the diagnosis of chronic health effects that could be related to pesticide exposure.

Commenters from some farm bureaus, grower associations, and Small Business Administration's Office of Advocacy opposed a two-year recordkeeping requirement, in part because they asserted that EPA could not show quantifiable benefits. These commenters argued it would be a paperwork exercise without health and safety benefits driven based on the needs of enforcement, and instead should be replaced with a minimal, non-intrusive requirement. One commenter suggested requiring employers to keep records only during the harvest season.

EPA Response. EPA has concluded that a two-year recordkeeping requirement would be helpful for health diagnoses and investigation purposes. EPA considered requiring the retention of records for five years and asked state pesticide regulatory agencies about their needs for access to pesticide application records. These enforcement agencies informed EPA that they rarely need to rely on records beyond the two-year timeframe.

EPA notes that this recordkeeping requirement does not necessarily impose a duplicative burden on agricultural employers to obtain pesticide application information and SDSs twice—once to satisfy the central display requirement and once to satisfy the recordkeeping requirement. Agricultural employers may satisfy this recordkeeping requirement by the removal of the pesticide application information and SDS from the central display 31 days from the expiration of the REI (or from the end of the pesticide application if there is no REI) and retaining those records for two years from the date of application. EPA recognizes that some employers may choose to maintain electronic copies of pesticide application records and the product SDS. The WPS does not specify that records must be kept on paper, so an employer can maintain records electronically as long as the employer satisfies all related requirements of the WPS, such as being able to quickly access and provide the required materials in the event of a pesticide emergency.

F. Costs and Benefits

1. Costs. EPA estimates the cost for these final hazard communication requirements, implemented together, to be $9.3 million annually, or $25 annually per establishment (Ref. 1). The cost of the hazard communication requirements differs from the proposed requirements because EPA is maintaining and revising the existing central display requirement, allowing the agricultural employer to display

information after the application negating the need to update information later, and requiring the agricultural employer to display and keep records of the pesticide application information and SDS but not the labeling.

2. Benefits. Although EPA cannot quantify benefits specific to any of these requirements, the qualitative benefits from workers' and handlers' ready access to accurate information about areas under an REI, pesticides in use, and potential health impacts from those pesticides convinced EPA to adopt these requirements Ref. 1). The final rule retains the central posting requirement, and allows the employer some flexibility in posting the information so accurate information is displayed.

VIII. Information Exchange Between Handler and Agricultural Employers

1. Current rule and proposal. The existing WPS requires handler and agricultural employers to exchange information about pesticide applications. When handlers are employed by an employer other than the agricultural employer, the existing WPS requires the agricultural employer to provide the handler employer with information about treated areas on the agricultural establishment the handler may be in (or may walk within one-quarter mile of), including specific location and description of any such areas and restrictions on entering those areas. The existing WPS requires handler employers to provide agricultural employers with the following information prior to making a pesticide application on the agricultural establishment:

- Location and description of the area to be treated.
- Time and date of application.
- Product name, active ingredient(s), and EPA registration number for the product.
- REI for pesticide(s) applied.
- Whether posted notification, oral notification, or both are required.
- Any other product-specific requirements on the product labeling concerning protection of workers or other persons during or after application.

The agricultural employer must display this information for workers and handlers employed by the establishment at the central location. The current WPS requires handler employers to inform agricultural employers before the application takes place when there will be changes to scheduled pesticide applications, such as changes to scheduled pesticide application times, locations, and subsequent REIs.

In addition to maintaining the current requirements, EPA proposed to require the agricultural employer to also provide to the handler employer information about the location of ''entry-restricted areas'' on the establishment. EPA also proposed to require the handler employer to communicate to the agricultural employer the start and end times of pesticide applications and the end date of the REI. EPA also proposed to relax existing WPS requirements by requiring handler employers to provide information about any changes to pesticide application plans to the agricultural employer within two hours of the end of the application rather than before the application. Changes to the estimated application end time of less than one hour would not require notification.

Finally, in the proposal, EPA unintentionally omitted the provision in the existing WPS that the agricultural employer need not provide information to the handler employer about treated areas if the handler will not be in or walk within one-quarter mile of those treated areas.

2. Final Rule. Information exchange from agricultural employer to handler employer. The final rule requires the agricultural employer to notify the handler employer of any treated areas where an REI is in effect and any restrictions on entering those areas. EPA has not included in the final rule a requirement for the agricultural employer to communicate to the handler employer information about the location of ''entry-restricted areas'' on the establishment because of the changes to the requirement concerning entry-restricted areas, as discussed in Unit IX.B. EPA has also revised the final rule to correct the unintentional omission of the existing rule's exception that the agricultural employer need not provide information to the commercial handler employer about treated areas if the handler will not be in, or walk within one-quarter mile of those areas. The final regulatory text for these requirements is available at 40 CFR 170.309(k).

Information exchange from handler employer to agricultural employer. EPA has finalized the proposal to expand and clarify the information the pesticide handler employer must provide to the agricultural employer with minor modifications. The final rule does not require the handler employer to convey the end date of the REI to the agricultural employer. The final regulatory text for these requirements is available at 40 CFR 170.313(i).

Timing of exchange of information from handler employer to agricultural employer. EPA has modified the final rule to specify those situations where the handler employer must notify the agricultural employer of changes to the application information before the application takes place. EPA has also modified the rule to specify the timing for notifying agricultural employers if the notification is not required before the application. The final regulatory text for these requirements is available at 40 CFR 170.313(j).

3. Comments and responses.

Comments. Many states and a few farmworker advocacy organizations expressed general support for the proposal to expand the information to be exchanged. These commenters agreed the additional information would help agricultural employers protect workers, reduce pesticide-related illnesses and exposure from drift during applications. Many farm bureaus, states, applicators and applicator associations and an agricultural organization generally disagreed with the proposed expansion. Some of these commenters argued that the proposed requirements are unrealistic and impractical given the dynamics and unpredictable factors involved in a farming operation, such as pest infestations and weather changes. In addition, they argued that the proposal would require multiple parties to exchange information, resulting in the potential for miscommunication. Some commenters also opposed the proposed expansion of information exchange because EPA did not provide documented justification. Crop consultants, an applicator association and a farm bureau indicated the proposal is unnecessary because close coordination of information already exists between applicators, handlers, crop consultants, and growers. Furthermore, they stated that not only are handlers already required to keep workers out of areas during applications, applications are often scheduled to take place when workers are absent. A few states, farm bureaus and a crop consultant opposed EPA's proposal to add to the information the agricultural employer is required to give the handler employer. One crop consultant indicated the information is already on purchase orders or sales agreements between growers and commercial handlers or their employers. One state requested that EPA omit the application start time because it is not used to calculate the REI.

EPA's proposal on the timing to provide notice of a change in application plans elicited many comments. EPA proposed that this

notice be provided within 2 hours of the end of the application, unless the only change was a difference of less than 1 hour between scheduled and actual application times. One state and several farmworker advocacy organizations endorsed the requirement because of the ease of providing the information in the timeframe by relying on existing electronic capabilities. One farmworker advocacy organization urged EPA to require that changes be communicated before the start of the application in order to enable employers to be able to keep workers out of the treated area.

To prevent confusion about scheduled and actual start and end times and to avoid miscommunication, one state suggested that EPA require the handler employer to inform the agricultural employer of changes at any time on the application day. Two aerial applicators explained that a two-hour window for notification of change sounds reasonable on paper, but not in practice. During long workdays of the busy season, applicators would have to make phone calls in the middle of the night and send text messages, usually from the airplane during or in between applications. Also, it can take more than one day to complete an application because of factors such as the weather, a change in wind direction, or verifying the presence of bystanders. These situations could require the handler to give several updates to multiple parties, resulting in a greater chance for errors and noncompliance.

One commenter requested that EPA require notification of a change within 24 hours from the end of the actual application, while another advised EPA to require notification if the actual application completion time is two or more hours later than the scheduled application time. Several farm bureaus, a pesticide applicator and a crop consultant organization advised EPA to require that changes in application plans be communicated: Before the scheduled date and times, if the application is going to be made earlier than expected, or before the end of the REI as scheduled, if the application is made later than expected. One aerial applicator stated that if an REI is greater than 24 hours, EPA should require an information update before the scheduled REI expires or within 24 hours of the scheduled application time. Another aerial applicator recommended the handler employer and handler give the agricultural employer a window of estimated start and completion date(s) and time(s). In this situation, the handler would not make the application outside of that window without the approval of the agricultural employer, who in turn must keep workers out of the area during that time, unless notified of a change in the application start and completion date(s) and time(s).

Many commenters noted the absence of the existing provision that the agricultural employer need not provide information to the commercial handler employer if the handler will not be in or walk within one-quarter mile of an area that may be treated with a pesticide or under an REI, and noted this could result in the need to provide excessive, unnecessary information.

EPA Response. The information exchange requirements ensure that agricultural employers and handler employers have the information they need to comply with the requirements for notifying workers and handlers of risks associated with pesticide applications and treated areas (*i.e.,* agricultural employers are required to notify workers of treated areas and display pesticide application and hazard information at the central location on the establishment for workers and handlers to see, and handler employers must inform their handler employees of treated areas on the agricultural establishment near where they work).

EPA has been convinced not to adopt the proposed change to expand the information required to be communicated by the agricultural employer to the handler employer to include information about the location of ''entry-restricted areas'' on the establishment. Requiring employers to exchange this information would not be practical given other changes in the rule related to the ''entry-restricted areas'' (replaced by ''application exclusion zones'' in the final rule) that make the tracking of such areas infeasible. EPA also agrees that it is not necessary for the handler employer to calculate the end time of the REI for each application and include it in the information conveyed to the agricultural employer. The requirement to provide this piece of information has been deleted from the final rule.

Most of the other information required to be exchanged by the final rule is already required to be exchanged by the existing rule, and therefore EPA does not agree that this requirement presents a substantially increased or unreasonable burden. Agricultural and handler employers are currently required to exchange information so agricultural employers may provide notification of application and treated areas under an REI to workers and handlers. Without this information transfer, accurate and timely notification would be difficult to achieve, exposing workers and handlers to potential exposure to pesticides. It is critical that the agricultural employer know the start times of applications in order to be able to notify workers and handlers (when they are on the establishment) so they may avoid treated areas. EPA recognizes that exchange of the expanded information may already occur on some establishments and expects those entities to experience less burden than in situations where such coordination has not already developed.

EPA recognizes that much of the information required may be available on sales agreements and purchase orders between commercial pesticide handlers and agricultural employers, which will reduce the burden for employers to gather it; however, without inclusion of the information exchange requirements in the WPS there is no assurance of timely exchange of all of the necessary information.

EPA considered the range of options suggested for the timing of the information exchange. Several of the recommendations for notification of application changes from the commercial pesticide handler employer to the agricultural employer can be accommodated under the final rule. For example, the applicator and agricultural employer can agree on a window of the estimated start and end times, with the understanding that the application would be made during that period, unless the two communicate and agree to a different timeframe. This would allow the agricultural employer to notify workers of the treatment, keep them from the area, and create and post the application information, satisfying the requirement.

EPA did not identify any suggestions from commenters, apart from those that would be covered by the final rule that would meet the needs for agricultural employers to provide employees notification of the application and inform them of treated areas under an REI, and to record and display the pesticide application information. Agricultural employers must have information about the start time of the application before it begins to ensure they have the ability to notify workers of the application before it commences. Agricultural employers must have the end time of the application to notify workers that although the application has ended, entry to the treated area remains prohibited because an REI is in effect. Without these details being provided prior to the application, agricultural employers are not able to fulfill their responsibilities to protect workers.

EPA notes that the method for notification of changes to application information should be agreed upon between the handler employer and the agricultural employer to ensure receipt, and can be accomplished through electronic media, telephone, or other means. The agricultural employer must receive the information in sufficient time to record and display the information for workers and handlers.

4. Costs and benefits. EPA has estimated the cost of the information exchange requirements to be negligible because the existing rule already requires handler employers and agricultural employers to collect and exchange information. The changes in the final rule are minor and offer flexibility for employers. The information the agricultural employer must give the handler employer has been clarified. EPA has made minor changes to the information the handler employer must give the agricultural employer. The timing to notify the agricultural employer of most changes to the information has remained the same as the existing regulation, *i.e.,* before the application begins. In the final rule, two changes provide the handler employer flexibility. If the product changes or the application is made later than originally scheduled, the handler employer must notify the agricultural employer within two hours of the end of the application. If the only change was a difference of less than one hour between the scheduled and actual application times, notification is not required.

EPA expects these changes will ensure that the agricultural employer provides workers and handlers with accurate application information, which was problematic under the existing rule, and maintains accurate application records. The information exchanged and the timing of notification of changes of actual applications from scheduled applications remains essentially unchanged. Although notification can be given after the fact if a different pesticide product is applied or the application is completed after it was scheduled, this change does not make the WPS any less protective of workers, handlers and others. The agricultural employer will still have the essential information needed to know when and where to keep workers, handlers and others out of areas to be treated during and after treatment, and the revised information will be available in time for proper medical treatment if needed. The cost of including additional details is reasonable compared to the improved ability of workers and handlers to identify areas where pesticides are being applied or have recently been applied.

IX. Drift-Related Requirements

The requirements discussed in this section are intended to decrease the number of incidents in which workers and other persons are exposed to pesticides through unintentional contact during application. Drift is the off-site movement through the air of pesticide droplets or particles originating from pesticides applied as liquids or dry materials. Workers errantly in the area being treated may be directly exposed to pesticides during application. In addition, bystanders (both workers and non-workers) located outside a treated area may be exposed when pesticide droplets or particles move outside the area being treated through the air during and/or immediately after the pesticide application. As used here, the term ''drift'' includes both of these modes of exposure, but does not include off-site movement of pesticide-imbedded soil-borne particles by wind or vapor drift through volatilization of applied pesticide, although these are often categorized as ''drift'' in other contexts. EPA has developed methodologies for assessing the risks to bystanders from exposure to pesticides from drift and also from volatilization, and addresses risks of concern and other issues via the registration review process. The purpose of the requirements discussed in this section is to prevent workers and other persons from being exposed to pesticides by unintentional contact during application. The term ''drift'' is used as shorthand in this section to refer to unintentional exposure from both direct exposures to workers in the area being treated and drift exposures to workers and bystanders.

A. Overarching Performance Standard

1. Current rule and proposal. The existing WPS includes two related requirements that prohibit a pesticide from being applied in a way that contacts workers or other persons. Agricultural products subject to the WPS must have this statement on the label: ''Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.'' 40 CFR 156.206(a). Also, the existing WPS requires the handler employer and the handler to assure that no pesticide is applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handler. These requirements prohibit application in a way that contacts workers or other persons both on and off the agricultural establishment where the pesticide is being applied.

EPA did not propose any changes to the label statement. EPA proposed several minor wording changes to the WPS requirement for the handler employer and the handler, but the impact of the proposed requirement would be the same as under the existing WPS.

2. Final rule. EPA has finalized the proposed changes to the requirement for the handler employer and handler with a minor change. The final rule changes the language from the proposed ''handler located on the establishment'' to ''handler involved in the application.'' As with the existing rule, the final rule prohibits contact to workers and other persons regardless of whether or not they are on the agricultural establishment. The final regulatory text for this requirement is available at 40 CFR 170.505(a). There are no changes to the label statement at 40 CFR 156.206(a).

3. Comments and responses.

Comments. Many commenters, including states and their organizations, grower associations, farm bureaus and pesticide manufacturer associations, stated that the existing two requirements adequately protect workers and bystanders from exposure during applications. These commenters opposed the other drift-related requirements that EPA proposed (entry-restricted areas for farms and forests and the requirement to suspend applications under certain conditions) as unnecessary, asserting the proposed requirements do not provide any additional protection.

Many respondents from states and their organizations, grower associations, farm bureaus and pesticide manufacturer associations commented that EPA's risk assessments and pesticide labels include conservative protections for applicators, handlers, workers and bystanders. Some of these commenters argued that the existing restrictions on the labels, including REIs and pesticide-specific buffers, provide sufficient protection to workers and bystanders.

Many respondents from all commenter types commented on incidents where workers or bystanders reported being contacted by pesticides that were being applied. Some of these incidents involve workers in the areas where pesticides were applied and other incidents involve workers or bystanders being exposed to pesticides that drifted off the target site. Many of the commenters cited three broad studies that looked at data from SENSOR-

Pesticides and California's Pesticide Illness Surveillance Program (Refs. 10, 11 and 12). Other commenters cited specific incidents of exposure from drift or workers in the area being treated being sprayed directly. Some applicator and pesticide manufacturer associations cited state data showing that there has been a decrease in drift complaints over time, dropping from an average of 333 complaints per year nationwide (from 1996 through 1998) to an average of 247 complaints per year (from 2002 through 2004).

EPA response. EPA disagrees with the assertion that the ''do not contact'' requirements, along with the other protections on pesticide labels, are by themselves sufficient to protect workers and bystanders from being directly contacted by pesticides that are applied. First, many commenters cited incidents where people were directly exposed to pesticide applications, even if there was disagreement about how regularly these types of incidents happen. Second, EPA's risk assessments and registration decisions are based on the premise that the WPS protections effectively prevent people (workers and bystanders) from being sprayed directly (Ref. 13). In other words, incidents where workers or bystanders are sprayed directly result in people being exposed to pesticides in a way that is not considered in EPA's risk assessments or registration decisions. These types of incidents are misuse violations but they continue to occur, as described in the following sections. Therefore, there is a need to supplement the existing WPS protections to reduce exposures to workers and other persons from being directly sprayed with pesticides.

There is no one solution that can prevent all drift incidents and it will take a comprehensive approach, including additional regulatory requirements, education, outreach, and some common-sense voluntary measures to further reduce the number of people who are directly exposed to pesticide spray/applications. The additional regulatory requirements include revised requirements for entry restrictions during pesticide applications and for handlers to suspend applications in certain circumstances. Common-sense voluntary measures include a grower talking to his/her neighbors to let them know when pesticides are being applied so the neighbors can keep workers and others away from the boundary of adjacent establishments during that time, and participating in voluntary communication programs such as Spray Safe (*http://www.spraysafe.org/*) and Drift Watch (*https://driftwatch.org/*). EPA intends to include information about good management practices as well as the regulatory requirements during outreach for implementation of the final rule. It is also worth noting that EPA is working to assess and mitigate any product-specific risks from exposure to pesticides from drift and from volatilization within the registration review process.

B. Entry Restrictions To Protect Workers and Other Persons During Application

1. Current rule and proposal. The existing WPS establishes entry-restricted areas adjacent to treated areas that apply *during* pesticide application for nurseries and greenhouses only. The existing rule requires that the agricultural employer must not allow or direct any person, other than an appropriately trained and equipped handler, to enter or remain in the entry-restricted area during a pesticide application in a nursery or greenhouse. The size of the entry-restricted area depends on the type of product applied and the application method. The entry restrictions for greenhouses also include ventilation requirements. The existing entry restriction requirement applies only within the boundaries of the agricultural establishment. The existing provisions at 40 CFR 170.110 regarding entering entry-restricted areas during application are different than the existing provisions at 40 CFR 170.112 regarding entry into treated areas *after* the application of a pesticide and before the REI specified on the pesticide labeling has expired.

EPA proposed to establish entry-restricted areas during pesticide applications on farms and in forests, while slightly modifying the requirement for entry-restricted areas for nurseries and greenhouses. EPA proposed two types of entry restrictions: One for enclosed space production, which would apply to greenhouses and other types of indoor production operations (*e.g.,* mushroom houses, hoop houses, polyhouses), and one for outdoor production, which would apply to farms, forests and nurseries. In addition, EPA proposed to define the entry-restricted area as the area from which workers or other persons must be excluded *during and after* the pesticide application.

2. Final rule. In regard to enclosed space production (*e.g.,* greenhouses, mushroom houses, hoop houses), EPA has finalized the requirements for entry restrictions during pesticide applications with several minor changes. For the most part, the final rule incorporates the existing entry restriction and ventilation requirements for greenhouses as the requirements for enclosed space production. The final rule deletes the term ''entry-restricted area'' and adjusts the descriptions of the application types to be consistent with the changes to the description of application exclusion zones for outdoor production. In addition, EPA changed the definition of ''enclosed space production'' to clarify that it applies only to areas with non-porous covering, so structures with a covering made of fencing or fabric to provide shade on plants (no walls) such as shade houses, are not considered enclosed spaces under the final rule. See the discussion of definitions in Unit XVIII.C. of this document for more information about the changes to this definition.

In regard to outdoor production (*e.g.,* farms, forests, nurseries, shade houses), the final rule differs substantially from EPA's proposed requirements. The final rule makes the following changes from the proposal:

- Replacing the phrase ''entry-restricted area'' with ''application exclusion zone'' to make it more distinct from the requirements regarding REIs. The final regulatory text for this requirement is available at 40 CFR 170.405(a).
- Revising the corresponding definition to clarify that the application exclusion zone exists only during (not after) a pesticide application. The final regulatory text for this definition is available at 40 CFR 170.305.
- Revising the corresponding definition and regulatory description of an application exclusion zone so it is a specified distance from the application equipment rather than from the edge of the treated area, and clarifying that the application exclusion zone moves with the application equipment. The final regulatory text for this requirement is available at 40 CFR 170.405(a)(1).
- Revising some of the application methods in the description of the application exclusion zone to reflect current application methods and to differentiate the distances based on the spray droplet size rather than pressure. The final regulatory text for this requirement is available at 40 CFR 170.405(a)(1).
- Adding a provision to the regulatory text to clarify that any labeling restrictions supersede the requirements of the WPS, including those related to application exclusion zones. This was discussed in the preamble of the proposed rule (Ref. 2 at 15490) but was inadvertently left out of the proposed regulatory text. The final regulatory text for this requirement is available at 40 CFR 170.303(c) and 170.317(a).

3. Comments and responses.

Comments—supporting the proposal or more stringent measures. Many commenters, including farmworker advocacy organizations, public health organizations, and a state, generally supported the proposed requirement for entry-restricted areas. The commenters stated that the proposed change should provide modest improvements in protecting workers from pesticide drift during application if there is enough training and education of applicators. One farmworker advocacy organization described an incident where workers were in a field topping tobacco at the same time a plant growth regulator with a 24-hour REI was being applied to the adjacent row. The workers were close enough to have to move out of the path of the tractor. However, because the treated area was defined to be only the rows being treated, this was permissible under the existing WPS. Many commenters provided other examples of incidents where workers were unintentionally exposed directly to the pesticide spray. A few farmworker advocacy organizations commented that many workers say that they have felt the spray of pesticides from fields close to where they work. A farmworker advocacy organization commented that in 2012, about 20% of farmworkers in New Mexico reported to the organization that pesticides were applied to the fields at the same time that they were working. Another farmworker advocacy organization stated that about half of the child tobacco workers interviewed by the organization in 2013 reported that they saw tractors spraying pesticides in the fields in or adjacent to the ones where they were working.

Many farmworker advocacy organizations and several public health organizations argued that EPA should revise the approach for entry restrictions to protect workers on neighboring property and to increase the length of the entry-restricted area. The recommended distances ranged from 60 to 200 feet for ground application and 300 feet to a mile or more for aerial application. EPA responded to some of these suggestions in its response to ''Pesticides in the Air—Kids at Risk: Petition to Protect Children from Pesticide Drift (2009)'' (Ref. 13).

Comments—opposing the proposal. Many states and their organizations, grower organizations, farm bureaus, applicator organizations, agricultural producer organizations, pesticide manufacturer organizations, and the Small Business Administration's Office of Advocacy opposed the proposed requirement to apply the entry-restricted areas to farms and forests. Most of these commenters argued that the approach is too complicated because it establishes another area to be controlled that varies by application type, may include persons other than those employed by the agricultural establishment and may be different than label restrictions. (Note: Some of the comments appear to reflect a misunderstanding of the proposal, *i.e.,* that the entry-restricted areas would be ''buffer zones'' that would remain in effect after the application was complete.) Some states and their organizations commented that the requirement to keep individuals out of varying widths of areas surrounding treated areas would be difficult for an agricultural employer to implement and even more difficult for a state to enforce.

Most of these commenters asserted that the proposed requirement to apply entry-restricted areas to farms and forests would present some logistical issues that could effectively shut down parts of the establishment. For example, many ground and aerial pesticide applications occur along rural roads or near access points to the agricultural establishment. These roads and access points would be within the proposed entry-restricted areas. On larger fields, pesticide applications could take several hours to complete. Commenters claimed that prohibiting workers from using these roads or gaining access to farm buildings for long periods of time would be impractical and could have an adverse economic impact. Many of the commenters stated that EPA did not account for the cost of stopping business during some pesticide applications. As an example, one grower organization opposed the ''worker buffers'' because they could take a lot of area out of cultivation on smaller farms, farms with widely varied crop maturities and farms that are not laid out in large blocks. Instead of arbitrary buffers, this commenter argued to keep the standard as it is—do not apply where workers are present and do not allow spray (or drift) to contact workers.

Comments on application types and distances. Some commenters addressed the specific application methods and the distances of 100 feet and 25 feet in the proposed entry-restricted areas. Some states, grower organizations, agricultural organizations and pesticide manufacturer organizations commented that the distances of 25 to 100 feet are not supported by drift reduction technologies, applicator standard operating procedures or incident data. A state commented that the table of application methods and distances is flawed because it does not account for all application scenarios and does not logically apply distances.

EPA Response. Based on the comments, EPA has made some changes in the final rule from the proposed requirement to extend entry-restricted areas to farms and forests. However, experiences such as those of workers having to move to get out of the way of the tractor that was applying pesticide (described previously) and workers being directly sprayed confirm EPA's position that additional protections are necessary during pesticide applications on farms and in forests. The existing WPS prohibits a farm or forest agricultural employer from allowing or directing any worker to enter or remain in a treated area, which is defined to include areas being treated. The existing regulations require oral notifications before pesticide applications to include the location and description of the treated area, the time during which entry is restricted and instructions not to enter the treated area until the REI has expired. The existing regulations require handler employers to ensure that pesticides are applied in a manner that will not contact a worker either directly or through drift. Inasmuch as these requirements—clearly intended to prevent direct exposure of workers during pesticide applications—have proven insufficient for that purpose, additional measures are needed.

EPA has changed the final rule in several ways to address some of the concerns expressed in the comments about the logistical problems with the proposal. First, in the final rule EPA replaced the term ''entry-restricted area'' with ''application exclusion zone,'' which more clearly associates this restriction with the period during the pesticide application. This new term is also less likely to be confused with the term ''restricted-entry interval.'' Second, EPA revised the requirements for the application exclusion zone so that it is not based on the ''treated area,'' but instead a specified distance from the application equipment. The application exclusion zone is essentially a horizontal circle surrounding the application equipment that moves with the application equipment. For example, if a pesticide is applied aerially, the border of the application exclusion zone is a horizontal circle that extends 100 feet from the place on the ground directly below the aircraft, and moves with the aircraft as the application proceeds.

Because the application exclusion zone is based on the location of the application equipment, rather than the location of the treated area, the application exclusion zone could extend

beyond the boundary of the agricultural establishment. However, in 40 CFR 170.405(a)(2), the final rule limits the requirement for the agricultural employer to keep workers and other persons out of the treated area or the application exclusion zone during application to areas that are within the boundaries of the agricultural establishment, as proposed. The existing entry-restricted area requirement for nurseries is also limited to areas that are within the boundaries of the agricultural establishment. EPA retained the existing and proposed limitation because this requirement applies to the agricultural employer. The agricultural employer can control what happens on the agricultural establishment but could have difficulty limiting access to roads or fields that are beyond his property.

The comments reflected a general lack of understanding that the proposed entry-restricted areas would exist only during application, and many comments anticipated conflicts between no-spray buffers on some pesticide labels and the proposed entry-restricted area. However, these are two different types of requirements. If a label specifies a ''no-spray'' buffer, pesticide cannot be applied in that area at any time. Under the final rule, a pesticide can be applied in an application exclusion zone, and the requirement for agricultural employers is to keep workers and other people out of this zone during the pesticide application. These two types of requirements are distinct, and as a result should not be problematic to implement.

EPA reassessed the application methods and distances in the proposed requirements for entry-restricted areas for outdoor production and made some changes in the description of application exclusion zones in the final rule in § 170.405(a)(1). The final rule maintains the proposed distances of 100 feet and 25 feet but revises the application methods associated with each distance.

The application methods that have an application exclusion zone of 100 feet are the ones where pesticide is expected to move a longer distance from where they are applied. The changes include:

• Adding air blast applications, to more accurately and more broadly describe current application methods.

• Deleting pesticides applied as an aerosol because it is unnecessary.

• Including pesticides applied as a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter less than 294 microns). The volume median diameter refers to the midpoint droplet size or mean, where half of the volume of spray is in droplets smaller, and half of the volume is in droplets larger than the mean. EPA chose to establish this criteria based on the spray quality rather than just the pressure because the drop size depends on a number of variables, including the pressure, the nozzle type, liquid properties, and the spray angle. Focusing on the spray quality, rather than pressure, is also consistent with EPA's voluntary Drift Reduction Technology program and current models of drift used in EPA's risk assessments.

The application methods that have an application exclusion zone of 25 feet are the ones where pesticide is expected to move a shorter distance from where they are applied. The changes include:

• Replacing several of the proposed criteria with pesticides applied as a spray using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or larger).

• Eliminating the criterion based on the product label requiring a respirator because it is intended to apply to enclosed spaces like greenhouses and was accidentally included in the proposed criteria for outdoor production.

The corresponding changes to application methods were made to the Table—Entry Restrictions During Enclosed Space Production Pesticide Applications at 40 CFR 170.405(b)(4) for consistency.

EPA acknowledges that some pesticide labels will have restrictions that apply during applications that are different than the application exclusion zones. For example, the restrictions on soil fumigant labels are more restrictive than the application exclusion zone of 100 feet specified in § 170.405(a)(1)(i)(D). In situations like this, pesticide users must follow the product-specific instructions on the labeling. As stated in §§ 170.303(c) and 170.317(a), when 40 CFR Part 170 is referenced on a pesticide label, pesticide users must comply with all of the requirements in 40 CFR Part 170, except those that are inconsistent with product-specific instructions on the pesticide product labeling.

C. Suspend Application

1. Current rule and proposal. As discussed in Unit IX.A., the existing WPS requires handler employers and handlers to assure that no pesticide is applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handler. However, the existing WPS does not include an explicit requirement for handlers to stop or suspend application. EPA proposed to add a provision to require a handler performing a pesticide application to immediately stop or suspend the pesticide application if any worker or other person, other than an appropriately trained and equipped handler, is in the treated area or the entry-restricted area. Based on the description of entry-restricted areas in the proposed rule, the requirement for handlers to stop or suspend application in certain circumstances would apply only *within* the boundaries of the agricultural establishment.

2. Final rule. In the final rule, EPA has made several changes to the proposed requirement to suspend applications. First, EPA revised the language to require a handler to ''immediately suspend a pesticide application'' rather than to ''immediately *stop or* suspend a pesticide application'' to clarify that the application must be suspended but can be restarted once workers or other persons are out of the zone. Second, EPA changed the area that is covered by the requirement to suspend application in two ways. EPA replaced ''entry-restricted area'' with ''application exclusion zone,'' decreasing the size of the area that is covered by the requirement. See Unit IX.B. Also, EPA removed the treated area from the requirement. For outdoor production, the area covered by the requirement is much smaller than the area that would have been covered by the proposed rule, which would have been the treated area plus up to 100 feet beyond the edge of the treated area. Third, the application exclusion zone can extend beyond the boundaries of the agricultural establishment for the purposes of this requirement, *i.e.,* the handler must suspend application if any person other than another handler involved in the application is in the application exclusion zone, regardless of whether the application exclusion zone extends off of the employer's property.

The final rule requires the handler performing the application to suspend application if people who should not be present are in the application exclusion zone (which ranges up to 100 feet from the application equipment for outdoor production) or in the area identified for exclusion for enclosed space production (which ranges from 25 feet to the entire enclosed space plus any adjacent structure that cannot be sealed off.) The final regulatory text for this requirement is available at 40 CFR 170.505(b).

3. Comments and responses.

Comments. Some commenters, including farmworker advocacy organizations, public health organizations, academics, and a state

generally supported the proposed requirement for applicators to stop or suspend pesticide applications under certain conditions. A farmworker advocacy organization supported the proposed requirement, stating that current rules do not provide meaningful guidance on how applicators can prevent human exposure during applications. Some other commenters from farmworker advocacy organizations, public health organizations and public health agencies supported the proposed requirement but urged EPA to extend the protections to workers at neighboring establishments. Many of these commenters provided information suggesting that workers may be more likely to be affected by drift from a different establishment. For example, commenters cited a Washington Department of Health report that documented 43 workers in Washington being affected by drift from another farm while only 13 workers reported being affected by drift from the farm where they were working in 2010–2011. In comments arguing against the need for entry-restricted areas, some applicator organizations provided examples supporting the requirement to suspend applications, stating that it is standard operating procedure for aerial applicators to temporarily avoid making passes adjacent to roads or other areas if workers happen to be passing by in vehicles or on foot.

Many states and their organizations, grower organizations, farm bureaus, applicator organizations, agricultural producer organizations and pesticide manufacturer organizations opposed the proposed requirement for handlers to stop or suspend pesticide applications in certain circumstances. Most of these commenters argued that the provision is unnecessary because it would not offer any protections or prevent contact from pesticide applications beyond the existing ''do not contact'' requirement. Some commenters raised logistical concerns: Applicators may not be aware that a person has entered a treated area or entry-restricted area in many situations, such as in a forest or an orchard in full leaf, in a very large field, or if there are restricted sight lines or rolling hills; the proposed requirement would impose unwarranted expectations for pilots, who would have to be fully aware of boundaries 100 feet on all sides of the target area while traveling at 150 mph; as proposed, an applicator would have to stop if a person is in an entry-restricted area even if it is not possible for that person to encounter pesticides because of wind conditions.

A few grower organizations and farm bureaus commented that there is a difference between stopping and suspending an application and asked whether this would require applicators to cease application altogether or suspend the application until a person is no longer in the area.

EPA Response. As stated in the proposal, EPA has identified a need to supplement the ''do not contact'' performance standard because exposure to drift or direct spray events still happen despite the ''do not contact'' requirement, and EPA's risk assessments and registration decisions presume that no workers or other persons are being sprayed directly. Therefore, the final rule includes an explicit requirement for handlers to suspend pesticide applications under certain conditions, which mandates applicators to take specified actions to prevent exposing people to pesticide during applications.

However, EPA revised the final rule in response to several points made by commenters. First, the final rule requires a handler to ''immediately suspend a pesticide application'' rather than to ''immediately *stop or* suspend a pesticide application.'' This change was made to clarify that the application must be suspended immediately if workers or persons other than handlers are in the specified areas but can be restarted once workers or other persons are out of the specified area.

EPA was persuaded by the commenters who raised logistical concerns about the proposed requirement, which were related to the handler not being able to see the person or a person entering an edge of a large area that is not near the application equipment. EPA revised the requirement in the final rule to decrease the size of the area that the handler must monitor for workers or persons other than handlers by removing the treated area from the area covered by this requirement and by changing the ''application exclusion zone'' so it is measured from the application equipment rather than from the edge of the treated area. In the final rule, the handler performing the application must suspend application if any of the identified people are in the application exclusion zone (which ranges up to 100 feet from the application equipment) rather than if any of the people are in the entire treated area plus that distance (up to 100 feet) from the edge of the treated area.

EPA was also persuaded by the comments and incident information about workers at neighboring establishments being directly contacted by drift. The incidents cited by commenters show that workers are directly exposed to pesticide applications from neighboring establishments as well as from the establishment where they are working. To reduce the number of incidents where workers are exposed to drift from neighboring establishments, the final rule extends the application exclusion zone beyond the boundaries of the agricultural establishment for this requirement, thus requiring applicators to immediately suspend applications if people other than a properly trained and equipped handler are in the application exclusion zone.

EPA has decided to extend the application exclusion zone beyond the boundaries of the agricultural establishment for the requirement to suspend applications for several reasons. First, this addresses more of the worker drift cases, where workers are within 100 feet of the agricultural establishment to protect more workers. Out of 17 incidents identified in the comments, only one would have been prevented if the application exclusion zone was limited to the boundaries of the agricultural establishment as provided in the proposed rule. The requirement in the final rule would have prevented at least four of the incidents reported in the comments, and possibly as many as 12, depending on the actual distances between the workers and application equipment, which were not specified in the comments. Second, the existing requirement that the handler must assure the pesticide is applied in a way that does not contact workers or other persons already extends beyond the boundary of the agricultural establishment. The new, explicit requirement to suspend application if people other than handlers are in the application exclusion zone is intended to supplement the existing ''do not contact'' requirement by giving the applicator specific criteria for suspending application. These specific criteria should be equally useful to applicators attempting to comply with the existing ''do not contact'' requirement beyond the boundaries of the agricultural establishment. Third, the application exclusion zone would extend a maximum of 100 feet beyond the boundary of an agricultural establishment only for the length of time it takes for the equipment applying the pesticide to pass by, so this should not shut down roads or access points to the establishment for long periods of time.

To reiterate a point made in Unit IX.B., the final rule does not hold agricultural employers responsible for keeping workers and other persons out of portions of the application exclusion zone that extend beyond the boundaries of the agricultural establishment. On the other hand, this provision in § 170.505(b) of the final rule imposes a requirement on the handler applying the pesticide to immediately suspend the application if workers or persons other than handlers involved in the application are in the application exclusion zone, whether on the establishment or beyond the boundaries of the establishment.

D. Costs and Benefits

1. Costs. In the proposal, EPA estimated the cost for restricting entry to areas adjacent to an area being treated would be negligible. EPA assumed that employers could generally reassign workers to other tasks for the duration of the pesticide application in instances where worker tasks in the adjacent areas had to be stopped until the application was complete. In the proposal, EPA estimated the cost of the requirement to suspend application would be negligible because it essentially clarifies an existing requirement. In the final rule, EPA estimates the costs of both requirements remains negligible.

2. Benefits. EPA believes both of the drift-related requirements discussed in this section of the preamble will help reduce the number of exposures of workers and other non-handlers to unintentional contact to pesticide applications. Therefore, the benefits of these requirements outweigh the negligible costs.

X. Establish Minimum Age for Handling Pesticides and Working in a Treated Area While an REI Is in Effect

A. Current Rule and Proposal

The existing regulation does not establish any age restriction for handlers or early-entry work. EPA proposed to prohibit persons younger than 16 years of age from handling pesticides, with an exception for handlers working on an establishment owned by an immediate family member. EPA requested comment on an alternative option of prohibiting any person under 18 years old from handling pesticides.

The existing WPS establishes conditions for when a worker may enter into a treated area under an REI. The conditions are related to the type of work performed (often referred to as ''early-entry'' tasks) and the length of time the worker may be in the treated area. However, the existing WPS establishes no minimum age for workers entering a treated area under an REI to perform early-entry tasks. EPA proposed to prohibit any worker under 16 years old from entering a treated area under an REI to perform early-entry tasks, with an exemption from this prohibition for persons covered by the immediate family exemption. EPA requested comment on an alternative option of prohibiting any person under 18 years old from entering treated areas during the REI to perform early-entry tasks.

B. Final Rule

The final rule prohibits persons younger than 18 years old from handling pesticides. EPA has retained the proposed exemption for handlers working on an establishment owned by an immediate family member. The final regulatory text for the prohibition is available at 40 CFR 170.309(c) and 170.313(c). The final regulatory text for the exemption is available at 40 CFR 170.601(a)(1)(i).

The final rule prohibits persons younger than 18 years old from entering treated areas during the REI to perform early-entry tasks, and retains the proposed exemption for persons working on an establishment owned by an immediate family member. The final regulatory text for this prohibition is available at 40 CFR 170.309(c) and 170.605(a). The final regulatory text for the exemption is available at 40 CFR 170.601(a)(1)(xii).

C. Comments and Responses

Comments. Many commenters requested that EPA establish a minimum age of 18 for handlers and early-entry workers. Commenters cited several reasons for their request. First, many commenters noted that adolescents' bodies are still developing and they may be more susceptible to the effects of pesticide exposure. Second, commenters noted that adolescents are less mature and their judgment is not as well developed as that of adults. This immaturity may mean that adolescents may be less consistently aware of risks associated with handling pesticides or entering a treated area while an REI is in effect, that they may not adequately protect themselves or other workers from known risks, and that spills, splashes, and improper handling practices may be more likely. A few commenters submitted studies related to development of maturity and decision-making skills in adolescents in support of this assertion. Third, commenters asserted that restricting handling activities to persons at least 18 years old could result in higher potential economic benefit from avoiding exposure and any potentially related chronic effects to children, because they have a longer potential life span. Fourth, because information on the potential chronic effects of pesticide exposure on developing systems is not known, commenters recommended that EPA prohibit adolescents from handling pesticides and entering treated areas while an REI is in effect as a precaution until it can be shown that they would not suffer adverse chronic effects from potential exposure. Finally, a few commenters noted that persons under 18 years old are protected in other industries by OSHA and should receive similar protections under the WPS, and that some states have already prohibited handling of pesticides in agriculture by anyone under 18 years old.

Some commenters expressed support for a minimum age of 16. States primarily supported EPA's proposal to establish a minimum age of 16, noting that establishing a minimum age of 18 would require them to change their state laws. Other commenters supporting the proposed minimum age of 16 noted that this requirement would align with DOL's restriction on handling pesticides in toxicity categories I and II in agriculture.

A few commenters opposed establishing any minimum age. These commenters asserted that EPA should not take any action because the DOL's hazardous occupations orders under the Fair Labor Standards Act (FLSA) already prohibit adolescents under 16 years old from handling pesticides in toxicity categories I and II in agriculture with limited exceptions. Some commenters also assert that establishing any minimum age for pesticide handlers is a matter that should be handled by the states, not EPA.

Some commenters requested that EPA eliminate the exception from any minimum age requirement for members of the owner's immediate family. Commenters assert that adolescents' developmental status does not differ if they are an employee on a farm owned by an immediate family member or by someone unrelated to them. Other commenters supported EPA's proposal or requested that EPA establish a higher minimum age only if EPA also retains the exception for members of the owner's immediate family.

EPA Response. Based on the comments received and an evaluation of existing literature related to adolescents' development of maturity and judgment, EPA has decided that the benefits of further reductions in adolescent pesticide exposures justify their cost; the final rule generally prohibits persons under 18 years old from

handling pesticides or entering a treated area while an REI is in effect. EPA recognizes that adolescents' bodies and judgment are still developing. While studies have not demonstrated a clear cut off point at which adolescents are fully developed, literature indicates that their development may continue until they reach their early to mid-20s. EPA also agrees that research has shown that adolescents may take more risks, be less aware of the potential consequences of their actions on themselves and others, and be less likely to protect themselves from known risks. All of this information supports establishing a higher minimum age than proposed in order to allow those handling pesticides to develop more fully before putting themselves, others, and the environment at risk, and to allow those performing early-entry activities to develop more fully in order to adequately protect themselves from the risks of entering a treated area while an REI is in effect. The final rule will reduce the potential for misuse by adolescent handlers who may less consistently exercise good judgment when handling agricultural pesticides.

EPA notes commenters' assertions that avoiding pesticide exposure in adolescents could result in higher potential economic benefit because of adolescents' longer potential lifespans. EPA agrees that it is appropriate to take reasonable precautions to protect adolescents from pesticide exposures, both because of the potential impact of pesticides on further development and because adolescents may not properly appreciate (and take appropriate steps to avoid) the risks of potential pesticide exposure. While statistical associations have been observed in studies that estimate the relation between pesticide exposure and chronic health outcomes such as cancer, the causal nature of these associations has not yet been determined; thus quantifying the magnitude of the chronic health risk reduction expected as a result of pesticide exposure reduction is not possible. However, based on what is known about the potential for biologically active chemicals generally to disrupt developmental processes, it is reasonable to have heightened concern for adolescents under the age of 18 in situations where they face particularly high pesticide exposures. Prohibiting adolescents under the age of 18 from handling agricultural pesticides will protect them from any potential risks of pesticide use through handling activities, ensuring that adolescents do not suffer unreasonable adverse effects from handling agricultural pesticides. Prohibiting adolescents under 18 years old from entering a treated area while an REI is in effect will protect them by delaying their entry into treated areas until residues are at a level that should not cause unreasonable adverse effects.

EPA recognizes that DOL prohibits persons under 18 years old from engaging in hazardous tasks in other industries, and that some states have taken action to prohibit certain adolescents from handling pesticides in agriculture (state minimum ages for pesticide handlers, where established, range from 16 years old to 18 years old). These examples of protections for adolescents in other industries or by states indicate a recognition that different standards for certain adolescents and adults are appropriate.

EPA disagrees with commenters' assertions that EPA should defer to the states or the FLSA and not establish any age-related restrictions on pesticide handling or early-entry activities. EPA has the responsibility under FIFRA to regulate the use of pesticides to avoid unreasonable adverse effects, apart from any requirements established by other federal or state laws. The DOL's actions under the FLSA limiting the use of certain pesticides to persons at least 16 years old do not preclude EPA from taking actions to ensure that human health and the environment are protected from unreasonable adverse effects. While DOL's hazardous occupations order prohibiting those under 16 years old from handling certain pesticides satisfies the purposes of the FLSA, those purposes are distinct from those of FIFRA. EPA has concluded that because, as discussed previously, adolescents' bodies, maturity, and judgment are still developing, the handling of agricultural pesticides and entry into a treated area while an REI is in effect by persons under 18 years old presents an unreasonable likelihood of adverse effects. Therefore, the final rule generally limits pesticide handling and early-entry activities to persons who are at least 18 years old.

EPA agrees that adolescents' developmental status does not differ if they are employees on a farm owned by an immediate family or by someone unrelated to them. However, EPA recognizes that imposing a minimum age for handling agricultural pesticides or performing early-entry tasks on owners or members of their immediate families could significantly disrupt some immediate family-owned farms. Given the high social cost of imposing a minimum age requirement on owners and members of their immediate families on farms owned by members of the same immediate family, EPA has finalized the proposed exemption to this requirement.

4. Costs and benefits. EPA estimates the cost of requiring handlers and early-entry workers to be at least 18 years old would be $3.1 million annually. EPA estimates that, on average, the cost would be about $8 per agricultural establishment per year. The cost per commercial pesticide handling establishment per year is estimated to be over $360. The estimated cost of the final requirement is likely to be overstated, particularly for commercial pesticide handling establishments, because EPA made some very conservative assumptions regarding the amount of time an adolescent works.

EPA cannot quantify the benefits associated with this specific proposal. However, this requirement would improve the health of adolescent handlers, as well as other workers and handlers on the establishment and the environment. It would also improve the health of adolescent workers by reducing their potential for exposure to pesticides in a treated area when an REI is in effect. As discussed in the preamble to the proposed rule, adolescents' judgment is not fully developed. Restricting adolescents' ability to handle pesticides will lead to less exposure potential for the handlers themselves, and less potential for misapplication that could cause negative impacts on other handlers or workers on the establishment, as well as the environment.

XI. Restrictions on Worker Entry Into Treated Areas

A. Requirements for Entry During an REI

1. Current rule and proposal. The existing WPS establishes specific exceptions to the general prohibition against sending workers into a treated area while an REI is in effect. Workers who enter pesticide-treated areas during an REI (known as ''early-entry workers'') without adequate protection may face an elevated risk from pesticide exposure. Under the existing rule, the employer must: Ensure that the worker has read or been informed of the human health hazards on the product labeling; provide instruction on how to put on, use, and remove PPE; stress the importance of washing after removing the PPE; and instruct the worker on how to prevent, recognize, and treat heat-related illness. The employer must also implement measures to prevent heat related illness when workers must wear PPE.

In addition to these existing requirements, EPA proposed to require

employers to inform workers sent into a treated area while the REI is in effect of the specific exception under which they would enter, to describe the tasks permitted and any limitations required under that exception, and to identify the PPE required by the labeling. EPA also proposed to require the employer to create a record of the oral notification provided to early-entry workers, to obtain the signature of each early-entry worker acknowledging the oral notification prior to the early entry, and to maintain the record for 2 years.

2. Final Rule. EPA has finalized the proposed requirements for the employer to inform the worker of the type of exception which permits the entry into the area under an REI, to describe the tasks that the worker may perform and other limitations under the exception, and to identify the PPE that must be worn. However, EPA has decided not to require employers to create or maintain records of the oral notification. The final regulatory text for this requirement is available at 40 CFR 170.605.

3. Comments and responses.

Comments on oral notification. Comments on the proposal to inform workers of the early entry exception and to explain the PPE were largely supportive, recognizing the reasonable nature of the proposed information. Commenters in support of the proposal included a pesticide manufacturer organization and farmworker advocacy organizations. One public health organization supported the proposal, but recommended that the requirement be modeled after OSHA's confined space regulations, to include: Specific training for early entry, a requirement for workers to be provided respirators and other necessary PPE, written emergency rescue procedures and resources in case of an overexposure or other mishap, on-site monitoring of the worker from outside the entry zone, and recordkeeping of each entry.

Several agricultural producer organizations and pesticide manufacturer organizations supported the proposal, but expressed concern for the requirement for employers to manage heat stress.

EPA Response. EPA has decided not to amend the final rule based on OSHA's confined space regulations. OSHA's definition of a confined space is one in which there is limited or restricted means for entry or exit. These characteristics exacerbate any hazard to the employee, in that the employee could be overcome by a toxic atmosphere or by physical engulfment, such as in a grain storage bin, and be unable to quickly exit. EPA recognizes a similar potential for pesticide handlers making fumigant applications in greenhouses to be overcome by the fumigant. The WPS provides protections for such scenarios by requiring PPE, including respirators where required by the label, and continuous monitoring by a handler outside of the treatment area. The handler entering the greenhouse would have specific instructions on the labeled hazards. The monitoring handler must have access to the PPE required by the product labeling in case they would need to enter the greenhouse for rescue of the applicator. However, except for the use of fumigants, which have specific label requirements because of their increased potential for inhalation risk, the more common scenario of a worker entering a treated area on a farm, forest, or in a nursery during the REI would not pose such risks from a toxic atmosphere. It is unlikely that there would be an environment that could concentrate the pesticide and produce a potentially life-threatening environment. The predominant component of exposure during work in a treated area where an REI is in effect is dermal, with rare exceptions. Specific information about the entry must include the human health hazards on the pesticide labeling, explanation of the required PPE and the proper way to wear and remove PPE, description of the tasks that may be performed and any limitations on the time permitted in the area. Workers directed to enter a treated area during the REI must have had the pesticide safety training so they may protect themselves. Employers must provide the PPE required by the product label for early entry to minimize exposure. Employers must provide early entry workers with the decontamination supplies appropriate for pesticide handlers.

EPA agrees with commenters that heat stress can be a problem for workers in warm, humid climes and when employees must wear PPE. EPA notes that requirements related to heat stress for early entry workers are already included in the existing rule at 40 CFR170.112(c)(6)(x) and 170.112(c)(7).

Comments in opposition to the early-entry exceptions. A number of farmworker advocacy organizations voiced opposition, in general, to most or all of the early entry exceptions in the existing rule, suggesting that workers should not be required to enter treated areas under an REI, due to risk of exposure.

EPA Response. In deciding whether to allow workers to enter treated areas prior to the expiration of the REI, EPA considered the risk to the workers and the benefits from the early-entry activities. In each case, EPA determined that the potential risks to properly trained and equipped early-entry workers are reasonable in comparison to the significant economic impacts from delaying necessary activities, provided that the required limitations to each exception are observed.

Comments on recordkeeping of oral notification. One farmworker advocacy organization supported the recordkeeping requirement, stating that the ''proposed changes will ensure early entry workers are adequately informed about the risks of the work they are asked to do.'' In contrast, several states and their organizations expressed concern for the recordkeeping requirement, stating that it is not practical and would result in technical violations, such as failures to obtain the necessary signatures, without enhancing worker protection.

EPA Response. EPA was convinced by the rationale provided by the states that the requirement for records of notification to early-entry workers was too burdensome for agriculture, while adding little or no protections for the workers. There is typically some urgency to the need for entry into a treated area while the REI is in effect; the added burden to create records during this time could be unreasonable as it would not necessarily increase protection of early-entry workers. EPA retained the requirement for employers to provide protective information to early-entry workers, but did not include the proposed recordkeeping requirement because it is unclear that such records would improve the transmission of information.

B. Clarify Conditions of the ''No Contact'' Exception

1. Current rule and proposal. The existing WPS allows workers to enter areas while an REI is in effect for activities that do not result in contact with any treated surfaces. In the proposal, EPA sought to clarify the ''no contact'' requirement of the exception by explaining that performing tasks while wearing PPE does not qualify as ''no contact.'' The proposal offered three examples of acceptable ''no contact'' activities.

2. Final rule. EPA has finalized the proposed clarification. The final rule adds to the exception the following language: ''This exception does not allow workers to perform any activities that involve contact with treated surfaces even if workers are wearing personal protective equipment.'' The final regulatory text for this requirement is available at 40 CFR 170.603(a)(1).

3. Comments and responses.

Comments. One farm bureau stated that workers are prevented from having contact with pesticides and their residues through the medium of PPE.

EPA Response. Although PPE—when properly fitted, worn, removed, cleaned and maintained—can provide significant protection against pesticide exposures, it does not eliminate exposure. The variation in exposure reduction offered by various types of PPE can be seen in EPA's ''Exposure Surrogate Reference Table'' (*http://www.epa.gov/opp00001/science/handler-exposure-table.pdf*). Use of PPE for activities involving contact with pesticide-treated surfaces does not reduce risks to the same level as no-contact activities. EPA has finalized the ''no contact'' exception as proposed because the PPE appropriate for early entry into treated areas under this exception is appropriate only for activities that do not involve contact with treated surfaces.

C. Limit ''Agricultural Emergency'' Exception

1. Current rule and proposal. The existing WPS permits entry into a treated area during an REI when a state, tribal, or federal agency having jurisdiction declares the existence of conditions that could cause an agricultural emergency. EPA proposed that only agricultural emergency determinations by EPA, state and tribal pesticide regulatory agencies, and state departments of agriculture, could authorize early entry under the agricultural emergency exception.

In addition, EPA proposed to limit the time a worker may be in the treated area under the agricultural emergency exception when the label of the product used to treat the area requires both oral and written notification (''double notification''). Under the existing rule, there is no time limit; EPA proposed to establish allowing workers to be in a treated area under this exception for a maximum of 4 hours in any 24 hour period.

2. Final rule. EPA has finalized the proposal, with one change. The final rule does not include EPA as an agency with authorization to declare the existence of conditions that could cause an agricultural emergency because EPA decided that States and Tribes are best situated to decide what conditions in their respective jurisdictions could constitute an agricultural emergency. The final regulatory text for this requirement is available at 40 CFR 170.603(c).

3. Comments and responses.

Comments on restricting the declaration of an agricultural emergency. One state supported the proposal, but recommended broadening it to include the state governor. Another state found the proposal satisfactory. One grower organization opposed the proposal, stating that pre-approval to enter the treated area would be cumbersome and unnecessary if the criteria are clearly defined and documented. Another grower organization and a farm bureau from the same state expressed concern that this change would seriously impact growers' ability to enter a treated area to manage fires, fix broken irrigation and chemigation pipes, and address other problems that could pose risks to adjacent public areas and cause crop loss. These commenters recommended that EPA develop guidance to instruct relevant municipal agencies such as local fire departments to declare agricultural emergencies.

Commenters also suggested that there is a need for entities other than EPA, state departments of agriculture and the state pesticide regulatory agencies to declare agricultural emergencies. In the examples provided by commenters, fires and broken irrigation or chemigation pipes could pose risks to the public and the crop.

EPA Response. As described in the preamble to the proposed rule, EPA noted that entities other than the state pesticide regulatory agencies, state departments of agriculture, and EPA might not have the background and technical expertise to assess the benefits and risks to workers from the entry while the REI is in effect, and might not understand the statutory requirement to consider both risks and benefits when establishing conditions for early-entry workers. EPA decided not to include state governors as an entity authorized to declare an agricultural emergency because it is not necessary; a state governor could direct the state department of agriculture or pesticide regulatory agency to determine whether conditions that could result in an agricultural emergency exist.

The need for pre-approval for conditions that may result in an agricultural emergency is a requirement in the existing rule. EPA has responded to the concern of the grower organization through its Interpretive Guidance Workgroup on the existing WPS, which clarified that state pesticide regulatory agencies may establish guidance or regulations describing the circumstances that could constitute an agricultural emergency and for which entry into areas under an REI is permitted. If a grower determines that such conditions exist at a site, then workers may enter the area while the REI is in effect under the agricultural emergency exception, consistent with applicable restrictions.

EPA has decided not to expand the declaring agencies to include municipal agencies such as local fire departments, but will work with state pesticide regulatory agencies and departments of agriculture to support identification of circumstances that could constitute an agricultural emergency in their jurisdictions. EPA recommends that these entities identify, in their states, local conditions that could constitute such emergencies. Through state regulation or by policy, these agencies may pre-approve entry when such conditions occur.

D. Codify ''Limited Contact'' and ''Irrigation'' Exceptions

1. Current rule and proposal. EPA established ''limited contact'' and ''irrigation'' exceptions as administrative exceptions in 1995. Although these exceptions are noted in the existing rule at 40 CFR 170.112(e)(7), the terms and conditions of these exceptions are not included in the existing rule. These exceptions permit entry into a treated area during the REI for certain non-hand labor activities, including irrigation. The existing exception for irrigation requires that the need for the early entry be unforeseen.

EPA proposed to incorporate the terms and conditions for these exceptions into the final rule, and to eliminate the requirement for the need for irrigation to be unforeseen.

2. Final rule. EPA has finalized the rule as proposed. The final regulatory text for this requirement is available at 40 CFR 170.603(d).

3. Comments. Two farm bureaus specifically supported the codification of the limited contact and irrigation exceptions.

E. Eliminate the Option for an Exception Requiring Agency Approval

1. Current rule and proposal. Under the existing rule, an applicant may request approval from EPA for an exception to the prohibition on worker entry into a treated area during the REI for a specific need. EPA proposed to eliminate the process for requesting an exception from the rule.

2. Final rule. EPA is finalizing the proposal to eliminate the provision for exceptions requiring Agency approval.

3. Comments and responses.

Comment. One grower opposed the elimination of the provision, citing the evolution of farming practices and the potential for conflict between new practices and the rule. The commenter

stated that there is no administrative burden to the EPA, except to evaluate requests if they are submitted.

EPA Response. EPA included the administrative exception process into the WPS in 1992 in recognition that the general prohibition on routine early entry might significantly affect various agricultural entities or practices in ways that might only become apparent as the 1992 WPS was put into effect. EPA created a small number of exceptions during the 1990s, but none since 1997. The effects of reentry intervals on agricultural entities and practices are now sufficiently well understood that the administrative exception process is no longer needed in the WPS. As explained in the preamble to the proposed rule, EPA finds the pesticide re-evaluation process a more appropriate venue than the WPS for considering the economic impacts of REIs on particular agricultural entities and practices. Under EPA's registration review process, applicants may request alternative REIs for specific needs for their crop. This process takes into account the potential increased risk to workers and the benefits to the production of the crop. In cases where EPA finds that the revision of an REI is warranted, the product label will be amended to specify the REI for that particular use.

F. Costs and Benefits

1. Costs. EPA estimates the cost of implementing the requirement for oral notification prior to workers' entry into a treated area under an REI to be about $706,000 per year, or about $2 per establishment annually. EPA estimates that the revisions to the exceptions allowing entry into a treated area before the REI expires would have negligible cost, if any.

2. Benefits. EPA concludes that the benefit of providing detailed information about the tasks they are to undertake and the limitations on their exposure to the worker prior to entry into an area under an REI is reasonable compared with the cost.

XII. Display of Pesticide Safety Information

A. Pesticide Safety Information Content

1. Current rule and proposal. The existing rule requires employers to display a pesticide safety poster containing the following information:

- Avoid getting on your skin or into your body any pesticides that may be on plants and soil, in irrigation water, or drifting from nearby applications.
- Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.
- Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).
- Wash/shower with soap and water, shampoo hair, and put on clean clothes after work.
- Wash work clothes separately from other clothes before wearing them again.
- Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.
- Follow directions about keeping out of treated or restricted areas.
- There are federal rules to protect workers and handlers, including a requirement for safety training.

The existing rule also requires the employer to provide contact information for the nearest emergency medical care facility and to promptly update the safety information poster when any of the required contact information changes.

EPA proposed changing the term for what employers must display from ''pesticide safety poster'' to ''pesticide safety information.'' EPA proposed retaining the existing content requirements of the existing rule, with one exception. EPA proposed removing the item regarding federal rules to allow the other information to be more prominent. EPA proposed retaining the requirement to display the contact information for the medical facility and amending the language from ''nearest emergency medical care facility'' to ''a nearby operating medical facility.'' Finally, EPA proposed requiring the employer to provide on the display the name, address, and telephone number of the state or tribal pesticide regulatory agency.

2. Final rule. EPA has finalized the proposed requirements for content, and has added a point to the proposed display requirements that advises workers and handlers to seek medical attention as soon as possible if they believe they have been made ill from pesticides. EPA has also amended one of the existing required points to clarify that if pesticides are spilled or sprayed on the body, workers and handlers should rinse immediately in the nearest clean water if more readily available than the decontamination supplies, and should wash with soap and water as soon as possible. The final rule refers to the requirement as ''pesticide safety information'' and allows display of the information in any format that meets the requirements of the rule, rather than only as a pesticide safety poster. EPA has included a requirement in the final rule for the employer to update the pesticide information display within 24 hours of notice of any changes to the medical facility or pesticide regulatory agency contact information. Finally, EPA has provided an option in the regulatory text that allows employers to comply by following the requirements at 40 CFR 170.311(a)(1)–(4) before they are fully implemented. The final regulatory text for these requirements is available at 40 CFR 170.311(a)(1)–(4).

The final rule delays implementation of the changes to the required pesticide safety information until two years after the rule is made final, in order to allow time for model pesticide safety information display materials to be developed and distributed.

3. Comments and responses.

Comments. Farmworker advocacy groups and public health organizations supported the emergency medical care change and inclusion of the state or tribal agency responsible for enforcement. However, they urged implementation sooner than the proposed two years from the effective date of the final rule. One commenter reported that a recent survey they conducted indicated that 25% of respondents did not complain about pesticide-related health problems or pesticide applications to the fields while they were working because they did not know to whom to complain and 62% feared losing their jobs if they were to complain.

In general, agricultural producer organizations did not object to the proposed changes for providing emergency medical information but two commenters were concerned about spurious reporting of alleged violations resulting from inclusion of the state or tribal regulatory agency in the pesticide safety information. Two commenters interpreted the proposal as requiring injured workers to contact state or tribal agencies responsible for enforcement for emergency medical attention. A grower organization pointed out that the nearest operating medical facility might change depending on the time of day and wondered if they needed to list hours of operation and addresses of all emergency medical care facilities in the area where the employer operates.

One commenter suggested the safety poster should always be in a standardized format and requested that EPA not allow the information to be displayed in several different formats.

EPA Response. EPA has concluded that there was general support for the proposed requirement regarding the content of the safety information display. EPA has delayed implementation of the final requirements for two years after

publication of the final rule to allow time for display material to be updated, printed and distributed. However, EPA encourages employers to implement the new requirements prior to that date by allowing employers the option to use the new safety information content.

In response to concerns about the placement of the medical facility information and the inclusion of regulatory agency information in the display, EPA has revised the regulatory text to clarify that the contact information about the medical facility must be clearly identified as the emergency medical contact information on the display. Displaying the regulatory agency information is important for the ability of workers and handlers to report possible violations, and in those states where it is already required, it does not appear to have generated spurious reporting of alleged violations. EPA appreciates that some states may already require employers to make such medical and regulatory information available and where state requirements meet or exceed the federal requirement, they do not need to be duplicated. However, EPA has added this requirement to the WPS to ensure the information is available to workers and handlers in all states.

EPA is finalizing the proposed requirement to identify a *nearby* operating emergency medical care facility to simplify the requirement in situations where the *nearest* operating emergency medical facility varies with the location of workers and handlers.

EPA disagrees with the comment requesting that the information be displayed in a standardized format. As long as the information is provided in a way that workers and handlers can understand, EPA sees no need to mandate a specific format.

B. Location of Pesticide Safety Information Display

1. Current rule and proposal. The existing rule requires agricultural and handler employers to display the pesticide safety poster at a central location on the establishment. EPA proposed to require that agricultural employers display the pesticide safety information at locations where decontamination supplies must be provided, in addition to the existing requirement to display it at a central location.

2. Final rule. In the final rule, EPA has amended the proposal to require that in addition to displaying pesticide safety information at a central location, employers must also display it at permanent decontamination supply locations and where decontamination supplies are provided in quantities to meet the needs of 11 or more workers or handlers. The final regulatory text for this requirement is available at 40 CFR 170.311(a)(5).

3. Comments and responses.

Comments. Farmworker advocacy organizations and public health organizations supported requiring display of pesticide safety information where decontamination supplies are provided for easy access to safety information for farm workers and families at strategic locations. They asserted that this would improve the ability of farmworkers and their families to stay healthy. They maintained that due to language barriers, immigration status, and fear of retaliation, farmworkers are often reluctant to ask their employers for information. Three individual farmworkers also commented on the proposed rule and echoed concerns expressed by farmworker advocacy groups and public health organizations. The commenters requested clear information in Spanish and English at a central location with easy access that includes telephone numbers, places to go for help, and hospitals in the area. They stated that it was important that employers give farmworkers the necessary information about the pesticide application without workers having to ask for information. About half of the grower organizations commenting had no objection to the additional mandate on employers and agreed that the additional reminders at decontamination sites have potential benefits.

The remaining grower organizations believed that the proposed requirement would pose a significant burden. One commenter stated that duplicating the pesticide safety information at multiple sites throughout an agricultural organization did not equate to a better training program and believed this requirement would likely result in additional fines for noncompliance without raising safety awareness. Some pointed out that workers are bused in for a day in the field and irrigators are sent to different areas by phone; none of these congregate at a central location.

Many states opposed displaying the pesticide safety information at decontamination sites. Because of the mobile nature of many decontamination sites, such as the back of a pickup truck, some noted the proposed requirement would be burdensome. One indicated that it would be difficult for a grower owning fields across multiple counties to keep the pesticide safety information accurate. They generally supported displaying the pesticide safety information at permanent decontamination sites and base of operation mix/load sites. Several states asked for clarification about what types of decontamination sites would be required to display the pesticide safety information and suggested that portable toilet facilities and plumbed wash sites would be more appropriate locations.

Others mentioned the lack of protection from the weather of the pesticide safety information at OSHA-required restroom facilities and the lack of access to this information when the vehicles carrying decontamination supplies are locked up at night. Two states recommended different sizes for the pesticides safety information. One state suggested that pesticide safety information displays be no larger than 11 x 17 inches and laminated to withstand at least one year's worth of weather conditions for use at decontamination sites; this state also recommended resizing the existing pesticide safety information to 8.5 x 11 inches or less and made of durable card stock or plastic for the agricultural workers to take home.

EPA Response. EPA agrees with the commenters who supported requiring safety information displays at a central location and anywhere decontamination supplies must be provided because the information is a useful reminder of the hygienic safety principles from their training. However, EPA was persuaded by arguments that the burden to display the information at mobile decontamination sites could be substantial, based on concerns for their ability to display the information so that it could be easily seen by workers, such as by posting it on a vertical surface. The final rule requires employers to display the information at the central display and all permanent sites, including a lavatory or bathroom, where decontamination supplies are provided to meet the requirements of the rule. However, for other locations where decontamination supplies must be provided, the pesticide information display is required only when the supplies are provided for 11 or more workers or handlers. This aligns with OSHA's field sanitation standard that requires toilet facilities for 11 or more workers. EPA notes that employers may use these portable toilet facilities or permanent wash sites to display the information, as recommended by some states.

EPA does not agree with the contention that requiring the pesticide safety information display at multiple locations would result in fines for noncompliance, without greatly benefiting the employee. The pesticide safety information display reinforces the

hygienic training principles from the safety training, and when coupled with access to decontamination supplies, offers a hands-on opportunity for workers and handlers to adopt these practices. Additionally, information about medical facilities available to workers where they may be exposed to pesticides may help them take steps to respond to an emergency.

EPA appreciates the comments regarding display size and options for lamination. The final rule does not establish a specific size for the information or require it to be laminated. However, the final rule requires the information to be legible at all times while it is displayed, and EPA expects that employers will opt for the optimal size and protection from the elements for their specific needs. Because the final rule limits the type of decontamination sites covered by this requirement and includes flexibility for identifying the regulatory agency and a nearby operating emergency medical care facility, it is possible but unlikely that some growers with larger establishments may need to provide different specific contact information about the regulatory agency and/or the medical facility, depending on the area where workers or handlers are working.

Commenters suggested the information be available in English and Spanish. EPA notes that the requirement is for the information to be provided in a manner that the workers and handlers can understand, which may include making it available in English and Spanish, or in other languages as appropriate.

EPA plans to develop and make available to agricultural and handler employers posters bearing the pesticide safety information, in a bilingual and pictorial format and with space for employers to add the required regulatory agency and medical facility information. As discussed in the proposed rule, the information does not have to be displayed as a poster as long as the display includes the required information and meets the requirements of the section.

C. Costs and Benefits

1. Costs. EPA estimates the cost of requiring additional pesticide safety information displays at permanent sites with decontamination supplies and at other locations where there are 11 or more workers or handlers and of requiring contact information on the display to be updated to be $390,000 annually, or about $1 annually per establishment per year.

2. Benefits. Workers and handlers will benefit from having access to information about basic pesticide safety at locations they are likely to visit. In addition, workers and handlers will benefit from having accurate information about nearby medical facilities and how to contact the state regulatory agency if necessary. EPA finds the costs from this requirement are reasonable when compared to the benefits of reminding employees about basic pesticide safety and hygienic practices at the sites where they routinely wash.

XIII. Decontamination

A. Clarify the Quantity of Water Required for Decontamination

1. Current rule and proposal. The existing rule requires employers to provide ''enough water for routine washing and emergency eye flush'' when workers are performing activities in areas where a pesticide was applied and the REI has expired. For early-entry workers, the existing WPS requires employers to provide ''a sufficient amount of water'' for decontamination. The existing WPS requires employers to provide handlers with ''enough water for routine washing, for emergency eye flushing and for washing the entire body in case of an emergency.'' EPA proposed to require specific quantities of water for workers, early-entry workers and handlers based on its 1993 guidance, ''How to Comply with the Worker Protection Standard for Agricultural Pesticides; What Employers Need to Know.'' In the guidance, EPA recommended one gallon of water per worker for routine decontamination, three gallons of water for early-entry workers for decontamination and three gallons of water per handler for routine handwashing and potential emergency decontamination.

EPA requested comment on the proposed quantities of water and the use of waterless cleansing agents in place of soap, water, and single-use towels. EPA also requested information on the efficacy of waterless cleansing agents for removing pesticide residues.

2. Final rule. EPA has finalized the proposed decontamination water requirements. EPA has also clarified that employers must make the required quantities of water and other decontamination supplies available at the beginning of the work period. The final rule does not allow waterless cleansing agents to be used in place of water, soap, and single-use towels. The final regulatory text for these requirements is available at 40 CFR 170.411(b), 170.509(b) and 170.605(h).

3. Comments and responses.

Comments. A majority of commenters supported the proposal to require one gallon of water per worker for routine decontamination, three gallons of water for early-entry workers for decontamination and three gallons of water per handler for routine washing and emergency decontamination but many requested clarification of the time frame associated with the supply; they wondered if the prescribed amounts were the maximum quantity per site or per number of workers, the minimum amount at the beginning of the day or at all times during the work period. Six commenters were in favor of replacing soap and water with a waterless cleansing agent. One commenter noted such a substitution would be effective for workers but not handlers; another suggested that these agents might be less bulky than the existing required supplies. One commenter provided information on a specific waterless cleansing agent.

EPA Response. EPA notes that the proposed quantities of water for decontamination are intended for agricultural settings that are not subject to the field standards of OSHA and the American National Standards Institute (ANSI). Based on comments, EPA has clarified the final rule to require that the specified amount of supplies be available at the beginning of the work period and that they are to be calculated per worker and per handler. The final rule does not require the replenishment of used supplies until the beginning of the next work period. The information supplied by commenters was insufficient to convince EPA to replace water, soap, and single-use towels with a waterless cleansing agent. The one waterless cleansing agent discussed in the comments had limited use since the information indicated it could be used to remove only one family of pesticides; workers and handlers are likely to encounter residues from various families of pesticides.

B. Eliminate the Substitution of Natural Waters for Decontamination Supplies

1. Current rule and proposal. For sites where worker or handler activities are farther than one-quarter mile from the nearest vehicular access, the existing rule permits employers to allow workers and handlers to use clean water from springs, streams, lakes or other sources (''natural waters'' for the purposes of this section) for decontamination, if such water is more accessible than the employer-provided water. The employer must ensure any water used for decontamination, including natural waters, is of a quality and temperature that will not cause illness or injury. EPA

proposed to eliminate the provision that allows employers to permit workers and handlers to substitute natural waters for the required decontamination supplies at remote sites. For remote sites, the proposal would have maintained the existing requirement for employers to provide all decontamination supplies (soap, single-use towels, clean change of clothing and water) at the nearest point of vehicular access. However, the existing regulation does not permit substitution of waters from natural sources for the decontamination water at the point of nearest vehicular access, and EPA's proposed change mischaracterized the existing requirements.

2. Final rule. In the final rule, EPA has removed from the regulatory text the provision that allows employers to permit workers and handlers to use clean water from springs, streams, lakes or other sources if that water is more accessible in remote locations where the decontamination supplies are farther than one-quarter mile from where workers and handlers are working. EPA is taking this approach to remove confusion about the employer's responsibilities. The employer must always provide the decontamination supplies in quantities outlined in the regulation. When workers or handlers are performing tasks at remote sites more than one-quarter mile from the nearest point of vehicular access, employers must provide all required decontamination supplies (soap, single-use towels, and water, plus clean change of clothing if required) at the nearest point of vehicular access. Under the final rule, employers are required to make the decontamination supplies available as close as possible to the remote site (as determined by how close a vehicle can get) and employers do not have to check or confirm that water from springs, streams, lakes or other sources at remote sites meets the standard of being of a quality and temperature that will not cause illness or injury. EPA has amended the training requirements to cover the proper use of natural waters at remote sites by workers and handlers. EPA believes that workers and handlers in these remote areas should primarily rely on the decontamination water that is provided by the employer for routine washing and emergency decontamination because the quality of the natural waters at the remote site is unknown. In case of an overexposure, such as a spill, contact from drift, or direct spray, workers and handlers should always use the emergency decontamination supplies if they are more readily available. However, training will emphasize that workers or handlers should rinse immediately using the nearest source of clean water to mitigate the exposure, and to use the nearest source of clean water, including springs, streams, lakes or other sources, if more readily available than the decontamination supplies. Workers and handlers will be advised through training that as soon as possible they should decontaminate thoroughly with the soap, water and towels provided by the employer and, if available, change into clean clothes. EPA plans to modify training materials to incorporate this information. The final regulatory text for worker and handler decontamination is available at 40 CFR 170.411(b)(1), 170.509(b)(1), and 170.605(h)–(j).

3. Comments and responses.

Comments. Many commenters supported not using natural waters to replace the required decontamination supplies. Two states, a farmworker advocacy organization, and a grower organization supported the need for employees to access the nearest clean water in case of an exposure. Some farmworker advocacy organizations expressed concern that the quality of the natural waters might be questionable and not the best choice for decontamination.

Finally, one farm bureau commenter stated that large scale planting activities can place workers more than one-quarter mile from vehicular access, and retaining the existing requirement is more reasonable than expecting workers to carry washing water with them.

EPA Response. EPA maintains its position that the employer-provided decontamination supplies, provided within one-quarter mile of the workers and handlers—or in remote areas, at the nearest point of vehicular access to worker and handler work sites—are the appropriate supplies for routine washing and emergency decontamination. The employer must ensure this water meets the minimum criteria for quality. However, EPA agrees with commenters that prompt washing in clean water is an important step in reducing overexposure, for example, from a spill, contact from drift, or direct spray. EPA has identified acute incidents that would have been mitigated if the exposed worker or handler had decontaminated promptly. EPA is concerned that the existing requirements for employers to ensure the quality of natural waters prior to its use and for them to permit its use will prevent workers and handlers from using these waters to decontaminate in case of an emergency. Ensuring the quality of all natural waters on their establishment could be burdensome for employers, and as a result they might not evaluate the quality or permit the use of natural waters.

To ensure that workers and handlers needing emergency decontamination can use water that is more accessible than the decontamination water provided by the employer, the employer no longer must predetermine that the quality of the water meets the criteria or permit their employees access. The rule permits the use of natural waters for emergency decontamination, but does not require it. Workers and handlers seeking to mitigate an emergency exposure will be informed in their training to use the nearest clean water to immediately rinse off if such water is more readily available than the employer-provided decontamination supplies, and then go to where the employer-provided supplies are to fully decontaminate. EPA believes the benefits of using natural clean waters to decontaminate immediately in an emergency pesticide exposure situation outweighs the potential risks of making workers or handlers wait until they can use supplied decontamination water that has been evaluated for quality but may be less available to immediately address the exposure. EPA thinks that washing in natural waters in any agricultural area is unlikely to pose risks comparable to a significant direct pesticide exposure.

C. Requirements for Ocular Decontamination in Case of Exposed Pesticide Handlers

1. Current rule and proposal. The existing rule requires employers to provide ''enough'' water to handlers for routine and emergency washing and emergency eye flushing. For handlers who use products that require eye protection, employers must provide each handler with at least one pint of water that they can carry for use in the event of an ocular pesticide exposure. EPA proposed to require employers to provide clean, running water at permanent (*i.e.,* plumbed and not portable) mixing and loading sites for handlers to use in the event of an ocular pesticide exposure when using a pesticide with labeling that requires eye protection.

2. Final rule. Under the final rule, employers must provide water for ocular decontamination either through a system capable of delivering 0.4 gallons/minute for at least 15 minutes or from six gallons of water able to flow gently for about 15 minutes. This water must be available at all mixing and loading sites where handlers are mixing or loading a product that requires eye

protection or when closed systems, operating under pressure, are in use. The final rule amends the existing requirement for employers to provide at least one pint of water per handler in portable containers that are immediately available to handlers applying the pesticide, rather than to all handlers mixing, loading and applying pesticides, if the pesticide labeling requires protective eyewear. The final regulatory text for these requirements is available at 40 CFR 170.509(d).

The term ''potable'' in the preamble and regulatory text for the proposed rule was a typographical error and has been corrected to ''portable'' in the final rule.

3. Comments and responses.

Comments. There was general support for this proposal. Many commenters urged EPA to adopt or coordinate with American National Standards Institute (ANSI) standard Z358.1–2009 and/or the OSHA requirements, 29 CFR 1928.110, as several states have done. Many requested a definition of ''permanent mixing and loading site'' and ''a system capable.'' Some qualified their support based on the inclusion of ''nurse rigs,'' ''nurse tanks'' and ''gravity-fed tanks'' in the final rule. Commenters also explained that much of the mixing and loading is done in the field rather than at a site with running water. Other commenters wondered if the water for decontamination needed to be potable.

EPA Response. The OSHA standard at 29 CFR 1910.151(c) specifies that ''. . . where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided . . .''. The ANSI standard provides specifications for two types of eyewash stations, plumbed and gravity-fed. The specifications describe a system with a precise rate of flow (0.4 gallons/minute for 15 minutes), that can activate in 1 second or less and does not require the user to control the flow of water. While the OSHA and ANSI standards are very protective, EPA believes that the final rule requirements provide handlers with mitigation appropriate to pesticide exposure in agricultural settings at significantly lower costs than the ANSI standards. Based on the comments, EPA realized that there might have been some confusion regarding the nature of permanent mixing and loading sites, the plumbing associated with non-permanent mixing and loading sites, and the quality of the water required. In the final rule, EPA decided to apply the requirements to all mixing and loading sites where pesticides whose labeling requires protective eyewear are handled because the risk to handlers who mix and load these products is the same, regardless of where they perform the tasks. Rather than specify what types of water tanks or eye wash systems would comply with the requirement, EPA opted for flexibility. The final rule allows employers to provide either at least 6 gallons of water in containers suitable for providing a gentle eye flush for about 15 minutes, or a system capable of delivering gently running water at a rate of 0.4 gallons per minute for at least 15 minutes to satisfy the requirement. One emergency eyewash system is required at a mixing/loading site when a handler is mixing or loading a product whose labeling requires protective eyewear for handlers, regardless of how many handlers are mixing or loading at that site. The final retains the existing requirement for water to be of ''a quality and temperature that will not cause illness or injury.''

D. Showers for Handler Decontamination

1. Current rule and proposal. The existing rule establishes specific requirements for routine and emergency handler decontamination supplies, but these requirements do not include shower facilities. EPA considered but did not propose a requirement for handler employers to provide shower facilities.

2. Final rule. EPA has not included in the final rule a requirement for employers to provide shower facilities for handlers.

3. Comments and responses.

Comments. Many commenters supported the proposal for not providing shower facilities for handlers while others requested that EPA require employers to provide shower facilities for handlers. Those against adding the shower requirement noted the provision would not necessarily guarantee use in order to reduce take-home or handler exposure. Those supporting a requirement for shower facilities indicated that handlers would use them if they were provided. Both groups, however, agreed that better training and adequate information on reducing take-home exposure, as suggested by EPA, would be a better approach.

EPA Response. EPA agrees that additional training for handlers and clarified decontamination provisions such as the provision of at least 3 gallons of water per handler for routine and emergency washing, available at the beginning of the day, would help reduce take-home exposure without requiring shower facilities. The estimate of the cost of installing showers as provided in the proposal, combined with the lack of confidence that most handlers would routinely use showers if provided, led to the conclusion that a shower requirement would be unlikely to reduce risks to an extent commensurate with the costs.

E. Costs and Benefits

1. Costs. EPA estimates the total cost of the revisions to the decontamination requirements to be approximately $412,000 annually, or about $1 per establishment per year, CPHEs $21 per establishment per year.

EPA does not believe there will be any cost associated with deleting the provision allowing employers to direct workers and handlers to use natural waters in addition to the decontamination supplies required by the rule. The final rule still allows workers and handlers to use clean, natural waters, but removes employers' obligation to ensure that the water is of a temperature and quality that will not cause harm.

Because EPA is not imposing a requirement for employers to provide shower facilities for handlers, there is no estimated cost. Refer to the Economic Analysis of the proposed rule for details regarding the estimated cost of requiring showers for handlers (Ref. 14).

2. Benefits. EPA expects that workers and handlers will benefit from having access to sufficient supplies for routine washing and decontamination. In addition, handlers will benefit by having sufficient water available to rinse their eyes in the event of an accident while mixing or loading certain pesticides. Employers will benefit from certainty about the amount of water that they must supply and when that water must be available.

XIV. Emergency Assistance

A. Current Rule and Proposal

The existing WPS requires employers of workers or handlers, including those handlers employed by the agricultural establishment or those working for a pesticide handling establishment, to provide prompt transportation to an emergency medical facility to employees who have been poisoned or injured by exposure to pesticides used on the establishment. Emergency medical assistance under the existing rule consists of the prompt provision of transportation to an emergency medical facility for the worker or handler and the provision of obtainable information about the exposure, including information about the product(s) that may have been used, to emergency

medical personnel or the exposed employee.

EPA proposed to require agricultural and handler employers to provide emergency medical assistance within 30 minutes after learning that an employee may have been poisoned or injured by exposure to pesticides as a result of his or her employment, replacing the current standard of ''prompt.'' The proposed change was intended to ensure that the potentially injured party would be on route to a medical facility within 30 minutes.

EPA also proposed that the employer provide a copy of the pesticide label, or specific information from the label, along with the SDS and circumstances of the pesticide use and potential exposure, to employees potentially injured by exposure to pesticides and to treating medical personnel.

B. Final Rule

EPA has retained the existing requirement for providing transportation and information promptly. The final rule clarifies that these requirements apply only to current or recently employed workers, and that emergency assistance must be provided if there is reason to believe that a worker or handler has been potentially exposed to pesticides or shows symptoms of pesticide exposure.

EPA has amended the requirement for the information that the employer must provide related to emergency assistance. The final rule requires the employer to provide to treating medical personnel a copy of the SDS, product name, EPA registration number and active ingredient for each pesticide product to which the person may have been exposed, as well as the circumstances of application or use of the pesticide on the agricultural establishment and the circumstances that could have resulted in exposure to the pesticide. This is a slight change to the existing rule which makes the information available to the worker or handler. In this final rule, the worker or handler has access to the information through the hazard communications requirement. This provision deals specifically with meeting the needs for medical assistance, and requires that the information be provided to the medical personnel.

EPA has clarified in the final rule that the provision of the emergency assistance requirement for transportation and information applies only to currently employed workers seeking emergency medical assistance or recently employed workers within 72 hours after their employment for acute exposures occurring on the agricultural establishment.

The final regulatory text for these requirements is available at 40 CFR 170.309(f) and 170.313(k).

Readiness is among the most important factors in an employer's ability to promptly carry out the emergency assistance requirements. EPA strongly encourages employers to develop an emergency response plan and to address in such a plan details related to the emergency medical assistance requirements of the WPS. EPA also encourages employers to periodically test, evaluate and, if necessary, update the plan. EPA will develop a sample plan to help employers prepare for possible pesticide-related emergencies. Employers can also find additional information concerning the development and implementation of an emergency preparedness program at the U.S. Department of Homeland Security's Web site, *http://www.ready.gov/business/*.

Although EPA believes that it is important for employers to develop emergency response plans, EPA has not made this a requirement of the final rule. EPA recognizes that pesticide exposure is just one of many hazards that should be addressed in an emergency response plan, and that EPA has very little information about the extent of emergency planning in the agricultural community. Accordingly, EPA has decided that it would be unwise to address this issue in the WPS without the benefit of a more robust dialogue with all stakeholders.

C. Comments and Responses

Comments. Many private citizens and farmworker advocacy organizations, some pesticide state regulatory agencies and several public health organizations supported the proposal to require agricultural employers and handler employers to provide emergency medical assistance within 30 minutes after learning that an employee may have been poisoned or injured by exposure to pesticides as a result of his or her employment, replacing the current standard of ''prompt.'' They stated that the clarification of time for the provision of transportation and information would improve the safety of farmworkers.

The Progressive Congressional Caucus, many farmworker advocacy organizations and public health organizations expressed concern that the proposed emergency response time of 30 minutes is too long and recommended that it should be further reduced. Commenters reasoned that pesticide poisoning can be fatal or result in long-term effects if not quickly treated.

On the other hand, many commenters, mostly growers and farm bureaus, and some states and agricultural producer organizations expressed opposition to the proposal and favored retaining ''prompt '' to allow more flexibility due to geographical constraints. The Small Business Administration's Office of Advocacy stated that small farms that are farther away from medical facilities would not be able to obtain emergency transportation within the timeframe. Those with few employees and limited transportation options would be overburdened in attempting to comply with a 30 minute timeframe.

Commenters representing many states, several agricultural industries, many growers and farm bureaus, and the Small Business Administration's Office of Advocacy recommended that emergency response requirements should apply only to current employees seeking emergency medical assistance for acute incidents.

Additional comments from states and their organizations recommended that the agriculture emergency requirement address only acute exposures to current employees of the establishment. They raised concerns for the potential for former employees or those with exposures in the past to request emergency assistance. One commenter stated that allowing any person who was ever employed by the establishment the ability to demand emergency assistance could cause problems with compliance and enforcement. Some of these organizations requested clarification of the term ''emergency medical facility.''

Commenters also recommended that the requirement allow, similar to OSHA, trained first aid providers on the establishment to provide care, which could enable more timely treatment.

Commenters noted that requiring the employer to provide the label to employees potentially injured by exposure to pesticides and to treating medical personnel could lead to further exposure, if the employee takes an open container of pesticides bearing the label. Further, commenters suggested that the information outlined in the proposal could be obtained from sources other than the label.

EPA Response. EPA was convinced by the concerns raised by members of the agricultural community that geographical constraints, in some cases, would make the 30 minute response timeframe for transportation difficult or impossible to meet. Agricultural establishments can be very large and are

often distant from population centers. Remote locations, including those in forestry, are common; and the distance to an emergency medical facility or to an ambulance service can be significant.

The final rule requires employers to comply with the emergency assistance requirements by promptly making transportation available to an emergency medical facility for potentially injured employees and providing the SDS, specific product information, and information about the exposure to the treating medical personnel. Because the information about the pesticide may be critical to effectively manage the illness, EPA decided to focus the requirement to ensure that treating medical personnel receive the information. The agricultural employer must provide that information in a way that is reasonably expected to be accessible to the treating medical personnel. The requirement does not preclude the employer providing the information to injured employees and does not prevent injured employees from requesting this information. This requirement will allow continued flexibility for employers and encourage timely medical treatment for potentially injured employees.

In deciding to retain the requirement for prompt provision of transportation, EPA also took into consideration OSHA's standard for the provision of transportation to persons in construction, which requires ''Proper equipment for prompt transportation of the injured person to a physician or hospital.'' 29 CFR 1926.50(e).

EPA agrees with the recommendation to clarify that the requirement applies only to current or recently employed workers seeking emergency medical assistance for acute exposures occurred at the agricultural establishment, and has revised the final rule accordingly.

EPA notes that for some cases of suspected pesticide injury, the attention of a trained first aid provider can mitigate the injury. Such treatment would not negate the obligations of the employer to provide transportation promptly to an injured employee, or to provide information about the pesticide and exposure to medical personnel, but is encouraged. Allowing a competent first aid provider to administer timely treatment to an injured employee could offset complications from longer exposures.

EPA agrees with comments that a requirement to provide the label in the event of an emergency could be burdensome and place employees at risk for additional exposure if the label is attached to an open container of pesticides. EPA has not included the proposed requirement to provide the label or information from the label; rather, the final rule requires the employer to provide the necessary information, but does not specify the source of the information. EPA has removed from the list of specific pieces of information the employer must provide information about antidote, first aid, and recommended treatment because the SDS contains this information. EPA notes that the information about the product and the SDS will be available as part of the pesticide application and hazard information.

In response to the requests for clarification of what qualifies as an emergency medical facility, EPA notes that a hospital, clinic, or infirmary offering emergency health services qualifies.

Finally, the employer must provide information about the pesticide and the exposure to the treating medical personnel.

D. Costs and Benefits

There are no incremental costs associated with the decision to retain the requirement of prompt provision of transportation in the existing rule. The cost associated with the SDS were included in the costs for the pesticide application and hazard information. There are significant benefits to reducing damage from pesticide exposure by prompt medical attention.

XV. Personal Protective Equipment

A. Respirators: Fit Testing, Training and Medical Evaluation

1. Current rule and proposal. The existing regulation requires handler employers to ensure that each handler's respirator fits correctly. However, the existing rule does not provide specific details on ensuring that a respirator fits properly, nor does it require employers to conduct medical evaluations of the handler's fitness for respirator use, provide training on the proper use of respirators, or retain fit test records.

EPA proposed to require handler employers to comply with the respirator fit testing, training, and medical evaluation requirements set by OSHA at 29 CFR 1910.134 whenever a respirator other than a dust or mist filtering mask is required by the labeling. EPA did not propose any new requirements for filtering facepiece respirators (OSHA's term for dust or mist filtering masks). The OSHA standard includes a specific standard for fitting a user for respirator use, training on recognizing when the respirator seal may be broken, and what steps to take to properly use and maintain respirators. OSHA also requires respirator users to be medically evaluated to ensure the respirator use does not cause undue stress on their bodies. EPA proposed to require that employers comply with the OSHA requirements for fit testing, training, and medical evaluation by cross-referencing 29 CFR 1910.134, in order to avoid creating a duplicative regulation and to ensure that if technology advances lead OSHA to amend its standard, the change would automatically apply to pesticide uses subject to the WPS as well. EPA also proposed to require handler employers to maintain records of the fit test, training, and medical evaluation for two years.

2. Final rule. EPA has retained the proposed elements in the final rule, with some changes and clarifications. Specifically, the final rule cross references and requires compliance with the OSHA standards for fit testing, training, and medical evaluation when a respirator is required by the labeling. The final rule expands from the proposal the types of respirators covered by the requirement to include filtering facepiece respirators. The final rule also adds an additional item to the list of conditions that would trigger replacement of the gas- or vapor-removing canisters or cartridges.

In the final rule, EPA has retained the proposed requirement for handler employers to maintain records of the fit testing, medical evaluation, and training. The final rule clarifies that the required training is limited to the care and use of respirators, 29 CFR 1910.134(k)(1)(i)–(vi), and does not include the training on the general requirements (*i.e.,* 29 CFR 1930.134(k)(1)(vii)).

The final regulatory text for these requirements is available at 40 CFR 170.507(b)(10) and 170.507(d)(7).

3. Comments and responses.

Comments. EPA received many comments in favor of requiring handler employers to comply with the respirator fit testing, training, and medical evaluation requirements established in the OSHA standard. Many farmworker advocacy organizations and some PPE manufacturers asserted that EPA should also apply the proposed standards for fit testing, training, and medical monitoring to users of filtering facepiece respirators in addition to the other respirator types (*e.g.,* tight fitting elastomeric facepieces). Commenters suggested that filtering facepiece respirators are widely used and covered by OSHA's respirator requirements, and that their exclusion would result in inadequate protection for many pesticide handlers. OSHA defines a filtering facepiece as ''a negative

pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium'' in 29 CFR 1910.134(b).

Furthermore, many farmworker advocacy organizations stated that EPA should require compliance with all elements of 29 CFR 1910.134, rather than the proposal to just include fit testing, training, and medical evaluation. Specifically, they urged EPA to adopt OSHA's requirements for employers to develop a respiratory protection program (29 CFR 1910.134(c)) and conduct a workplace hazard evaluation (29 CFR 1910.134(d)(1)(iii)).

Nearly all commenters expressed support for a general requirement related to proper respirator care and use, such as appears in the existing rule. However, many pesticide manufacturers and their associations, state farm bureaus and agricultural producer organizations questioned the feasibility of the proposed requirement for medical evaluations because locating qualified physicians practicing in rural areas would be difficult. Other farm bureaus noted that the OSHA standard applies to general industries, shipyards, marine terminals, longshoring and construction, and it would not likely be easily adopted in agricultural settings. Some commenters, including the Small Business Administration's Office of Advocacy, also asserted that EPA's cost estimates associated with the medical evaluations and fit testing were too low.

Some commenters, including a state farm bureau, raised concerns that EPA's reference to OSHA's regulations could give OSHA legal grounds to pursue oversight of certain small farming operations, contrary to provisions of existing law.

EPA Response. In the final rule, EPA has required that employers comply with the respirator fit testing, training, and medical evaluation requirements described in the proposed rule when the use of respirators is required by the labeling. The final rule also expands its coverage to include filtering facepiece respirators (referred to as dust/mist filtering respirators in the proposal). EPA included filtering facepiece respirators in the final rule to ensure that handlers required to use any type of respirator are adequately protected. Filtering facepiece respirators need to be fit tested and used properly to provide the intended protection. In addition, this will ensure that respirators used under the WPS provide the same level of protection as comparable respirators used under OSHA's respiratory protection requirements.

EPA acknowledges that, if the final rule were to require handler employers to comply with the OSHA requirement to adopt a worksite-specific respiratory protection program, such a requirement would address in detail the selection, cleaning, storing, repair and replacement of respirators, as well as worksite-specific procedures when respirator use is required. EPA has decided not to expand the final rule to include the OSHA requirement to adopt a worksite-specific respiratory protection program because specific respirator requirements are described on EPA-approved, product-specific pesticide labeling. These product-specific respirator requirements are based on the acute inhalation toxicity of the end-use product or a comprehensive risk assessment informed by incident data, or on extensive pesticide active ingredient toxicology data, exposure science and epidemiology data (if available), or on both. Therefore, requiring a general worksite-specific respiratory protection program would duplicate the analysis underlying product-specific respirator requirements included on pesticide labeling.

EPA acknowledges that implementing respirator fit testing, training, and medical evaluation in agriculture will place additional burden on agricultural employers. However, the proper fit and use of respirators is essential in order to realize the protections respirators are intended to provide. EPA's pesticide risk assessment process relies on National Institute for Occupational Safety and Health (NIOSH) protection factors (*i.e.,* respirators used according to OSHA's standards) when deciding whether handler inhalation exposure can be mitigated by respirator use. If the handler inhalation exposure can be mitigated by a particular type of respirator, EPA may require the use of that respirator on the pesticide label, among other risk mitigation measures. Without the protection provided by the respirators identified on the label, use of those pesticides would cause unreasonable adverse effects on the pesticide user, *i.e.,* the handler.

EPA is aware of several states, including California, Oregon and Washington, that have successfully incorporated all aspects of the OSHA standard for respirators in agriculture, demonstrating the feasibility of applying OSHA's requirements in agriculture. North Carolina has incorporated many innovative ways to facilitate the medical evaluation and fit testing process, and helped farmers (including handler employers) locate reputable sources for online services for fit testing and medical evaluation, and sources for NIOSH-approved respirators, filters, and cartridges. EPA plans to work with stakeholders such as state regulatory agencies, universities, and others to provide outreach assistance such as training programs and written materials and to encourage the dissemination of information about fit testing and medical evaluation resources.

EPA has reviewed and revised its cost estimates for fit testing, training and medical evaluation. The cost estimate assumes that farms would designate one handler to be fit tested so the incremental costs for the filtering facepiece respirators reflects the need to fit test and train on multiple types of respirators. The increased costs also reflects the cost of the on-line medical evaluation, which replaces the estimated time of a medical technician reviewing the evaluation, and the cost of the employer's time to arrange (if off-site) or oversee (if on-farm) the evaluation and fit test, which was previously omitted. EPA has also updated wages, price of materials and services such as the cost of the medical evaluation and the fit test materials. Details of the revised estimate are available in the Economic Analysis for this final rule (Ref. 1).

EPA recognizes that some handlers may not be able to use a tight-fitting respirator. EPA notes that the purpose of the medical evaluation is to ensure handlers are able to tolerate the physical burden caused by the use of respirators. Many medical conditions, such as cardiovascular diseases and the reduced pulmonary function caused by smoking, could impede the ability of the handler to wear a respirator without adverse health impacts. The medical evaluation should identify these potential issues and disqualify the handler from using a tight-fitting respirator. Tight fitting respirators include filtering facepiece respirators, full and half face elastomeric respirators and tight fitting powered air purifying respirators (PAPR). However, for these handlers, loose-fitting PAPRs are an option for respiratory protection because they do not require medical evaluations or fit testing. EPA notes that many handler employers may be able to rely on online services where medical evaluations can be performed by relying on medical questionnaires. The employee would complete the medical questionnaire, which would be provided to the licensed medical professional for review. If the employee is cleared by the review, he or she is approved to wear a respirator. If the employee is not cleared through the review of the questionnaire, the employer may send the employee for further medical review

or the employer may identify a different employee to handle the pesticide.

EPA does not believe that including in the WPS a requirement that employers must perform respirator fit testing, training, and medical evaluation in accordance with OSHA's requirements by cross-reference to 29 CFR 1910.134 affects the scope of OSHA's jurisdiction. This final rule changes only the FIFRA WPS, which is implemented and enforced by EPA, the States and Tribes, and not by OSHA.

However, in consideration of the commenters who asked that EPA require compliance with all elements of OSHA requirements at 29 CFR 1910.134, the Agency re-evaluated other elements of that regulation. As part of that re-evaluation, EPA identified an inconsistency between the Agency's proposal and OSHA's requirements concerning a change schedule for the replacement of the gas- or vapor-removing canisters or cartridges. Specifically, OSHA requirements address change schedules that utilize NIOSH end-of-service-life indicator designations (29 CFR 1910.134(d)(3)(iii)(B)(2)). To ensure respirator protections are of greater consistency across industries, EPA has added the OSHA requirement that triggers the replacement of the gas- or vapor-removing canisters or cartridges to the list of conditions in the final rule at § 170.507(d)(7) through an incorporation by reference.

4. Costs and benefits. EPA estimates the cost to employers of complying with the WPS respirator requirements that cross-reference the OSHA standard would be $10.6 million annually, or about $43 per year, on average, for agricultural establishments with handlers and about $8 for commercial pesticide handling establishments per year. On family-owned farms that use pesticides and do not hire labor, the estimated annual cost of the respirator requirements is approximately $9 per establishment per year. As explained previously, the estimated cost increased in the final rule because the cost analysis was revised to account for handlers to be fit tested and trained to use multiple types of respirators, the cost of an on-line medical evaluation, and the employer's time to arrange for the fit testing, evaluation and training. EPA assumes that about 30 percent of handlers working on 60 percent of farms that employ handlers will be fit tested in any year; the average cost per farm reflects this assumption. The cost to commercial pesticide handling establishments only reflects the cost of recordkeeping because EPA assumes that they already comply with OSHA's respirator requirements because they engage in activities outside of the scope of the WPS that are covered by OSHA. The cost estimates for agricultural establishments are very conservative because of broad assumptions regarding the number of handlers and farms affected, and the fact that some establishment owners are already required to comply with OSHA requirements related to respirator use for other reasons.

EPA cannot quantify the benefits associated with this specific requirement. However, ensuring that handlers can safely use respirators and that those respirators fit properly will increase the protections offered by respirators to the levels presumed in EPA's pesticide registration decisions. This should lead to a reduction in occupational pesticide-related illnesses. In comparison to these expected benefits of proper respirator use and reduced illnesses, the costs associated with the final rule requirements appear to be reasonable.

B. Chemical-Resistant PPE

1. Current rule and proposal. The definition for ''chemical resistant'' in the existing WPS is a ''material that allows no measurable movement of the pesticide being used through the material during use.'' Prior to the proposed rule, EPA received many comments from stakeholders suggesting that there was no way for agricultural employers, handlers, early-entry workers, pesticide educators and inspection personnel to ensure the PPE being used was ''chemical resistant.'' EPA proposed requiring employers to provide PPE defined by its manufacturer as chemical resistant.

2. Final rule. EPA has rejected the proposed change. The final rule retains the existing definition of chemical resistance. The final regulatory text for this requirement is available at in 40 CFR 170.507(b)(1).

3. Comments and responses.

Comments. While several commenters representing states and academia supported the idea of PPE manufacturers defining chemical resistant in principle, many also questioned the feasibility of such an approach. Specifically, the commenters questioned whether manufacturers can reliably label PPE as chemical resistant in a permanent manner that would be easy for enforcement personnel to check during inspections. Several other commenters from pesticide manufacturers and PPE manufacturers suggested such claims may not be able to be made for the wide range of pesticide formulations and active ingredients. One PPE manufacturer asserted that the existing definition was purposefully worded to ensure worker protection and that EPA's proposal over-simplifies a very complex and critical issue. Many other commenters reiterated this latter comment regarding over-simplification of the process for developing chemical resistant PPE.

EPA Response. EPA recognizes the many comments highlighting the challenging issues involved with having PPE being defined as chemical resistant by the equipment manufacturer, who does not know the ingredients in every pesticide product. EPA agrees with commenters that the proposed approach would create more problems than it would resolve. Therefore, the final rule retains the existing chemical resistant definition.

4. Costs and benefits. Because EPA is retaining the current definition of chemical resistant, there are no estimated costs.

C. Contaminated PPE

1. Current rule and proposal. The existing WPS requires employers to ensure that PPE is cleaned before each day of reuse. If the article cannot be properly cleaned, the employer must dispose of it in accordance with applicable Federal, State, and local regulations. EPA proposed to add a requirement for employers to render unusable contaminated PPE that cannot be properly cleaned before it is disposed.

2. Final rule. In the final rule, the employer must ensure that contaminated PPE is made unusable as apparel or disposed of in such a way that it is unavailable for further use. EPA has also included in the final rule a requirement for the person who cleans, disposes, or otherwise handles the contaminated PPE to wear the gloves required for mixing and loading the pesticide that contaminated the PPE. The final regulatory text for this requirement is available at 40 CFR 170.507(d)(2).

3. Comments and responses.

Comments. Prior to the proposed rulemaking, state pesticide regulatory agencies expressed concern that unless proper measures are taken, contaminated PPE might be reused either as PPE or simply as a garment, placing the person wearing it at risk from pesticide exposure. In support of the proposal, one public health organization commented that rendering contaminated garments unusable would prevent adverse health effects. A state noted that the proposal was an effective method to reduce the potential for access to contaminated PPE. One grower

organization noted that the potential for exposure exists when individuals cut or render contaminated PPE unusable, and suggested a requirement to seal the contaminated PPE in a disposal container and to dispose of the container in an appropriate manner.

In contrast, some grower organizations stated that the current requirement is adequate and EPA should not adopt the proposal. Some farm bureaus opposed the proposal and thought the concern for individuals gaining access to contaminated PPE was well meaning yet hypothetical. Some of these commenters suggested it could lead to confusing violation scenarios, specifically from the interpretation of ''render unusable.''

EPA Response. The final rule clarifies that the requirement is to make the PPE ''unusable as apparel.'' EPA agrees that access to contaminated PPE might be prevented by sealing it in a container and entrusting it to a waste disposal system that effectively prevents diversion of waste, and that such an approach would reduce pesticide exposure to the person handling the contaminated article relative to many methods of rendering the PPE unusable. EPA has included in the final rule a provision allowing the PPE to be ''made unavailable for further use'' as an alternative to the proposed requirement to render the contaminated PPE unusable. To reduce the potential exposure to a person handling contaminated PPE, the final rule requires that a person must wear gloves while handling PPE covered by 40 CFR 170.507(d)(2).

EPA disagrees with comments from farm bureaus suggesting that there is little likelihood of persons accessing contaminated PPE. As mentioned in the preamble to the proposed rulemaking, state pesticide regulatory agencies have raised concerns for the potential reuse of contaminated PPE to EPA. EPA relies on state pesticide regulatory agencies to raise issues with implementation of the existing WPS that arise when they conduct inspections of WPS establishments. EPA has chosen to amend the existing rule in response to the input provided by the States.

4. Costs and benefits. EPA has estimated that the cost of rendering the PPE unusable or unavailable is negligible. Although the benefits cannot be quantified, contact with contaminated PPE may result in significant exposure, especially if worn repeatedly. The negligible cost of this requirement compared to the benefit from ensuring that contaminated PPE cannot continue to cause exposure is reasonable.

XVI. Decision Not To Require Monitoring of Handler Exposure to Cholinesterase-Inhibiting Pesticides

A. Current Rule and Proposal

The existing WPS does not have a requirement to monitor cholinesterase (ChE) levels in workers or handlers. In the proposal, EPA invited comment on whether to require routine ChE monitoring of handlers. However, because EPA's initial judgement was that the benefits of routine ChE monitoring would not justify the cost, EPA did not propose to add a requirement for routine monitoring of ChE inhibition in handlers.

B. Final Rule

The final rule does not include a requirement for routine ChE monitoring for handlers.

C. Comments and Responses

Comments. In response to the proposal, several grower organizations, state farm bureaus, crop consultants and their organizations, and states and their organizations expressed support for EPA's decision not to require a mandatory routine ChE monitoring program as part of the WPS. Several commenters stated that the most effective approach to prevent handler exposure to any pesticide product is to address the potential for exposure in advance of use, rather than after exposure has taken place. Many of these commenters agreed with EPA's assessment in the proposal that EPA's worker risk assessments and mitigation measures are sufficient to provide the necessary protection from pesticide exposure during handling. One commenter also suggested that requiring ChE monitoring may add to confusion and provide a false sense of safety to workers, health care providers, and regulators because it only measures exposure. These commenters suggested that the best approach that can be taken to mitigate exposure would be to address it through product-specific risk assessments supporting the registration of pesticide products, robust handler training on specific pesticides, and effective enforcement of label requirements.

In addition, some of the commenters objected that ChE monitoring is an invasive process, and that routine ChE monitoring would be extremely time-consuming and costly and would provide information of questionable value. One commenter stated that a proper ChE monitoring program would require that a baseline be established for employees, and that it would be highly unlikely that a baseline could be obtained for many workers because of previous exposure to organophosphate insecticides, while another commenter suggested that exposure to other common materials can change the levels of ChE, especially in serum level measurements, making it difficult to establish a baseline. Another commenter added that the timing of meals, stress, physical activity, and changes in body mass can cause ChE levels to fluctuate within an individual, and that the baseline value should be taken on the day of handling a ChE-inhibiting pesticide prior to exposure due to this intra-individual variability. The commenter suggested that baselines established every 1 to 2 years, as currently recommended by Washington State and California, respectively, would not provide meaningful information concerning the degree of exposure due to these daily fluctuations.

Conversely, several commenters, including some members of Congress, the California Department of Public Health, Washington State's Department of Health and Department of Labor and Industries, several public health organizations, academics, and farmworker advocacy organizations supported the idea of adopting a routine ChE monitoring program as part of this rulemaking, particularly for handlers who use ChE-inhibiting pesticides like organophosphates and N-methyl-carbamate pesticides. Many of these commenters cited the existing ChE monitoring programs in California and Washington State in their arguments for why ChE monitoring should be expanded nationally.

Some commenters stated that California and Washington have longstanding medical monitoring programs with proven track records in reducing exposure to, and illnesses from, highly neurotoxic chemicals. These commenters stated that the successful implementation of these monitoring programs has helped health professionals understand the effects of these classes of pesticides and prevent poisoning by identifying overexposure. Two commenters stated that Washington's program is effective and protects workers as reflected by worksite field evaluations of action level ChE depressions, which have identified multiple pesticide WPS violations that are believed to contribute to worker exposure. A couple of commenters stated that the benefits realized by the state programs, which would expand nationally if monitoring were to be required, include:

- Greater certainty about the frequency of pesticide overexposure.

• Avoidance of serious pesticide illness.

• Improved compliance with the WPS.

• Identification of any existing PPE, work practice, and engineering control requirements that are not sufficient to protect pesticide handlers from exposure.

• Greater awareness of chemical and exposure hazards.

Some commenters cited Washington State's data that shows that the percentage of overexposed participating handlers who required remedial action fell from 20% when the program started in 2004 to 6% in 2013, for a reduction of 70%. These commenters stated that Washington's Department of Labor and Industries found that ChE monitoring helped identify the causes of overexposure, which allowed for those causes to be corrected by alerting employers and handlers to unsafe work practices, conditions, or equipment. Additionally, a couple of commenters stated that the percentages of handlers who actually reached the removal level from handling ChE-inhibiting pesticides remained consistently low after the implementation of the ChE monitoring program, with the percentages being 3.8% in 2004, 0% in 2010 and 2011, 2.3% in 2012, and 4% in 2013. These commenters believed that the sharp decline in the number of handlers needing remedial action, along with the consistently low percentage of handlers who exceeded 20% below their baseline (*i.e.,* those who reach the evaluation level in the state programs), shows that the program has been effective in reducing exposure to OPs and carbamates, and that monitoring should be implemented nationally so that all workers receive similar benefits.

Some commenters in support of requiring ChE monitoring also discussed the costs associated with ChE monitoring. They stated that the cost of implementation should not deter EPA from requiring medical monitoring on a national level. A few commenters stated that EPA's estimate that the cost of ChE monitoring would average $53 per year per agricultural establishment was a small cost when contrasted with the 70% reduction in overexposure according to Washington State's data. A couple of commenters also stated that monitoring in California and Washington has led to substantially fewer pesticide poisonings and reduced use of these highly toxic pesticides, and can, in turn, reduce long-term medical costs to farmworkers and the agricultural economy. Some commenters stated that EPA's analysis did not include an estimation of the medical expenses that were saved, the lost wages prevented, and the pesticide-related illnesses avoided as a result of early detection and intervention. As a result, the commenters believed that the benefits of a national ChE monitoring program would more than justify the costs given the severe effects of overexposure to ChE-inhibiting pesticides.

Other commenters supporting ChE monitoring stated that employees who handle ChE-inhibiting chemicals in non-agricultural sectors routinely receive the protection of medical monitoring. For example, some commenters stated that OSHA requires medical monitoring for workers who handle a wide range of toxic substances. They also stated that USDA requires monitoring of its employees who may be exposed to organophosphate or carbamate pesticides. These commenters stated that these safeguards should be provided for all workers who handle these pesticides, and therefore should be included in the final rule.

EPA Response. After reviewing the comments, EPA continues to believe that the expected benefits of a routine ChE monitoring program for handlers are not sufficient to justify the costs. As stated in the proposed rule, EPA believes that Washington State's efforts have identified the primary reasons for ChE inhibition among pesticide handlers. In many cases, ChE depression was caused by handlers not following basic safety and hygiene procedures, *e.g.,* not wearing the label-required PPE and failing to wash before meals or bathroom breaks. Additionally, several handlers who did wear respirators as required by labeling had beards, which compromised the seal between the face and the respirator and reduced the protection intended to be afforded by the PPE. EPA believes that requiring expanded and more frequent handler training, in combination with requirements for fit testing and training on proper respirator use for handlers, addresses the primary reasons for overexposure to ChE-inhibiting pesticides.

The revised labeling with increased protections and new mitigation measures resulting from the reregistration of organophosphates and carbamates will also result in lowered handler exposure. Reregistration has resulted in some uses of the most acutely toxic organophosphates being phased out. For the remaining uses, EPA has imposed additional PPE requirements, requirements for closed-system mixing and loading, and reductions to rates of application and number of annual applications permitted. As labels with updated PPE requirements for handlers are seen and followed in the field, EPA expects to see reduced numbers of overexposures. Additionally, the organophosphates and carbamates that are still registered are being used less frequently and being replaced by pesticides with lower risks, also reducing the potential for overexposure.

While EPA estimated the costs of a national, routine ChE monitoring program to be at least $15.2 million annually, or about $53 per agricultural establishment per year and $120 per commercial pesticide handling establishment per year, this estimate does not include the full costs that would be expected of a national ChE monitoring program. As stated in the proposed rule, a national, routine ChE monitoring program would likely include program components such as training, recordkeeping, clinical testing, and field investigations, which were not included in the estimated costs because the initial $15.2 million estimate appeared by itself to be disproportionately high in comparison to the expected benefits. Additionally, the estimated costs do not include the states' costs to build infrastructure to support ChE monitoring or to cover continued laboratory costs such as equipment maintenance and administrative support. If EPA were to calculate these additional costs, the estimated costs would be much higher than $15.2 million annually. Therefore, EPA stands by its assessment in the proposed rule that the cost of implementing a national, routine ChE monitoring program is not justified by its limited benefits.

EPA believes that the increased handler protections being finalized in this rulemaking, combined with the product-specific risk mitigation measures, will appropriately address the elevated potential for ChE inhibition in handlers. Moreover, the training and PPE elements of the final rule will have the combined effect of providing important protective benefits to all pesticide handlers through increased knowledge of exposure risks and prevention strategies. This approach will lead to a reduction of pesticide exposures because it prevents handler exposure before it occurs.

D. Costs and Benefits

Since EPA is not requiring routine ChE monitoring, there are no costs associated with this decision.

XVII. Exemptions and Exceptions

A. Immediate Family

1. Current rule and proposal. The WPS currently exempts the owners of agricultural establishments from requirements to provide certain WPS protections to themselves and their immediate family members. Owners are required to comply with all applicable provisions of the WPS for any worker or handler employed on the establishment who is not a member of the owner's immediate family. The definition of ''immediate family'' in the existing rule includes only the owner's spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters. EPA proposed to expand the definition of ''immediate family'' to add father-in-law, mother-in-law, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers-in-law, and sisters-in-law.

Note, too, that the existing WPS definitions of workers and handlers depend upon them being employed for compensation. Therefore, any person performing worker or handler tasks who does not receive a wage, salary or other compensation is not a worker or handler protected by the WPS, regardless of familial relationship to the owner.

EPA requested comment on but did not propose changes narrowing the immediate family exemption in two ways: (1) Limiting it only to those immediate family members of an owner of an agricultural establishment who are at least 16 years old, and (2) eliminating the exemptions from requirements regarding emergency assistance for workers and handlers and regarding handler monitoring during fumigant application.

As part of the proposal to establish a minimum age for pesticide handlers and early-entry workers, EPA proposed to add an exemption from the minimum age requirements to the immediate family exemption.

2. Final rule. EPA has finalized the definition of ''immediate family'' as limited to the owner's spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. ''First cousin'' means the child of a parent's sibling, *i.e.,* the child of an aunt or uncle. The final regulatory text for this definition is available at 40 CFR 170.305.

EPA has amended the exemption from certain provisions of the WPS for owners and members of their immediate families to include exemptions from the minimum age requirements for handlers and early-entry workers. The final regulatory text for this exemption is available at 40 CFR 170.601(a)(1)(i) and 170.601(a)(1)(xii).

EPA has clarified the final regulatory text related to the exemption from certain provisions of the WPS for owners and members of their immediate families. The exemption in the final rule will apply to owners and members of their immediate family on any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family. The final regulatory text for this exemption is available at 40 CFR 170.601(a)(1).

EPA has not included in the final rule any of the other changes to the owner and immediate family exemption considered in the proposal.

3. Comments and responses.

Comments. Most of the commenters expressed general support for the proposed expansion to the definition of immediate family and the inclusion of an exemption from the minimum age requirement. Some commenters asserted that the definition provides greater clarity about who qualifies under the immediate family exemption and will assist both the regulated community and state regulatory agencies in ensuring compliance with the proposed rule.

A few commenters requested that EPA expand the definition to include cousins. Many commenters, including the Small Business Administration's Office of Advocacy, requested that EPA expand the definition further to include aunts, uncles, nieces, nephews, and cousins. Commenters requesting further expansion of the definition noted that an expansion of the family members considered immediate family under the WPS would better reflect the reality of the family farm in America. Commenters also requested that EPA further expand the definition and exemption to recognize varying ownership patterns used to assure the continued operation of the farm and the involvement of siblings and their heirs. One commenter suggested that EPA align the exemption with USDA's interpretation of farm ownership by family members, which considers a ''family farm'' to be one where a majority of the farm is owned by family members, rather than retaining EPA's interpretation of the exemption as applying only on establishments that are wholly owned by one or more members of the same immediate family.

A few commenters requested that EPA delete the definition of immediate family and eliminate the exemption. These commenters noted that risks from pesticide exposure are the same for family and non-family members, so all persons need the same level of protection regardless of their familial relationship to the owner.

EPA Response. EPA has further expanded the definition of immediate family to also include aunts, uncles, nieces, nephews, and first cousins (*i.e.,* child of a parent's sibling, child of an aunt or uncle) and is retaining the exemption in the WPS. EPA believes that the proposed definition of ''immediate family'' represents an appropriate accommodation to the social costs of the WPS to farm owners and members of their immediate families relative to FIFRA's requirement to prevent unreasonable adverse effects.

EPA considered commenters' requests to expand the definition of ''immediate family.'' Commenters suggested that a definition that includes cousins, or cousins, aunts, uncles, nieces and nephews would better reflect the actual patterns of family-based farm ownership in the United States. EPA agrees with commenters' suggestions that family-based farm ownership may extend beyond relationships covered by EPA's existing or proposed definition. EPA agrees with commenters' requests to expand the definition to include aunts, uncles, nieces, nephews, and first cousins. For clarity, EPA has chosen to define ''first cousin'' as the child of a parent's sibling, *i.e.,* the child of an aunt or uncle.

EPA has clarified the applicability of the exemption in the final rule in response to comments. The exemption in the final rule applies to the owners and their immediate family members on any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family. A ''majority of the establishment'' means that more than 50 percent of the equity in the establishment is owned by one or more members of the same immediate family as defined in the WPS.

EPA agrees that the risks associated with pesticide exposure do not vary based on a person's relationship to the owner of the establishment. However, EPA recognizes that family-owned farms need flexibility and expects that those family members working on an establishment covered by the immediate family exception would be adequately prepared and supervised by family members. Although owners and their immediate family members are exempted from certain provisions of the WPS (*e.g.,* providing pesticide safety training and specific decontamination supplies for immediate family

members), they are obligated to follow the pesticide labeling and other WPS provisions that are established to protect workers and handlers from risks associated with specific pesticides. For these reasons, EPA has chosen not to eliminate the definition of immediate family or the exemption from certain portions of the rule for the establishment owner and members of his or her immediate family.

Although owners of establishments and members of their immediate family are exempt from some of the provisions of the rule, EPA expects that they will voluntarily follow the provisions from which they are exempt, or achieve equivalent risk mitigations through other means. EPA encourages owners and family members to carefully study the WPS requirements and assure themselves that they are not placing each other at risk of unreasonable adverse effects.

4. Costs and benefits. EPA estimates changing the definition of immediate family and adding to the existing exemptions for owners and members of their immediate family an exemption from the minimum age requirements would not substantially change the cost of the final rule.

B. Crop Advisors and Employees

1. Current rule and proposal. The existing rule exempts employers from complying with certain handler requirements when the employee performs crop advising tasks in a treated area under an REI and is a certified or licensed crop advisor or directly supervised by a certified or licensed crop advisor. A certified or licensed crop advisor is one who has fulfilled the requirements of a program acknowledged as appropriate in writing by EPA or a state or tribal agency responsible for pesticide enforcement. The existing rule allows a certified or licensed crop advisor to make specific determinations regarding the appropriate PPE, decontamination and safe method of conduct for those working under his or her direct supervision. A person employed by a commercial pesticide handling establishment performing crop advising tasks after expiration of an REI is not subject to any provisions of the WPS. The rule also exempts employers from complying with worker requirements such as providing decontamination supplies and emergency assistance for certified or licensed crop advisors and for persons they directly supervise.

EPA proposed to eliminate the exemptions for employees directly supervised by certified or licensed crop advisors. EPA also proposed to eliminate the exemption from the worker decontamination and emergency assistance provisions for certified or licensed crop advisors employed as workers on agricultural establishments.

2. Final Rule. EPA has eliminated both exemptions as proposed. However, EPA has included in the final rule added flexibility in the PPE requirements for crop advisors and their employees. Specifically, EPA has added language to the final regulation that allows crop advisors and their employees who perform crop advising tasks while an REI is in effect to substitute the label-required handler PPE with either the label-required PPE for early-entry activities or a standard set of crop advisor PPE. The standard set of PPE for crop advising tasks included in the final rule consists of coveralls, shoes plus socks, chemical-resistant gloves made of any waterproof material and eye protection if the labeling of the pesticide product applied requires protective eyewear for handlers. The final regulatory text for this requirement is available at 40 CFR 170.601(b) and 170.607(g).

3. Comments and responses.

Comments. In response to the proposal, crop consultant associations, several states and other commenters objected to eliminating the exemption currently in place for employees working under the direct supervision of a certified or licensed crop advisor. They asserted that certified and licensed crop advisors often exceed the minimum safety training requirements when educating their employees and those employees are aware of the risks associated with their work. Some crop consultant associations and other commenters noted that they are not aware of any case of endangerment or harm that has occurred to any employee under the direct supervision of a certified or licensed crop advisor.

The crop advisor associations also expressed concern that EPA underestimated the economic impact to crop advisors, and in turn to farmers, of eliminating this exemption, citing specifically the increased costs of additional PPE, the cost of work done by certified or licensed crop advisors instead of by their employees, and the cost of increased management time. Crop consultant associations and other commenters contended that these increased costs could discourage investment in integrated pest management (IPM) and result in increased pesticide use that might put workers at increased risk of pesticide exposure. Several states supported EPA's proposal to eliminate the crop advisor exemption.

EPA Response. After consideration of the comments submitted, EPA has concluded that the burdens associated with eliminating the exemption for employees of crop advisors are justified by the additional protections provided to workers performing crop advising tasks who are not certified or licensed crop advisors. EPA has retained the exemption to the WPS for certified or licensed crop advisors because these individuals are highly trained about pesticide risks and how to protect themselves. EPA eliminated the exemption for crop advisors' employees because pest scouting tasks may result in substantial contact with a pesticide on treated surfaces in pesticide-treated areas. The amount of contact with pesticides during scouting depends on variables such as the height and density of the crop, the nature of the activity, the surface that contains the pesticide residue, and whether residues are dry or wet. While EPA recognizes that the crop consulting industry has implemented a training program for employees, the program is not required and can vary in content and quality from employer to employer. Additionally, crop scouts and assistant crop advisors are generally entry-level employees who may not feel empowered to ask an employer for PPE or other protections and may not understand the complex factors influencing risk well enough to take appropriate protective measures for themselves.

Incident monitoring programs do not capture illness data specifically associated with crop advising tasks because cases are categorized under a general ''field worker'' label. However, EPA's risk assessments indicate that people doing crop advising tasks during an REI are at risk of chronic, low-level pesticide exposure over time. PPE requirements and availability of decontamination supplies during and after an REI are fundamental to mitigating risks of concern for workers. Allowing workers who are supervised by certified or licensed crop advisors to conduct crop advising tasks without the same basic protections provided for other workers would establish a lesser standard of protection for similar types of work. EPA understands that IPM programs require post-application entry and the timing is critical to efficacy. By retaining the exemption for certified or licensed crop advisors to conduct crop advising tasks during an REI and allowing flexibility for employers to substitute the label required PPE for handlers with either PPE for early-entry workers or a standard set of PPE, the

increased costs noted in comments are reduced.

4. Costs and Benefits. EPA estimates the cost of amending the exemption for crop advisors would be negligible. EPA finds that the incremental cost of employers providing decontamination supplies and PPE for crop advisor employees are reasonable compared to the cost. EPA is allowing flexibility in the choice of PPE for crop advisor employees who must enter treated areas under an REI to accommodate entry into multiple fields with the same attire. Benefits from reduced exposure to pesticides as a result of requiring the standard protections for all workers, including those supervised by certified or licensed crop advisors, are reasonable when compared to their cost.

C. Closed Systems

1. Current rule and proposal. The existing WPS permits exceptions to the label-specified PPE when using a closed system for certain pesticide handling activities. The existing rule does not adequately describe the specific characteristics of an acceptable closed system. EPA proposed to establish specific design criteria and operating standards for closed systems based on California's existing standards in the 1998 *Closed Systems Director's Memo* (*http://www.cdpr.ca.gov/docs/whs/cac/cacwhs98-01.pdf*).

2. Final Rule. EPA has modified the proposed approach regarding closed systems. Specifically, in the final rule EPA has adopted a broad definition, a performance-based standard, and basic operating standards. The operating standards require the handler employer to ensure that written operating instructions for the closed system are available, that the handler receives training on use of the closed system, and that the system is maintained according to the written instructions. Specific design criteria and recordkeeping requirements that EPA proposed are not included in the final rule.

The final rule retains the existing requirements for PPE when a closed system is used: Labeling-mandated PPE must be immediately available for use in an emergency and handlers must use protective eyewear for closed systems that operate under pressure.

The final regulatory text for the definition of closed systems is available at 40 CFR 170.305. The final regulatory text for the closed system exception is available at 40 CFR 170.607(d)(3).

3. Comments and responses.

Comments. Most comments that addressed closed systems supported the goal of encouraging their use as an engineering control through a WPS exception; however, very few individuals, states or organizations supported the proposal as written. Several farmworker advocacy organizations and public health organizations suggested that EPA require closed systems for all Toxicity Category I pesticide products rather than continuing the voluntary system. Comments from states and grower and industry associations supported the existing voluntary, performance-based system and objected to the proposed specific design criteria, noting a number of weaknesses in the criteria. Specifically, they noted that the pressure requirements were too prescriptive and would not allow effective mixing, that the proposal did not address water soluble packaging or lock and load systems used for dry formulations, and that the complicated requirements would be a deterrent to increased adoption of closed systems. A number of commenters also noted that the design standards are too restrictive to accommodate future innovation. States commented that assessing compliance with the design standard would require extensive inspector training and could result in technical violations without providing additional handler protection.

EPA Response. EPA considered the comments submitted and was convinced that the prescriptive requirements in the proposal would be a disincentive to the voluntary adoption of closed systems. In response, EPA has finalized a closed system performance standard that will permit flexibility for the system while meeting the protection goals.

In response to comments advocating that EPA require closed systems for all Toxicity Category I pesticides under the rulemaking, EPA reminds the commenters that worker risk assessments and the risk management processes establish the required protections that appear on product labels. EPA identifies the basic protections, often PPE, to protect handlers from risks of concern. If handler exposure during mixing and loading is above the established level of concern, and if PPE does not reduce exposure to below the level of concern, the pesticide label may require a closed system for mixing and loading. EPA has required the use of closed systems on some product labeling.

EPA recognizes that the reduction in handler PPE alone is not likely to be enough incentive for an employer to use closed systems. However, EPA is convinced that on larger establishments, the efficiency and comparative protection value of a closed system, combined with the reduction in PPE that must be worn by the handler, may induce users to adopt closed systems. Establishing requirements for such closed systems—whether required or used voluntarily—is necessary to protect handlers, who could be exposed to concentrated pesticides if they use poorly designed or constructed closed systems.

EPA agrees with the comments that a broad definition of ''closed system'' will encourage industry innovation better than the proposed prescriptive rule and will allow flexibility for employers to design systems specific to their needs. A broad performance standard, along with requirements concerning operating instructions, training and maintenance, will enable employers, handlers and regulatory personnel to determine whether a closed system qualifies for the exemption. The operating standards will ensure that the closed systems are used as intended and are adequately maintained.

EPA notes that the California Department of Pesticide Regulation (CDPR) no longer supports use of the prescriptive-based criteria upon which EPA modeled the proposal outlined in the NRPM. In December 2014, CDPR published proposed regulations outlining a simplified, performance-based criteria for closed system design. California is the only state with specific closed system standards, and has required their use with certain chemicals since the 1970s. CDPR developed their revised closed systems standard and discussed the proposal with representatives from groups that will be directly affected including agricultural producer organizations, manufacturers, applicators, and growers, as well as at CDPR's Pesticide Registration and Evaluation Committee and the Agricultural Pest Control Advisory Committee and Pest Management Advisory Committee meetings. EPA considered CDPR's proposed rule in the development of the final closed systems standard. EPA's final closed system requirements were developed using CDPR's proposal as a model and do not conflict with CDPR's proposed closed system requirements.

Section 170.607(d)(2)(i) establishes a performance standard for closed systems. Specifically, a closed system must remove the pesticide from its original container and transfer the pesticide product through connecting hoses, pipes and couplings that are sufficiently tight to prevent exposure of handlers to the pesticide product, except for the negligible escape associated with normal operation of the

system. This closed system performance standard is based on the criteria for closed systems in section 6746(f)(1) of CDPR's proposed regulations with a few changes, partly to accommodate the different terminology in the two sets of regulations. Also, EPA adjusted the requirement to apply to transferring any pesticide product rather than a pesticide concentrate so the WPS criterion would apply to transferring liquid formulations and dry formulations whereas California's proposed requirements would only apply to liquid formulations. Lastly, EPA added the phrase ''except for the negligible escape associated with normal operation of the system'' to provide the flexibility intended in the proposed rule. The existing WPS describes a closed system as preventing the pesticide from contacting handlers or other persons, which is a very high standard because it does not allow any exposure. The phrase ''except for the negligible escape associated with normal operation of the system'' is intended to account for the expected or predictable small release of pesticides from existing closed systems when hoses, pipes and couplings are disconnected. EPA recognizes that there will often be a small amount of material in the hoses, pipes and couplings to which the handler possibly could be exposed. EPA has not quantified the maximum amount of pesticide escape that is acceptable, but notes that it should be consistent with the intent of a closed system, which is to prevent contact to the handlers or other persons.

EPA also adjusted the final regulatory text for closed systems to address the comments about water soluble packaging. The regulatory text in the final rule was revised to state clearly that the closed system exception from PPE applies when intact, sealed water soluble packaging is loaded into a mixing tank or system. The regulation also clarifies that water soluble packaging is no longer a closed system if the integrity of the packaging is compromised. This language in the final rule incorporates EPA's current position about water soluble packaging and closed systems, as established in the Interpretive Guidance on the WPS: *http://www.epa.gov/pesticides/safety/workers/wpsinterpolicy.htm*.

While the final rule includes only a performance standard, EPA recognizes that it may be helpful to have guidance on how to construct a system to meet that standard. As part of California's proposed rulemaking, CDPR and the University of California, Davis (UC Davis) developed plans for building a closed system to release along with the proposal. The ''Overview of Closed Systems Components and User Designs'' document includes lists of component parts (and costs) for three levels of systems (basic, medium and high). The design plans developed by CDPR and UC Davis will provide users with examples of representative closed systems components so they can identify or develop acceptable closed systems.

4. Costs and benefits. EPA estimates the cost of the final closed system requirements will be $2.1 million annually. EPA estimates that cost per agricultural establishment will range from $5–$30 per year, and the cost per commercial pesticide handling establishment will be about $21 per year. EPA estimates that on family establishments, the cost would range from $1–$30 per year. Many commenters from the pesticide industry and grower associations stated that EPA underestimated the costs of closed systems in the proposed rule partly because existing closed systems would need to be upgraded to meet the proposed standards. The changes to replace the proposed specific design standards with a broad performance standard in the final rule address these comments, because employers will be able to continue using most existing closed systems with minimal adjustments. For details refer to the Economic Analysis accompanying this rule (Ref. 1). In addition, EPA notes that the WPS does not require use of closed systems, so commenters who assumed many pesticide users would have to purchase expensive closed systems were incorrect.

EPA adjusted the closed system cost estimates from the proposed rule in several ways to reflect changes in the final rule. The cost estimate in the proposed rule assumed that some users of closed systems would purchase new systems while others would revert to using PPE. In light of the revised definition, the final cost estimate assumes that most users would simply purchase an adapter to connect their existing closed system to the pesticide container, which is the part that most likely needs to be added to convert existing mechanical transfer systems to be closed systems that meet EPA's criteria. These changes and costs are based on the CDPR and UC Davis document ''Overview of Closed Systems Components and User Designs,'' which includes lists of component parts and their costs for three levels of systems. In addition, the cost of developing operating instructions was added, assuming that most closed systems are custom-made systems that would require the employer to develop operating instructions, while the costs of keeping records of maintenance was deleted. EPA reduced the estimated number of farms using closed systems based on information from the Agricultural Handler Exposure Task Force, which showed that the limited number of pesticide users who use closed systems are primarily larger establishments and commercial pesticide handling establishments. Therefore, the estimated costs of the closed system criteria decreased from the proposed rule to the final rule.

Using closed systems is preferred to wearing PPE as an approach for managing chemical exposure in the ''hierarchy of controls'' established under standard industrial hygiene principles. Enclosing the chemical and substantially reducing the potential for exposure at the source reduces the potential for subsequent exposure to handlers, other people, and the environment.

D. Aerial Applications—Eyewear Protection for Open Cockpits

1. Current rule and proposal. Under the existing WPS, where labeling requires eye protection, the requirement may be satisfied by goggles, safety glasses with front, brow and temple protection, or a full face respirator. The existing WPS allows aerial applicators applying pesticides from open cockpit aircraft to substitute a visor for label-required eye protection. Because the term ''visor'' can be used to refer to the brim of a cap that provides only shade and offers little eye protection from pesticide sprays, EPA proposed to clarify the requirement by removing the term. EPA proposed to allow aerial applicators to substitute for the label-required eyewear a helmet with the face shield lowered, because this more clearly indicates EPA's expectation of a clear visor that covers and adequately protects the eyes.

2. Final rule. In the final rule, EPA has removed the term ''visor.'' The final rule allows the substitution of a helmet with face shield lowered for labeled protective eyewear for aerial applicators in aircraft with open cockpits. The final regulatory text for this requirement is available at 40 CFR 170.607(f)(2).

3. Comments and responses.

Comments. There were very few comments addressing this proposal. One state suggested EPA consult with relevant aerial agencies responsible for overseeing the use of open cockpits for making pesticide applications to see if the proposal is feasible.

An aerial applicators association asserted that aerial applications of pesticides using open cockpit aircraft

are very rare and that EPA is solving a problem that does not exist. They objected to handlers operating open cockpit aircraft being required to wear the same PPE as handlers operating open cab ground equipment. They did not highlight any specific issue with the helmet and visor being lowered when protective eyewear are required.

EPA Response. EPA acknowledges that while open cockpit aircraft may be rare, available exposure data indicate that even pilots in enclosed cab aircraft are exposed to the pesticides they apply. Ensuring that the eye is protected from pesticides is required by the product labeling. Helmets with face shields in the lowered position provide acceptable eye protection, but many items referred to as ''visors'' offer no eye protection from pesticide sprays.

4. Costs and benefits. This provision does not represent a substantive change to the existing rule. EPA expects the cost to aerial applicators to be negligible.

E. Aerial Applications—Use of Gloves

1. Current rule and proposal. In the existing rule, aerial applicators have the option of whether to wear chemical resistant gloves to enter and exit the aircraft unless gloves are required by the product labeling. In the proposal, EPA inadvertently inserted the regulatory language that existed prior to the 2004 rule revision that required pilots to wear chemical resistant gloves.

2. Final rule. The final rule retains the exception in the existing WPS that offers aerial applicators the option of wearing chemical-resistant gloves when entering and exiting the aircraft, except when the product labeling requires that chemical-resistant gloves be worn when entering and exiting the aircraft. The final regulatory text for this requirement is available at 40 CFR 170.607(f)(1).

3. Comments and responses.

Comments. Many applicators and their associations and pesticide manufacturers noted this error. The commenters also asserted the use of gloves presents a hazard to pilots who may fall when entering and exiting the aircraft when wearing gloves. They also suggested contamination from contact with the exterior of the aircraft is minimized due to advances in application techniques (*e.g.,* GPS) that help pilots avoid flying through their spray.

EPA Response. The final rule retains the exception in the existing regulation that offers aerial applicators the option of wearing chemical-resistant gloves when entering and exiting the aircraft, except when the product labeling requires that chemical resistant gloves be worn entering and exiting the aircraft.

4. Costs and benefits. There is no cost associated with including the existing exception in the final regulation.

F. Enclosed Cabs—Changes to Exceptions to PPE Requirements When Applying Pesticides From Inside an Enclosed Cab

1. Current rule and proposal. The existing WPS permits exceptions to the labeling-specified PPE when handling tasks are performed from inside an enclosed cab that meets the specifications defined in the rule based on the dermal protection provided by the enclosed cab, which prevents pesticides from contacting the body. The existing rule also permits persons occupying an enclosed cab to forego certain labeling-required respiratory protection if the cab has been certified by the manufacturer to provide respiratory protection equivalent to the handler respiratory protection required by the pesticide labeling.

EPA proposed to eliminate the requirement for any labeling-specified respiratory protection PPE when applying pesticides from inside an enclosed cab. This would have allowed handlers to substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified PPE in all cases no matter what type of respiratory protection PPE was required by the labeling.

2. Final Rule. In the final rule, EPA requires handlers in enclosed cabs to wear the labeling-specified respiratory protection except when the only labeling-specified respiratory protection is a filtering facepiece respirator (NIOSH approval number prefix TC–84A) or dust/mist filtering respirator. In the final rule, handlers in enclosed cabs may substitute a long-sleeved shirt, long pants, shoes and socks for the labeling-specified PPE for skin and eye protection. If a filtering facepiece respirator (NIOSH approval number prefix TC–84A) or dust/mist filtering respirator is required by the pesticide product labeling for applicators, then handlers do not need to wear the respirator inside the enclosed cab if the enclosed cab has a properly functioning air ventilation system that is used and maintained in accordance with the manufacturer's written operating instructions. If any other type of respirator is required by the pesticide labeling for applicators, then the handler must wear the respirator inside the enclosed cab during handling activities.

EPA has retained other exceptions to PPE requirements for handlers using enclosed cabs. Specifically, all of the PPE required by the pesticide product labeling for applicators must be immediately available to handlers in an enclosed cab and be stored in a sealed container to prevent contamination. Handlers must wear the applicator PPE if they exit the cab within a treated area during application or when a REI is in effect. Once PPE has been worn in a treated area, handlers must remove it before reentering the cab to prevent contamination of the cab.

The final regulatory text for the enclosed cab exception is available at 40 CFR 170.607(e).

3. Comments and responses.

Comments. EPA did not receive any comments in opposition to the proposed changes to the enclosed cab exception. One grower noted that the enclosed cab exception is an excellent component of the proposal. Another commenter noted that respirator use is infrequent since the spraying operation takes place from inside an enclosed, climate-controlled tractor cab.

EPA Response. EPA considered the comments submitted and is convinced that the enclosed cab exception should be retained since it provides an important option to reduce potential pesticide exposure through engineering controls rather than PPE, and such cabs can be an important tool for addressing heat stress issues for handlers. Although EPA considered a more expansive exception under its proposal, after reevaluation of the potential exposure risks for handlers and the protections afforded by enclosed cabs, EPA determined that enclosed cabs may not universally provide respiratory protection necessary to mitigate inhalation risks for any pesticide product that required respiratory protection greater than a filtering facepiece respirator (NIOSH approval number prefix TC–84A) or dust/mist filtering respirator. EPA determined that enclosed cabs may not provide adequate protection from inhalation exposure hazards when the inhalation exposure risk arises from vapors or other non-particulate inhalation hazards. Additionally, EPA has learned that there are no longer any enclosed cab manufacturers certifying cabs to provide respiratory protection and the American Society of Agricultural and Biological Engineers has withdrawn their enclosed cab standard. Based on this information, EPA has removed provisions under the enclosed cab exception that permit persons occupying an enclosed cab to eliminate certain labeling-required respiratory protection PPE if the cab has been certified by the manufacturer to provide respiratory protection

equivalent to the respiratory protection required by the pesticide labeling.

4. Costs and benefits. EPA does not estimate that the change to the exception to PPE requirements for handlers using a tractor with an enclosed cab to apply pesticides will have a significant cost. Handlers will benefit by using adequate respiratory protection when applying pesticides from an enclosed cab.

XVIII. General Revisions

A. Label vs. Labeling

1. Current rule and proposal. FIFRA defines the label as ''the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.'' 7 U.S.C. 136(p)(1) For reasons of space and user convenience, detailed use instructions and precautions often appear in labeling provided with the pesticide product upon sale. As defined in FIFRA, ''labeling'' includes ''all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device . . .'' 7 U.S.C. 136(p)(2).

Labeling may include booklets distributed with the product when such documentation is too long to be included on the label that is securely attached to the container. For example, some products have labeling that is 60 or more pages long. FIFRA and EPA regulations require certain information to appear on the label—on or attached to the pesticide container. Other information necessary to use the product safely, such as directions for use, may be included in a booklet distributed with, but not securely attached to, the container (40 CFR 156.10(i)(1)(ii)); this information could also be available on the Internet if the producer has decided to provide web-distributed labeling for the product (Ref. 21). In either format, the information would be considered labeling. Labeling sometimes includes enforceable references to other documents that do not physically accompany the container, such as the WPS.

The existing rule discusses employers' responsibilities related to pesticide labels and labeling in several places. The existing rule requires agricultural and handler employers to ensure that pesticides are used in a manner consistent with the labeling. When the emergency assistance provisions of the WPS are triggered, the existing rule requires employers to provide information from the product labeling to affected workers, handlers, and/or treating medical personnel. Handlers must receive training on the format and meaning of information contained on pesticide labels and in labeling. Finally, employers must ensure that handlers have either read or have been informed in a manner they understand of all labeling requirements related to safe use of the pesticide, and that the handler has access to the product labeling during handling activities.

Although the proposal reorganized the rule, some of the requirements for the existing rule outlined in the previous paragraph remained essentially unchanged in the proposed rule, *e.g.,* agricultural and handler employers' responsibility to ensure that pesticides are used in a manner consistent with the labeling. The proposal included a requirement for employers to maintain copies of the pesticide labeling for each pesticide used on the establishment for 2 years from the date of application. The proposal also would have required the employer to provide a copy of the label and the product's SDS when the emergency assistance provisions are triggered, rather than to provide information from the pesticide labeling.

2. Final rule. Where the proposed rule would have required the employer to provide a copy of the pesticide label, or specific information from the labeling, and the SDS under the emergency assistance provisions, the final rule only requires the employer to provide the SDS and specific information, which can be obtained from the pesticide application and hazard information display, rather than the label or labeling. See Unit XIV. for other comments, EPA's responses and the final regulatory text related to emergency assistance. The final rule eliminates the proposed requirement for employers to maintain copies of the labeling, rather than the label, for each product bearing a WPS requirement on the labeling, and replaces it with a requirement for the employer to retain specific information about the product used and the application, as well as the SDS. See Unit VII. for other comments, EPA's responses and the final regulatory text related to this requirement.

For handler training requirements, EPA has amended the language in the final rule to delete the word ''all'' related to labeling. The final rule requires handlers to receive training on following *the portions of the labeling applicable to the safe use of the pesticide* and on the format and meaning of *information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.* The final regulatory text for these provisions is available at 40 CFR 170.501(c)(3)(iii)–(iv).

For labeling and application-specific information the employer must provide to the handler, EPA has amended the final rule to require the employer to provide the handler with information on all *portions of the labeling applicable to the safe use of the pesticide,* rather than on all labeling requirements. The final regulatory text for this provision is available at 40 CFR 170.503(a).

3. Comments and responses.

Comments. Commenters raised issues with EPA's use of the term ''labeling'' in the proposed rule. Commenters raised specific concerns with the use of the broader ''labeling'' in various requirements instead of limiting those requirements to just the label. These concerns arose in regard to agricultural and commercial pesticide handler employer duties, emergency assistance, hazard communication, and handler training and establishment-specific information.

Some commenters generally disagreed with EPA's use of ''labeling'' and requested that EPA use ''label'' instead throughout the rule. They asserted that labeling is too broad and that labeling includes materials not attached to the container, such as advertisements, brochures and pamphlets. Commenters assert that the broadness of ''labeling'' applied to requirements to provide or retain this information could result in a requirement on employers to track down many ancillary pieces of information for a complete record, or to face a technical violation for failure to retain all elements of the labeling.

Under the agricultural and commercial pesticide handler employer duties, at 40 CFR 170.9(a) and 170.13(a) of the proposal, commenters said that EPA's use of labeling was too broad. They asserted that employers' liability should be only to comply with the WPS rather than with the label or all relevant labeling because making the employer responsible for complying with all labeling exceeds the scope and intent of the WPS. They also noted that certified applicators, those competent to use pesticides according to the labeling instructions and who make the actual applications, should be required to comply with the labeling, but that the agricultural employer should not.

In regard to emergency assistance, commenters requested that EPA delete the reference to labeling and replace it with a requirement to provide the label and EPA registration number of the product. Commenters note that this requirement would be sufficient to provide appropriate information for emergencies.

Commenters also requested that in the section on pesticide application and hazard information, EPA delete the requirement for the employer to maintain copies of the labeling for all WPS-labeled pesticides used on the establishment, and instead to require the employer to maintain a copy of the label and EPA-registration number. Again, commenters noted that such a requirement would likely result in technical violations without providing benefit to workers or handlers.

In the sections on handler training and establishment-specific information, commenters took issue with requirements to train handlers on all labeling and to ensure that for specific applications handlers have read the labeling or have been informed of all labeling requirements. Commenters noted that a requirement for handlers to be trained on all labeling requirements, rather than those pertinent to their specific tasks, would be overly broad and unnecessary. Commenters requested that EPA replace ''labeling'' with ''label'' in these sections.

EPA Response. EPA disagrees with commenters' request to replace ''labeling'' with ''label'' throughout the regulation because the broader term is appropriate in many provisions of the WPS. The FIFRA scheme for managing the risks of pesticide products rests primarily on mandatory use directions and precautionary statements approved by EPA in the registration process and communicated to users through labels and labeling. Although in the case of lower risk products intended for general consumer use, this information typically fits on the label, this is not the case for many agricultural and commercial-use pesticides.

Labeling does not include advertisements, pamphlets or brochures unless they accompany the product when sold or are referenced on the labeling. For instance, EPA has indicated that documents such as marketing brochures used to sell the product and to provide information to customers and is not labeling as defined by FIFRA section 2(p). (*http://www.epa.gov/pesticides/regulating/labels/labels_faq/lr_faq_10.html*) If a document of this type does not accompany the product when sold and there is no reference to the bulletin on the product label, it is not ''labeling.'' Note though, that non-labeling documentation related to a product must not have claims that differ from the product label. 7 U.S.C. 136j(a)(1)(B).

Because mandatory use directions often appear in the labeling of agricultural pesticides, rather than the label, some provisions of the WPS appropriately use the word ''labeling.'' Where the word ''labeling'' appears in the WPS, employers are responsible for following or providing labeling as defined in FIFRA. This does not require employers to find, retain, or provide advertisements, pamphlets or marketing brochures that do not meet the definition of ''labeling.''

For example, it is appropriate that agricultural and handler employers' duties under the final rule include ensuring compliance with ''labeling'' rather than just the label. The existing regulation has the same requirement under general duties and prohibited actions. 40 CFR 170.7(a)(2). The labeling may include directions for use or other information essential to the safe and effective application of the pesticide, or specific information related to WPS protections, such as the REI. For these reasons, EPA has decided not to replace ''labeling'' with ''label'' throughout the final rule as suggested by the commenters.

Furthermore, the obligation of certified applicators (or any other person legally applying a pesticide) to follow the labeling does not negate the obligation of agricultural and handler employers to comply with the labeling. Requirements related to the WPS are found both in the regulation (*e.g.,* training, application-specific information) and on specific product labeling (*e.g.,* directions for use, REI, PPE). In addition, other non-WPS elements of the labeling, such as application rates and maximum number of applications to a crop, are relevant to protecting workers and handlers from occupational exposure to pesticides. When employers choose to use a pesticide that references the WPS on the labeling on their establishment (either as the applicator or by directing another person to apply the pesticide on their behalf), they are obligated to ensure that all requirements of the labeling are followed, not only those related to the WPS, to ensure that workers and handlers are adequately protected.

However, EPA agrees that certain WPS requirements could be limited to the information on the label or specific information from the label, and has specified ''label'' instead of ''labeling'' or specific information from the label where appropriate. For example, EPA agrees with commenters that employers need not provide all labeling in the event of the emergency. In the current rule, EPA lists specific information that must be provided to a potentially injured worker or handler, or to treating medical personnel: Product name, EPA registration number, active ingredients, antidote, and first aid and medical treatment information. Since all of this information is required on the label (40 CFR 156.10(a)(1)), the final rule allows the employer to provide a copy of the label or this specific information from the label, in addition to providing a copy of the SDS, when emergency assistance is required.

EPA also agrees with commenters' request to eliminate the requirement for employers to maintain copies of the labeling for all pesticides with a WPS reference statement used on the establishment. EPA agrees that if workers, handlers, or other persons need information on a specific product that was used on the establishment, such information can be obtained using the EPA registration number and product name. In response to comments received, EPA has replaced the proposal with a requirement for the employer to retain only the EPA registration number, active ingredient(s), product name, and other application-specific information for such products, in addition to the SDS.

Similarly, EPA agrees that requiring handler employers to ensure that handlers have been trained generally on, and for specific applications have read or been informed of all labeling requirements may be unnecessary if they are only using a product for a single type of application. The labeling could include directions for use covering multiple application methods and multiple crop sites, which may be of no relevance to a particular handler. Although the final rule continues to refer to ''labeling'' in this context, it now requires employers to ensure that for specific applications, handlers have read the portions of the labeling applicable to the safe use of the pesticide or have been informed in a manner they understand of all portions of the labeling applicable to the safe use of the pesticide. Further, EPA has amended handler training to require that handlers are instructed on their duty to follow the portions of the labeling applicable to the safe use of the pesticide, and on the format and meaning of information contained on pesticide labels and in labeling.

4. Costs and benefits. Where requirements related to labeling have imposed a cost, *e.g.,* the requirement for the employer to retain product labeling, the cost is discussed in the Unit related to the overall requirement. EPA does not estimate any additional costs with these requirements.

B. Regulating Other Persons

1. Current rule and proposal. Some provisions in the existing WPS provide protections to persons other than

workers and handlers (''other persons''). For example, an existing requirement on the label and in § 170.210(a) specifies that the applicator must apply the pesticide in a way that will not contact workers or other persons. The existing requirement for entry-restricted areas on nurseries in § 170.110 specifies that an agricultural employer must not allow or direct any person, other than an appropriately trained and equipped handler, to enter or remain in the restricted area. The existing immediate family exemption in § 170.104(a)(2) states that the owner of the agricultural establishment must provide protections to other workers and other persons who are not part of his immediate family. The description of closed systems in § 170.240(d)(4) of the existing rule describes closed systems as systems that enclose the pesticide to prevent it from contacting handlers or other persons. Also, the scope and purpose in § 170.1 of the existing rule explains that the WPS is intended, in part, to reduce the risks of illness or injury resulting from the accidental exposure of workers and other persons to pesticides.

The proposed rule included these same protections for persons other than workers and handlers and added several additional provisions that would affect ''other persons.'' The proposed requirement for a handler to cease or suspend application if a worker or other person is in the treated area or entry-restricted area was intended to supplement the existing ''do not contact'' requirements, which already protect persons other than workers or handlers. In addition, EPA proposed to include ''other persons involved in the use of a pesticide to which this part applies'' in the proposed anti-retaliation provision in § 170.15.

2. Final rule. The final rule includes the protections and references to ''other persons'' that were proposed, except that EPA removed the reference to other persons from the definition of closed systems. The final rule's prohibition against ''other persons involved in the use of a pesticide'' retaliating against workers or handlers in § 170.315 of the final rule is consistent with OSHA's non-retaliation provision. The other sections that provide protections to other persons continue existing requirements or supplement existing requirements and are discussed in detail in Unit IX. and Unit XVII.C.

3. Comments and responses.

Comments. Some grower organizations, states and their organizations, a retailer organization, and a commercial applicator opposed including protections for ''other persons'' in the WPS. These commenters argued that the proposal would extend the WPS to persons not currently covered and would result in an unwarranted expansion of scope beyond workers, handlers and employee/employer relationships. The grower, retailer and applicator commenters stated that including ''other persons'' could create the potential for frivolous legal challenges by anti-chemical activists seeking to prevent pesticide applications.

EPA Response. EPA disagrees with the comments on including protections for ''other persons'' in the WPS. EPA already protects ''other persons'' in addition to workers and handlers in the existing WPS. EPA notes that anti-chemical activists are not using the current protections to prevent pesticide applications and the final rule does not appear significantly more likely to be used in that manner.

4. Costs and benefits. The final rule generally continues or supplements existing protections so there are no incremental costs or benefits to the protections for other persons.

C. Definitions

1. General

i. Current rule and proposal. The existing WPS provides definitions for certain terms for use in the rule. In addition to the specific definitions for the twenty terms listed in 40 CFR 170.3, the WPS defines the terms ''closed system,'' ''enclosed cab,'' ''entry-restricted area,'' ''personal protective equipment,'' and ''use'' in other sections of the rule where those terms are used. EPA proposed to revise certain existing definitions to provide greater clarity, to add several new definitions for terms used in the rule, including definitions for the terms that had previously been defined elsewhere, and to eliminate two unnecessary existing definitions for ''greenhouse'' and ''forest.''

ii. Final rule. In the final rule, EPA has adopted the revisions to the definitions as proposed except for the definitions of the terms ''agricultural establishment,'' ''agricultural plant,'' ''authorized representative,'' ''closed system,'' ''commercial pesticide handler employer,'' ''commercial production,'' ''employ,'' ''enclosed space production,'' ''entry-restricted area,'' ''farm,'' ''forest operation,'' ''hand labor,'' ''immediate family,'' ''labor contractor'' ''outdoor production,'' ''nursery,'' and ''use.'' In the final rule, EPA has deleted the definitions for the terms ''greenhouse'' and ''forest'' as proposed. EPA has also deleted the existing definitions for the terms ''farm,'' ''forest operation,'' and ''nursery,'' as well as the proposed definition for ''commercial production.'' Additionally, in the final rule EPA has added a new definition for the term ''application exclusion zone.'' The discussions of the existing definitions and proposal, final rule, comments and EPA response for these terms are contained in Units XVIII.C.2—XVIII.C.8. The final regulatory text for these definitions is available at 40 CFR 170.305.

iii. Comments and responses.

Comments. EPA received comments on the proposed definitions of the terms ''authorized representative,'' ''closed system,'' ''enclosed space production,'' ''entry-restricted area,'' ''hand labor,'' ''immediate family,'' ''outdoor production,'' and ''use''. EPA did not receive any substantive comments opposed to the other proposed revisions related to definitions. EPA received several general comments from state, grower and agricultural producer associations that supported developing improved definitions because it would reduce the likelihood of alternative interpretations, while improving compliance and enforceability. Many farmworker advocacy organizations and public health organizations also supported EPA's proposed revisions to improve definitions, commenting that it is important to have clear and understandable language in order to avoid ambiguity.

During USDA's FIFRA section 25 review of the final rule, USDA commented that the definition for ''agricultural plant'' depends on the definition for ''commercial production,'' and the definition for ''commercial production'' depends on the definition for ''agricultural plant'' (Ref. 15). USDA said similar issues exist in the definitions of ''agricultural establishment'' and ''farm,'' ''forest operation,'' and ''nursery.'' USDA recommended resolving these circular dependencies. USDA also commented that the proposed definitions of ''employ,'' ''labor contractor,'' and ''commercial pesticide handler employer'' contained problematic language that could confusion as to who is ultimately responsible for providing the handler protections in Subpart F of the proposed rule.

EPA Response. EPA agrees that improved definitions will reduce the likelihood of ambiguity and alternative interpretations, while improving compliance and enforceability. EPA believes these proposed revisions to the definitions adopt more widely used and commonly accepted ''plain English'' language, and will add clarity and consistency to the rule. The proposed revisions to the definitions will also

help address regulatory or policy issues with the existing rule raised by state regulatory partners and other program stakeholders.

In response to comments from USDA made during their FIFRA section 25 review of the final WPS rule, EPA agrees that the definitions for ''agricultural plant'' and ''commercial production,'' and the definitions for ''agricultural establishment'' and ''farm,'' ''forest operation,'' and ''nursery'' are circular (Ref. 15). While EPA is not convinced that serious confusion would result, EPA has eliminated some definitions and revised others to address USDA's concern. The terms ''commercial production,'' ''farm,'' ''nursery,'' and ''forest operation'' appear only in the definition section and are not used elsewhere in the regulation. Accordingly, EPA has deleted these definitions and merged their substantive content into the definitions of ''agricultural establishment'' and ''agricultural plant.'' EPA also agrees that the current definitions of labor contractor and commercial pesticide handler employer contain some problematic language that could result in potential confusion and/or conflict regarding agricultural employer and commercial pesticide handler employer duties under the rule. In the final rule, EPA has adopted revised definitions for ''employ,'' ''labor contractor,'' and ''commercial pesticide handler employer'' to address the potential confusion that could result from conflicting language in the existing proposed definitions. EPA believes the revised regulatory text clarifies that CPHEs are responsible for the handlers they employ and agricultural employers would no longer be considered employers of CPHE handlers for the purposes of the WPS, without overlooking the fact that some handlers are hired by agricultural employers through labor contractors and not CPHEs. A copy of USDA's comments and EPA's responses is available in the docket for this rulemaking. (Ref. 15).

iv. Costs and benefits. EPA estimates the proposed changes to the definitions will not substantially change the cost of the final rule.

2. Authorized Representative. i. Current rule and proposal. The existing WPS does not contain a definition for ''authorized representative.'' EPA proposed to add the term ''authorized representative'' to the rule and defined it as ''a person designated by the worker or handler, orally or in writing, to request and obtain any information that the employer is required to provide upon request to the worker or handler.''

ii. Final rule. The rule finalizes the proposed definition with changes. EPA has retitled the term ''authorized representative'' to ''designated representative'' to better describe the relationship between the representative and the worker or handler, and the definition narrows the information that is required to be provided by the employer to the designated representative. In the final rule, ''designated representative'' means ''any persons designated in writing by a worker or handler to exercise a right of access on behalf of the worker or handler to request and obtain a copy of the pesticide application and hazard information required by § 170.309(h) in accordance with § 170.311(b) of this part.''

iii. Comments and responses.

Comments. EPA received many comments from states, growers, agricultural associations and pesticide manufacturer associations objecting to the definition of ''authorized representative.'' Most commenters objected to the proposed requirement for employers to make certain pesticide information available to an ''authorized representative'' of their workers or handlers rather than the actual definition of authorized representative. Several farm bureau commenters and grower groups stated that oral designation of the representative could result in abuse, and would be unenforceable. One comment from a farmworker advocacy organization stated that EPA should keep the definition for authorized representative and clarify the range of representatives that could legitimately be asked to receive information on behalf of a worker or handler (*e.g.,* medical care provider, legal advocate, family member, etc.).

EPA Response. EPA has been convinced by comments that designation of the representative must be in written form to protect employers from fraudulent claims. A written request that identifies the worker or handler can be verified against employment records, and information about the dates of their employ can be used to narrow the information needed to be provided. The final rule requires employers to respond to written requests.

EPA disagrees with the recommendation to limit the definition to certain persons that could be asked to request the information on behalf of the worker or handler. EPA believes that specifying classes of persons permitted to serve as designated representative would unnecessarily limit worker and handler access to needed information. The final rule requires employers to respond to such requests within 15 days. However, to ensure that medical personnel treating a worker or handler have timely access to information necessary for purposes of diagnosis or treatment, EPA has included a separate requirement for employers to promptly provide the information to treating medical personnel or those working under their direction, at 170.311(b)(8).

iv. Costs and benefits. EPA estimates that including the definition of authorized representative will not change the cost of the final rule. Costs associated with the requirement for employers to respond to written requests for pesticide application and hazard information are included in the discussion in Unit VII.A.

3. Closed System. i. Current rule and proposal. The existing WPS defines the term ''closed system'' as ''a system that encloses the pesticide to prevent it from contacting handlers or other persons.'' EPA proposed to move the definition of closed system to the definition section of the rule and to redefine a closed system as ''a system for mixing or loading pesticides that encloses the pesticide during removal of the pesticide from its original container and transfer, mixing, or loading of the pesticide product, mixtures or dilutions, and any rinse solution, if applicable, into a new container or application equipment, in such a manner that prevents the pesticide and any pesticide mixture or use dilution from contacting handlers or other persons before, during and after the transfer, except for negligible release associated with normal operation of the system.''

ii. Final rule. In the final rule, EPA has defined ''closed system'' as ''an engineering control used to protect handlers from pesticide exposure hazards when mixing and loading pesticides.'' The final regulatory text for this definition is available at 40 CFR 170.305.

iii. Comments and responses.

Comments. EPA did not receive any specific comments on the definition of closed system. However, EPA received a number of comments related to EPA's proposal on closed systems that indicated the proposed requirements may be too prescriptive or limiting, could eliminate desired flexibility for growers, and could discourage innovation and the adoption of closed systems.

EPA Response. EPA agreed with the comments that the proposed requirements related to closed systems may be too prescriptive or limiting, could eliminate desired flexibility for growers, and could discourage

innovation and the adoption of closed systems. Although the comments did not specifically mention the closed system definition, EPA reconsidered the proposed definition of closed system in light of the overall comments on closed system requirements. EPA believes that a broader definition of ''closed system'' will encourage industry innovation better than the proposed prescriptive definition, and will retain flexibility for handler employers to design systems specific to their needs. In the final rule, EPA has adopted a new definition of closed system that more accurately defines the nature and intent of a closed system without inadvertently prescribing specific requirements and operational components for such closed systems.

iv. Costs and benefits. EPA estimates that revising the definition of closed system will not change the cost of the final rule.

4. Enclosed space production and outdoor production. i. Current rule and proposal. The existing WPS does not contain definitions for the terms ''enclosed space production'' or ''outdoor production.'' Instead, the existing WPS defines the term ''greenhouse'' to describe the type of WPS-covered agricultural establishments that produce agricultural plants inside enclosed structures. The existing rule uses the terms ''farm,'' ''forest'' and ''nursery'' for WPS-covered agricultural establishments that produce agricultural plants outdoors. Greenhouse is defined in the existing WPS as ''any operation engaged in the production of agricultural plants inside any structure or space that is enclosed with nonporous covering and that is of sufficient size to permit worker entry. This term includes, but is not limited to, polyhouses, mushroom houses, rhubarb houses, and similar structures. It does not include such structures as malls, atriums, conservatories, arboretums, or office buildings where agricultural plants are present primarily for aesthetic or climatic modification.'' EPA proposed to delete the definition of ''greenhouse'' because it would no longer be necessary as a result of the proposed addition of a new definition for ''enclosed space production.'' EPA proposed to define enclosed space production as ''production of an agricultural plant in a structure or space that is covered in whole or in part and that is large enough to permit a person to enter.'' EPA also proposed to add a new definition for the term ''outdoor production'' and defined it as ''production of an agricultural plant in an outside open space or area that is not enclosed or covered in any way.''

ii. Final rule. In the final rule, EPA has deleted the definition of the term ''greenhouse'' as proposed, and has adopted the definitions for ''enclosed space production'' and ''outdoor production'' with modifications. The final rule defines ''enclosed space production'' as ''production of an agricultural plant indoors or in a structure or space that is covered in whole or in part by any nonporous covering and that is large enough to permit a person to enter,'' and defines ''outdoor production'' as ''production of an agricultural plant in an outside area that is not enclosed or covered in any way that would obstruct the natural air flow.'' The final regulatory text for these definitions is available at 40 CFR 170.305.

iii. Comments and responses.

Comments. EPA received several comments from states and their organizations opposing the definition of ''enclosed space production'' as written. A few other commenters also expressed concerns with the definition of ''outdoor production.'' A state association noted that the proposed definition could greatly expand areas covered under certain entry restrictions to include any covered area such as fields or groves with shade covers and/or screen houses. The commenter expressed concerns that entry restrictions currently applicable to greenhouses would be extended to these establishments, and is not aware of any need for such an extension of these restrictions. States generally echoed these comments. One state requested clarification of whether the term ''spaces covered in part'' includes structures such as ''hoop houses,'' and another state noted that the proposed rule did not define or reference high tunnels and requested clarification of whether ''high tunnels'' are considered a greenhouse for the purposes of WPS (*i.e.,* would ''high tunnels'' be considered a type of enclosed space production?). One state commented that the proposed definition expands areas covered under certain entry restrictions to include shade houses and screen houses and this would have a major impact in on the state's nursery industry. Another state also expressed concerns that the proposed definition of enclosed space production would expand restrictions beyond greenhouses, and suggested that EPA add the phase ''where the production of agricultural plants for research or commercial purposes occurs'' to the definitions of enclosed space production and outdoor production so that only those operations engaged in the production of agricultural plants for commercial purposes would be covered by the WPS. Another state commented that the term ''outdoor production'' is too broad and by misinterpretation, could encompass a number of non-farm activities.

During USDA's FIFRA section 25 review of the final rule, USDA commented that the inclusion of the term ''natural forest'' in the definition of ''outdoor production'' creates confusion since there is no explanation of what the term ''natural forest'' means and therefore the term is not needed (Ref. 15).

EPA Response. EPA considered the comments submitted and agrees with the comments that said the proposed definition of ''enclosed space production'' could expand areas covered under certain entry restrictions to include any covered area such as fields or groves with porous shade covers and/or screen houses where such restrictions are not necessary. EPA noted the potential impact of the proposed definition on the nursery industry as raised by commenters. EPA also agrees that the proposed definition of ''outdoor production'' could lead to some outdoor production being considered enclosed space production because of the phrase ''that is not enclosed or covered in any way.'' EPA is convinced that the definition of enclosed space production and outdoor production should be revised so that operations that use non-porous coverings in their plant production operations, such as screen houses and shade houses, are not covered by the entry restrictions deemed necessary for the protection of workers and handlers that are working with pesticides or in pesticide treated areas in enclosed space production operations. Therefore, EPA revised the definitions of enclosed space production and outdoor production to clarify that enclosed space production only includes areas covered in whole or in part ''by any nonporous covering,'' rather than ''any covering'' as in the proposed definition; and that outdoor production will include areas that are covered only with coverings that are sufficiently porous that they do not obstruct the natural air flow typical of open fields or forests. It is intended that these definitions of enclosed space production and outdoor production be complementary, such that all production agriculture is either enclosed space production or outdoor production.

EPA does not agree with the request to add the phrase ''where the production of agricultural plants for research or commercial purposes occurs'' to the definitions of enclosed space production and outdoor

production so that only those operations engaged in the production of agricultural plants for commercial purposes would be covered by the WPS. EPA believes other definitions and language in the rule already clearly limit the scope of the WPS to establishments where the production of agricultural plants for research or commercial purposes occurs, so the addition of such language to these definitions would be redundant and would not serve to further limit the scope of the rule in any way not already accomplished through other means.

Some commenters requested clarification of whether structures such as ''hoop houses,'' and ''high tunnels'' are considered a type of enclosed space production. The term ''greenhouse'' in the WPS has resulted in enforcement problems, because of the extreme variability in the types of structures that might be considered greenhouses. This problem is compounded when considering the many greenhouse-type structures (*e.g.,* polyhouses, mushroom houses, hoop houses, high tunnels and similar structures) that have come into use. This is why EPA has replaced the term greenhouse with enclosed space production. EPA believes the new terms correspond more accurately to the nature of the risk that EPA is concerned about mitigating (*i.e.,* use of pesticides in enclosed spaces that could affect pesticide inhalation exposure potential). Therefore, if a structure or space is covered in whole or in part by any nonporous covering and is large enough to permit a person to enter, then the structure or space would fall under the definition of enclosed space production in the final rule. EPA anticipates that most greenhouses, hoop houses, high tunnels and similar structures will fall within the definition of enclosed space production, but a final determination will be made on a case-by-case basis applying the parameters of the definition to each situation.

EPA agrees with USDA that the inclusion of the term ''natural forest'' in the definition of ''outdoor production'' creates confusion and is not needed. In response, EPA has revised the final definition of outdoor production accordingly (Ref. 15).

iv. Costs and benefits. EPA estimates adding and changing the definition of enclosed space production and outdoor production will not substantially change the cost of the final rule.

5. Entry-restricted area and application exclusion zone. i. Current rule and proposal. The existing WPS does not contain a definition for the terms ''entry-restricted area'' or ''application exclusion zone.'' Under the existing rule, the term ''entry-restricted area'' is used to refer to areas on an establishment from which workers and other persons must be excluded during, and/or immediately after, an ongoing pesticide application to protect the workers or other persons from being contacted by the pesticide (either directly or through drift). EPA proposed to define the term ''entry-restricted area'' as ''the area from which workers or other persons must be excluded during and after the pesticide application.''

ii. Final rule. In the final rule, EPA has added the term ''application exclusion zone'' instead of the proposed term ''entry-restricted area.'' EPA has defined the term ''application exclusion zone'' as ''the area surrounding the application equipment which must be free of all persons, other than appropriately trained and equipped handlers, during pesticide applications.'' The final regulatory text for this definition is available at 40 CFR 170.305.

iii. Comments and responses.

Comments. EPA received several comments from states regarding the term ''entry-restricted area.'' One commenter said the term was linguistically awkward and said EPA should instead use the term ''restricted area buffer.''

EPA Response. EPA considered the comments submitted and agrees with the comments that the term ''entry-restricted area'' was not clear and would be likely to cause confusion. In the final rule, EPA has eliminated the use of that term and has therefore deleted the proposed definition. The final rule adopts the term ''application exclusion zone'' to refer to the area from which persons must be excluded during applications. See Unit IX. for EPA's response to the comments on the WPS requirements related to entry-restricted areas.

iv. Costs and benefits. EPA estimates that not including the proposed definition of the term ''entry-restricted area'' in the final rule and adding the new definition for ''application exclusion zone'' will not substantially change the cost of the final rule.

6. Hand labor. i. Current rule and proposal. The existing WPS defines hand labor as ''any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with surfaces (such as plants, plant parts, or soil) that may contain pesticide residues. These activities include, but are not limited to, harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, roguing, and packing produce into containers in the field. Hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing the tasks of crop advisors.'' In the proposal, EPA intended to revise the definition by deleting the following sentence from the existing definition, ''These activities include, but are not limited to, harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, roguing, and packing produce into containers in the field.'' In the proposed regulatory text for the definition of term ''hand labor,'' EPA inadvertently deleted the phrase ''except that hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing crop advisor tasks'' from the end of the definition. The erroneously proposed definition for the term ''hand labor'' was ''any agricultural activity performed by hand or with hand tools that cause a worker to have substantial contact with plants, plant parts, or soil and other surfaces that may contain pesticide residues.''

ii. Final rule. EPA has corrected the unintentional omission from the proposed definition of ''hand labor.'' The final rule defines ''hand labor'' as ''any agricultural activity performed by hand or with hand tools that cause a worker to have substantial contact with plants, plant parts, or soil and other surfaces that may contain pesticide residues, except that hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing crop advisor tasks.'' The final regulatory text for this definition is available at 40 CFR 170.305 for the final regulatory language for definitions.

iii. Comments and responses.

Comments. One commenter objected to the proposed change to the definition of hand labor that deleted the phrase ''except that hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing crop advisor tasks'' from the end of the definition. The commenter indicated that removing this exception from the definition of hand labor would make the irrigation exception for early entry unworkable and would disrupt irrigation operations.

EPA Response. EPA agrees with the comment on the definition of ''hand labor.'' In the final, rule EPA has deleted the sentence listing hand labor activities as proposed, but has retained the clause excluding ''operating, moving, or repairing irrigation or watering equipment or performing crop advisor

tasks'' from being considered hand labor tasks.

iv. Costs and benefits. EPA estimates that revising the definition of hand labor will not change the cost of the final rule.

7. Immediate Family. See Unit XVII.A. for a complete discussion of EPA's consideration of the definition of ''immediate family'' in conjunction with the exemption from certain provisions of the WPS for owners and members of their immediate families.

8. Use. i. Existing definitions and proposal. The existing WPS provides a definition of the term ''use'' (as in ''to use any registered pesticide in a manner inconsistent with its labeling'') for the purposes of the rule at 40 CFR 170.9, ''Violations of this part.'' For the purposes of the WPS, EPA has interpreted the term ''use'' to cover a broad range of pesticide-related activities that are listed at 40 CFR 170.9. EPA proposed to move the existing definition for ''use'' found at 40 CFR 170.9 into the definitions section of the rule.

ii. Final rule. In the final rule, EPA has adopted the definition for ''use'' as proposed. The final regulatory text for this definition is available at 40 CFR 170.305.

iii. Comments and responses.

Comments. EPA received several comments from states, growers, agricultural associations and pesticide manufacturer associations objecting to the proposed definition of ''use.'' Most commenters objected to the definition of use because they did not support inclusion of ''arranging for application of the pesticide'' as part of the definition of ''use.'' Some commenters said they believed that this language would greatly expand the scope of the WPS and would be unreasonable and unnecessary. Some commenters noted that they could not see how ''arranging for application of the pesticide'' could be considered use. During its review of the draft final rule under FIFRA section 25(a), USDA noted that the term ''arranging for the application of the pesticide'' as part of the definition of the term ''use'' could lead to persons that call on or answer the telephone and ''arrange'' for pest management by scheduling the appointment on behalf of another to be covered by the rule and possibly have WPS responsibilities.

EPA Response. EPA disagrees with comments that say the proposed definition for the term ''use'' could or will expand the scope of the WPS because this interpretation has been in the WPS since the rule first became effective. Moreover, EPA has not been made aware of any instances where this interpretation of ''use'' has resulted in an unreasonable or inappropriate outcome. EPA believes that ''arranging for application of the pesticide'' is appropriately part of the definition of ''use'' for the purposes of the WPS because in production agriculture, the individual who physically ''uses'' a pesticide almost always does so at the direction of another person who has substantially greater control over the circumstances of the use. Thus the WPS is designed so that when an agricultural or handler employer arranges for the application of a pesticide by a handler employee, it triggers certain WPS duties that are properly the responsibility of the agricultural or handler employer. For instance, once the agricultural employer arranges for a pesticide application by a commercial pesticide handling establishment, the commercial pesticide handler employer must provide the agricultural employer with certain information about the intended application before the application takes place (so the employer will be able to fulfill WPS notification requirements and protect workers during application, etc.). In such circumstances, it is reasonable and appropriate that the handler employer should be held responsible for the pre-application information exchange even though the application has not commenced and even though the handler employer personally never physically ''uses'' the pesticide.

EPA interprets ''arranging for application of the pesticide'' as used in § 170.9(a) and § 170.305 as a means of assuring that the entities (generally the agricultural employer or handler employer) with the most authority and control over WPS compliance would be legally responsible for WPS compliance. EPA does not interpret ''arranging for application of the pesticide'' as making subordinate persons who merely perform the clerical functions of arranging for application of the pesticide liable for WPS compliance. Therefore, since EPA has not been made aware of any instances where the existing interpretation of the term use has resulted in any problems for growers, states or the agricultural industry, EPA has moved the definition for the term ''use'' into the definitions section of the rule without any change from the proposal.

iv. Costs and benefits. Moving the definition of use will not change the cost of the final rule.

D. Restructuring 40 CFR Part 170

1. Current rule and proposal. The existing WPS is organized into three subparts: ''General Provisions,'' ''Standard for Workers,'' and ''Standard for Handlers.'' Content that applies to both workers and handlers is repeated creating redundancy throughout the rule.

EPA discussed renaming the regulation ''Requirements for Protection of Agricultural Workers and Pesticide Handlers'' in the preamble of the proposal and proposed reorganizing the rule into four subparts: ''General Provisions,'' ''Requirements for Protection of Agricultural Workers,'' ''Requirements for Protection of Pesticide Handlers,'' and ''Exemptions and Exceptions.'' EPA proposed creating the ''General Provisions'' subpart to describe certain obligations for agricultural employers, handler employers, and those requirements that apply to both. The proposal included subparts ''Requirements for Protection of Agricultural Workers'' and ''Requirements for Protection of Pesticide Handlers'' to provide information that supplements the general duties and obligations for employers and to outline the content of the training and decontamination supplies that the employer must provide for workers and handlers respectively. EPA proposed to consolidate most of the exceptions and exemptions into a separate subpart titled ''Exemptions and Exceptions'' to make them easier to find and reference.

2. Final Rule. In the final rule, EPA has retained the existing name of the regulation, ''Worker Protection Standard,'' and has adopted the proposed restructuring of the rule with minor modifications.

EPA has determined that it is appropriate to allow one year for employers, trainers, and state and tribal regulators to prepare for the changes to the WPS. See Unit XIX. In order to allow the existing WPS to remain in effect for one year and to make available the revised regulatory language in advance of the implementation date, both the existing WPS and the revised WPS must appear in the Code of Federal Regulations. Thus the final rule provides that Subparts A, B and C of part 170 will remain in effect until one year after the effective date of this final rule. Subparts D, E, F and G of part 170 contain the full text of the revised WPS; however, these subparts will not be implemented until one year after the effective date of this final rule. Some provisions of subparts D, E, F and G, such as pesticide safety training and the pesticide information display, will not be implemented until two years after the effective date of this final rule. One year after the effective date of this final rule, subparts A, B and C will no longer be effective. At that time, EPA intends to

delete subparts A, B and C from part 170.

In addition to finalizing the proposed structuring of the rule, EPA has added a new section providing a process for allowing states and tribes to request equivalency determinations from EPA for existing state or tribal laws or regulations that may provide protections equivalent to the WPS. EPA has added this to a retitled subpart: ''Exemptions, Exceptions and Equivalency.''

3. Comments and responses.

Comments. EPA did not receive any comments opposed to the proposal to restructure the WPS. One commenter noted that the proposed restructuring of the rule increased the clarity of the rule and the relationship among the components. Another commenter asserted that there was no need to change the name of the regulation, and noted that if EPA was going to change the name of the rule, it should more accurately represent the full scope of the rule and the impacted establishments.

EPA Response. EPA agrees with the comment that it is unnecessary to change the name of the rule. ''Worker Protection Standard'' and the abbreviation WPS are commonly used and associated with the rule. Upon further consideration, EPA agrees that the existing name of the rule is very widely recognized and that it will facilitate more effective communications on the rule to retain the current name of the rule.

EPA also agrees with the commenter that the proposed restructuring of the rule increases the clarity of the rule and the relationship among the components. EPA is adopting the proposed restructuring of the WPS in the final rule with the minor modifications noted. EPA expects the revised part 170 will be easier to read and understand, thereby improving compliance by worker and handler employers.

4. Costs and benefits. EPA does not estimate any costs associated with the restructuring of the rule. The benefits of the restructuring will be increased clarity and understanding of the rule which should result in improved compliance and more consistent enforcement.

E. Equivalency Provisions

1. Current rule and proposal. The current WPS does not contain equivalency provisions that would permit EPA to potentially recognize, through a WPS-established regulatory mechanism, state or tribal worker protection laws and/or regulations that may provide equivalent or significantly greater protection in comparison to the provisions of the existing WPS, or provide equivalent protection at a significantly lower cost. EPA did not propose to add equivalency provisions to the rule because it did not receive information from states or tribes that such provisions were necessary, and had not been informed by growers that WPS requirements conflicted with existing state or tribal worker protection laws or regulations.

2. Final rule. In the final rule, EPA has included a section on equivalency because of comments received that indicate provisions may be needed to address certain issues with the WPS potentially conflicting with existing state and tribal worker protection laws or regulations. EPA recognizes that some states and tribes have existing worker protection provisions in their own laws and regulations that may be equivalent to the provisions of the existing WPS, that may provide significantly greater protection, or may provide equivalent protection at a significantly lower cost, and decided it would be more practical and efficient to establish a mechanism to evaluate specific state or tribal requirements and to make equivalency determinations rather than relying on other EPA enforcement mechanisms or policies to be able to allow such determinations. The final regulatory text for this requirement is available at 40 CFR 170.609.

3. Comments and responses.

Comments. Although EPA did not propose equivalency provisions, EPA received comments from the California Department of Pesticide Regulation (CDPR) that indicated it would be beneficial if states could be granted 'equivalency' as was done for the current WPS. The CDPR comment refers to an independent enforcement discretion decision that was granted under the current WPS to recognize CDPR's requirement for the content of their field posting sign to be equivalent to the existing requirement at 40 CFR 170.120. Comments from some other state pesticide regulatory agencies indicate there may be issues of equivalency between their regulations and the final WPS requirements. Although these commenters did not specifically raise the need for equivalency provision, they indicated a need for EPA to be aware of the issue and potentially identify solutions.

EPA Response. Based on the comments received and EPA's experience with the current WPS and requests from CDPR for equivalency on certain regulatory requirements, EPA agrees that there are potential situations where states or tribes may request EPA to consider equivalency under the WPS for their laws or regulations. Therefore, EPA believes it is prudent to consider an equivalency process under the WPS, and feels strongly that it is more efficient and advantageous to establish a mechanism for considering equivalency in the WPS rule rather than relying on other mechanisms. EPA has provided a general equivalency process in the rule that is modeled on the provisions that were developed and implemented for substantially the same reason and purpose under the pesticide containment regulations in 40 CFR 165.97. (71 FR 47330, August 16, 2006).

4. Costs and benefits. EPA does not estimate any costs associated with adding the equivalency provisions to the rule. The benefits of allowing equivalency under the provisions being included in the final rule will be that EPA will be able to more easily consider and permit equivalency for some states that have provisions in their own laws and regulations equivalent to the provisions of the WPS or that may provide significantly greater protections or equivalent protection at a lower cost.

F. Clarifications

1. Scope and Purpose. In the final rule, EPA has clarified who the rule protects and that agricultural and commercial pesticide handler employers are responsible for carrying out the requirements of the rule. EPA has also clarified that handlers have responsibilities under the rule to protect workers and other persons during pesticide applications. Refer to 40 CFR 170.301 for the revised language.

2. Applicability. In the final rule, EPA has clarified in 40 CFR 170.303(c) that users must comply with product labeling requirements where the labeling requirements differ from the rule, except as provided in 40 CFR 170.601, 170.603, and 170.607, where the WPS provides exceptions to label-required PPE and REIs.

3. Prohibited Actions. In the proposed rule EPA proposed modifications to the retaliation provisions of the rule to clarify the actions that are prohibited under the rule. In the final rule EPA has further modified the retaliation provisions based on comments provided from DOL on how EPA could improve its retaliation provisions by modeling it after language used in similar provisions in DOL regulations. Moreover, we note that this rule does not preempt the general anti-retaliation provision in the DOL-administered Occupational Safety and Health Act, 29 U.S.C. 660(c). Refer to 40 CFR 170.315 for the regulatory text.

XIX. Implementation

A. Proposal

EPA proposed to make the final rule effective 60 days after the date of publication in the **Federal Register**; however, compliance with certain provisions, including the additional content of pesticide safety training and pesticide safety information, and new signs for posting, would not be required until 2 years after the effective date of the final rule. EPA proposed the 2-year delay between effective date of the final rule and the implementation date to allow time for new training materials to be developed and made available, and to give employers, trainers, and other affected stakeholders time to make the necessary changes to their practices and operations to comply with the new training and pesticide safety information requirements. EPA also linked the implementation date for the revised pesticide safety training requirements for workers and handlers to the availability of new revised training materials that satisfy the new rule requirements. Under the proposal, if EPA announced the availability of such materials sooner than 18 months after the effective date of the final rule, then the new training requirements would go into effect 2 years after the effective date of the final rule. If EPA announced the availability of materials that comply with the requirements more than 18 months after the effective date of the final rule, then the new training requirements would not take effect until 180 days after the announcement of availability of complying training materials published in the **Federal Register**.

B. Final Rule

EPA has included in the final rule a one-year delay from the effective date of the final rule before employers must comply with any of the new WPS requirements. Thus, on January 2, 2017, employers will be required to comply with almost all of the new and revised WPS requirements. However, employers will not be required to comply with certain new WPS provisions until two years after the effective date of the final rule. This two year delay applies to the new requirements for pesticide safety training for workers and handlers, pesticide safety information and handlers to suspend applications when workers or other persons are in the application exclusion zone. As proposed, the final rule provides that compliance with certain new training requirements will not be required until the later of two years after the effective date of the final rule, or 180 days after EPA publishes in the **Federal Register** a notice of availability of new revised training materials that satisfy the new rule requirements.

The final regulatory text for these provisions is available at 40 CFR 170.2, 170.311(a)(3), 170.401(c)(3), 170.501(c)(3) and 170.505(b).

C. Comments and Responses

Comments. Most comments that addressed implementation focused on three main areas: (1) The need for better and more effective enforcement of the revised rule once the new requirements are effective; (2) the need for appropriate supporting communication, education, training and compliance assistance materials to facilitate effective implementation; and (3) the need for additional time before the final rule becomes effective to give regulators and the regulated community time to prepare for compliance with new requirements.

Many comments from states, pesticide safety educators, trainers, grower associations and pesticide manufacturer associations pointed out a need for appropriate training and compliance assistance materials to support effective implementation. Commenters indicated that it was essential for EPA to have updated communications and compliance assistance materials, such as fact sheets and the ''WPS How to Comply'' manual, developed and available to all affected parties in order for the regulated community to be able to learn and understand new requirements. Several states, grower associations and pesticide manufacturer associations commented that EPA should provide more time before the new rule requirements become effective so that regulators and the regulated community can more adequately prepare for compliance with new requirements. However, several farmworker advocacy organizations urged EPA to implement the proposed training requirements for workers and handlers sooner than the proposal of 2 years from the effective date of the final rule.

EPA Response. EPA considered the comments submitted and agrees that after publication of the final rule, some time is needed before the new WPS requirements are implemented. EPA understands that State, tribal and federal regulators need time to become familiar with the new regulation, provide training to pesticide inspectors, develop the capacity for enforcing the new rule requirements, establish appropriate WPS inspection and enforcement policies, and conduct outreach to the regulated and protected communities. In addition, agricultural employers will need time to become familiar with the new requirements and implement any necessary changes. In the final rule, EPA has delayed the implementation of the new WPS requirements for one year so that EPA can work with state and tribal pesticide regulators and the regulated community to better prepare for compliance with new rule requirements. The existing rule will remain in effect and be enforced during this time, as provided in 40 CFR 170.2.

EPA disagrees with comments that the compliance dates for the new worker and handler training requirements should be implemented sooner than 2 years from the effective date of the final rule as outlined in the proposal. EPA believes that up to 18 months could be needed in order to develop and disseminate new, high quality, multi-lingual worker and handler training materials in multimedia formats that comply with the new requirements. Additionally trainers will have to obtain the new training materials, become familiar with the new training content and ensure that they continue to meet any eligibility requirements to train. Therefore, EPA has decided to retain the proposed requirement to delay the new training requirements for 2 years from the effective date of the final rule (or 180 days after the announcement that training materials are available, whichever is later) to allow adequate time for development and widespread distribution of the materials to trainers and employers. While EPA agrees that it is important for workers and handlers to have the new safety training information as soon as possible, time will be needed to create and distribute new training materials and to allow existing trainers to familiarize themselves with those new materials. In order to maximize compliance with the final rule, and in the interests of consistency and efficiency, EPA intends to develop and make available suitable training materials. EPA intends to have new training materials developed and disseminated as soon as practical and will encourage employers to begin using the new materials as soon as they become available so that many workers and handlers will begin receiving the benefits of the new training before the required date.

EPA is committed to a robust outreach, communications and training effort to communicate the new rule requirements to affected WPS stakeholders. To facilitate implementation, EPA plans to issue plain language ''how to comply'' fact sheets and guidance materials once the

final rule is published. EPA plans to develop compliance assistance materials that are targeted to specific agricultural sectors and rule requirements such as respirator requirements or the WPS exemptions and exceptions. EPA also intends to develop and disseminate new worker and handler training materials, conduct outreach to potentially affected parties, and provide assistance and resources to States and Tribes for WPS implementation. EPA plans to hold Pesticide Regulatory Education Program courses for State and Tribal pesticide program staff that will focus on WPS implementation, and Pesticide Inspector Residential Training courses for State and Tribal pesticide inspectors that will focus on WPS inspection requirements.

D. Costs and Benefits

The discussion of the overall expected costs and benefits for implementation are discussed in Unit II.C. EPA believes that delaying the dates for compliance with the final rule for one year after the effective date will allow regulators and the regulated community to better prepare for compliance with the rule while delaying immediate costs and allowing time for employers to explore ways to minimize implementation costs.

XX. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. *Economic Analysis of the Agricultural Worker Protection Standard Revisions.* Washington, DC 2015.
2. EPA. Pesticides; Agricultural Worker Protection Standard Revisions; Proposed Rule. **Federal Register** (79 FR 15444, March 19, 2014) (FRL–9395–8).
3. EPA. Final Report: *Small Business Advocacy Review Panel on EPA Planned Revisions to Two Related Rules: Worker Protection Standard for Agricultural Pesticides (RIN 2070–AJ22); and Certification of Pesticide Applicators (RIN 2070–AJ20).* November 3, 2008.
4. EPA. *Response to Comments on Proposed Changes to the Worker Protection Standard.* 2015.
5. U.S. Senate. S. Rep. No. 92–883 (Part II), 92nd Congress, 2nd Session at 43–46 (1972). U.S. Code Congressional and Administrative News 1972, p. 4063.
6. DOL. *2011–2012 NAWS data—public set. http://www.doleta.gov/agworker/naws.cfm#d-files. Retrieved April 24 2015.*
7. USDA Economic Research Service. Kandel, W. *Profile of Hired Farmworkers, A 2008 Update. Economic Research Report No. 60. U.S. Department of Agriculture. Economic Research Service.* 2008.
8. EPA. *Worker Protection Standard: A Summary of the Public's Comments and the Agency's Response.* 1992.
9. Burke, L., Hutchins, H. *''A Study of Best Practices in Training Transfer and Proposed Model of Transfer.'' Human Resource Development Quarterly.* Vol. 19 no. 2, Summer 2008.
10. Calvert, et al, 2008. *''Acute pesticide poisoning among agricultural workers in the United States, 1998–2005.''American J Ind Med* 51, no. 12: 883–898. December 2008.
11. Kasner, et al. *''Gender differences in acute pesticide-related illnesses and injuries among farmworkers in the United States, 1998–2007. American J Ind Med* 55, no. 7: 571–583. July 2012. *http://onlinelibrary.wiley.com/doi/10.1002/ajim.22052/full. Retrieved April 24, 2015.*
12. *Lee, S–J, Mehler, L, Beckman, J, Diebolt-Brown, B, Prado, J, Lackovic, M, et al. ''Acute Pesticide Illnesses Associated with Off-Target Pesticide Drift from Agricultural Applications.'' Environ Health Perspect* 119:1162–1169. 2011.
13. EPA. *Response to ''Pesticides in the Air—Kids at Risk: Petition to Protect Children from Pesticide Drift (2009).''* 2014.
14. EPA. *Economic Analysis of the Proposed Agricultural Worker Protection Standard Revisions.* Washington, DC 2014.
15. EPA. *USDA Comments on the Draft Final Agricultural Worker Protection Standard Revision Rule and EPA Responses.* 2015.
16. EPA. Pesticides; Procedural Regulations for Registration Review; Final Rule. **Federal Register** (71 FR 45720, August 9, 2006) (FRL–8080–4).
17. OSHA. Hazard Communication; Final Rule. **Federal Register** (77 FR 17574, March 26, 2012).
18. EPA. Worker Protection Standards for Agricultural Pesticides; Proposed Rule. **Federal Register** (53 FR 25970, July 8, 1988) (FRL 3314–4).
19. OSHA. Hazard Communications Standard; Proposed Rule. **Federal Register** (53 FR 29822, August 8, 1988).
20. EPA. Worker Protection Standard; Hazard Information; Proposed Rule. **Federal Register** (57 FR 38167, August 21, 1992) (FRL–3793–1).
21. EPA. Pesticides; Final Guidance for Pesticide Registrants on Web-Distributed Labeling; Notice of Availability. **Federal Register** (79 FR 18908, April 4, 2014) (FRL–9905–60).
22. EPA. Pesticide Management and Disposal; Standards for Pesticide Containers and Containment; Final Rule. **Federal Register** (71 FR 47330, August 16, 2006) (FRL–8076–2).
23. EPA. Information Collection Request Supporting Statement: *Agricultural Worker Protection Standard Training and Notification (Final Rule).* EPA ICR No. 2491.02 and OMB Control No. 2070–0190. 2015.

XXI. 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 a significant regulatory action because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, EPA submitted the action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an economic analysis of the potential costs and benefits associated with this action, which is available in the docket and summarized in Unit II.C. (Ref. 1).

B. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted to OMB for approval under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2491.02 and OMB Control No. 2070–0190 (Ref. 23). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information collection activities related to the existing Worker Protection Standard are already approved by OMB in an ICR titled ''Worker Protection Standard Training and Notification'' (EPA ICR No. 1759; OMB Control No. 2070–0148). The final rule ICR addresses adjustments to the estimated number of respondents, time for activities, and wage rates related to the current regulatory requirements as approved under OMB Control No. 2070–0148. In addition, the final rule ICR addresses program changes related to the amendments, including modifications to restrictions in field entry activities during REIs; increased hazard communications; increased training (for both workers and handlers); provisions for information during emergency assistance; and recordkeeping for respirator and training requirements.

Respondents/affected entities: Agricultural establishments. The number of agricultural establishments is based on the 2012 Census of Agriculture data, special tabulation, by the USDA

National Agricultural Statistics Service (NASS). Based on that information, there are about 870,000 crop producing establishments covered by the rule.

Commercial pesticide handling establishments. Based on information from Hoover's Dun and Bradstreet, EPA estimates there are about 2,000 commercial pesticide handling establishments. Based on EPA's data on certified applicators, there are more than 40,000 commercial applicators in plant agriculture.

Agricultural workers and handlers. EPA estimates that there are about 1.9 million workers, based on the 2012 Census of Agriculture data, special tabulation, by USDA's NASS.

Respondent's obligation to respond: Mandatory (7 U.S.C. 136–136y, particularly section 136w(a)).

Estimated number of respondents: 985,000.

Frequency of response: Rule familiarization will occur annually for the first 3 years. Training of workers and handlers will occur annually. Posting of the hazard communications information will occur, on average, 20 times a year. Recordkeeping of training will occur 1.5 times per year.

Total estimated burden: 10,448,160 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $ 424,166,295 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9, and on applicable collection instruments. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule

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 RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are agricultural and handler employers, and commercial pesticide handler employers. EPA expects the impacts to be less than 0.1% of the annual value of sales or revenues for the average small entity. EPA calculates the impact of the rule as the percent of sales revenue. Only the very smallest farms, with average sales of less than $10,000 per year, may face impacts above one percent of sales. The number of entities that may be impacted in excess of one percent of sales could be about 12,000 farms, nurseries, and greenhouses or about 6% of all small farms impacted by the WPS with revenues less than $10,000 per year. However, this is likely an overestimate of the number of farms impacted as it does not account for the nearly 2,000 such farms in California that would face impacts well below the national average. Additionally, there are nearly 23,000 such farms that produce only oil crops or forage whose employees are not likely to engage in hand labor activities and would not be covered by worker requirements. Please refer to the Economic Assessment, Table 5.4–3. ''Small Business Impacts, WPS Farms making pesticide applications'' for further details of the assessment.

Although EPA was not required by the RFA to convene a Small Business Advocacy Review (SBAR) Panel because this rule would not have a significant economic impact on a substantial number of small entities, EPA nevertheless convened a panel to obtain advice and recommendations from small entity representatives potentially subject to this rule's requirements. A copy of the SBAR Panel Report is included in the docket for this rulemaking (Ref. 3).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an 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. The rule requirements would primarily affect agricultural employers and handler employers. The total estimated annualized cost of the final rule is $60.2—66.9 million.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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. However, this action may be of significant interest to state governments, because states provide enforcement for pesticide laws. EPA solicited and received comments from state partners on the proposed revisions, which are addressed in this final rule preamble and the response to comments document.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed rule would not regulate tribal governments directly; agricultural employers and pesticide handler employers are the directly affected entities. Thus, Executive Order 13175 does not apply to this action.

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

This final rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866. However, it is reasonable to expect that the environmental health or safety risks addressed in this rule may have a disproportionate effect on children. As such, EPA considered the best available science in order to protect children against environmental health risks and this final rule is consistent with EPA's 1995 Policy on Evaluating Health Risks to Children (*http://www2.epa.gov/sites/production/files/2014-/documents/1995_childrens_health_policy_statement.pdf*), reaffirmed in 2013 (*http://www2.epa.gov/sites/production/files/2014-05/documents/reaffirmation_memorandum.pdf*).

Protections include improved training on reducing pesticide residues brought from treated areas to the home on workers and handlers' clothing and bodies and establishing a minimum age of 18 for handlers and early entry workers. With regard to establishing an age restriction, while studies have not demonstrated a clear cut off point at which adolescents are fully developed, literature indicates that their development may continue until they reach their early to mid-20s. Additionally, research has shown that adolescents may take more risks, be less aware of the potential consequences of their actions on themselves and others, and be less likely to protect themselves from known risks. All of this information supports establishing a minimum age to allow those handling pesticides to develop more fully before putting themselves, others, and the environment at risk, and to allow those performing early-entry activities to develop more fully in order to adequately protect themselves from the risks of entering a treated area while an REI is in effect. The final rule will reduce the potential for misuse by

adolescent handlers who may less consistently exercise good judgment when handling agricultural pesticides.

Children face the risk of pesticide exposure from work in pesticide-treated areas, from the use of pesticides near their homes, and from residues of pesticides brought home by family members after a day of working with pesticides or in pesticide-treated areas. The final rule is expected to reduce these exposures and risks. By establishing a minimum age for certain pesticide-related activities in agriculture, children would receive less exposure to pesticides that may lead to chronic or acute pesticide-related illness. Another requirement to reduce risk to children is training for workers and handlers on the risks presented by take-home pesticide exposure and how best to reduce it.

Like DOL's regulations that implement the FLSA, the rule regulates the ages at which children can work in certain agricultural activities. The rule establishes a minimum age of 18 for pesticide handlers and for early-entry workers, except those working on an establishment owned by an immediate family member. Since children in agriculture may face elevated risks of pesticide exposure due to their immaturity, failure to exercise good judgment, and developing bodies, EPA feels that they warrant special consideration in light of the Executive Order on children's health. EPA expects that the final rule will mitigate or eliminate many agricultural pesticide risks faced by youths.

Additional information on EPA's consideration of the risks to children in development of this action can be found in the Economic Analysis for this action (Ref. 1).

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

This action is not a ''significant energy action'' under Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272.

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

EPA believes that this rule would not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. In fact, the population of agricultural workers and handlers that the rule seeks to protect is comprised primarily of minority and low-income individuals. As reviewed in Unit IV.B.3., the farmworker community, due to occupation, economic status, health, language and other sociodemographic characteristics, faces an increased risk of pesticide exposure which this rulemaking seeks to reduce through improving communication and protections.

EPA engaged with stakeholders from affected communities extensively in the development of this rulemaking, in order to obtain meaningful involvement of all parties. EPA believes that the rule would improve the health of agricultural workers and handlers by, among other things, increasing the frequency of training, enhancing training content to include ways to minimize pesticide exposure to children and in the home, adding posting of treated areas near worker and handler housing to prevent accidental entry, and establishing a minimum age for pesticide handlers and early-entry workers.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA submitted 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 170

Environmental protection, Agricultural worker, Employer, Farms, Forests, Greenhouses, Nurseries, Pesticide handler, Pesticides, Worker protection standard.

Dated: September 28, 2015.

Gina McCarthy,

Administrator.

Therefore, 40 CFR Chapter I is amended as follows:

PART 170—[AMENDED]

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 136w.

■ 2. Section 170.2 is added to subpart A to read as follows:

§ 170.2 Implementation and expiration dates.

(a) *Implementation date.* Beginning January 2, 2017, the requirements of § 170.301 through § 170.609 of this part shall apply to any pesticide product that bears the statement ''Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170''.

(b) *Expiration date.* Sections 170.1 through 170.260 of this part shall expire on, and will no longer be effective after January 2, 2017.

■ 3. In § 170.135, revise paragraphs (b) and (c)(1) to read as follows:

§ 170.135 Posted pesticide safety information.

* * * * *

(b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the pesticide safety concepts listed in paragraphs (b)(1)(i) through (vii) and (b)(2) of this section. Displays conforming to § 170.311(a)(3) meet the requirements of this paragraph.

(c) * * *

(1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster. Displays conforming to § 170.311(a)(3)(ix) meet the requirements of this paragraph.

* * * * *

■ 4. In § 170.235, revise paragraphs (b) and (c)(1) to read as follows:

§ 170.235 Posted pesticide safety information.

* * * * *

(b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the pesticide safety concepts listed in paragraphs (b)(1)(i) through (vii) and (b)(2) of this section. Displays conforming to § 170.311(a)(3) meet the requirements of this paragraph.

(c) * * *

(1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the

safety poster. Displays conforming to § 170.311(a)(3)(ix) meet the requirements of this paragraph.

* * * * *

■ 5. Subpart D is added to part 170 to read as follows:

Subpart D—General Provisions

Sec.
§ 170.301 Scope and purpose.
§ 170.303 Applicability of this part.
§ 170.305 Definitions.
§ 170.309 Agricultural employer duties.
§ 170.311 Display requirements for pesticide safety information and pesticide application and hazard information.
§ 170.313 Commercial pesticide handler employer duties.
§ 170.315 Prohibited actions.
§ 170.317 Violations of this part.

§ 170.301 Scope and purpose.

This regulation is primarily intended to reduce the risks of illness or injury to workers and handlers resulting from occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments. It requires agricultural employers and commercial pesticide handler employers to provide specific information and protections to workers, handlers and other persons when pesticides are used on agricultural establishments in the production of agricultural plants. It also requires handlers to wear the labeling-specified clothing and personal protective equipment when performing handler activities, and to take measures to protect workers and other persons during pesticide applications.

§ 170.303 Applicability of this part.

(a) This regulation applies whenever a pesticide product bearing a label requiring compliance with this part is used in the production of agricultural plants on an agricultural establishment, except as provided in paragraphs (b) and (c) of this section.

(b) This regulation does not apply when a pesticide product bearing a label requiring compliance with this part is used on an agricultural establishment in any of the following circumstances:

(1) As part of government-sponsored public pest control programs over which the owner, agricultural employer and handler employer have no control, such as mosquito abatement and Mediterranean fruit fly eradication programs.

(2) On plants other than agricultural plants, which may include plants in home fruit and vegetable gardens and home greenhouses, and permanent plantings for ornamental purposes, such as plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes or climatic modification.

(3) For control of vertebrate pests, unless directly related to the production of an agricultural plant.

(4) As attractants or repellents in traps.

(5) On the harvested portions of agricultural plants or on harvested timber.

(6) For research uses of unregistered pesticides.

(7) On pasture and rangeland where the forage will not be harvested for hay.

(8) In a manner not directly related to the production of agricultural plants, including, but not limited to structural pest control and control of vegetation in non-crop areas.

(c) Where a pesticide product's labeling-specific directions for use or other labeling requirements are inconsistent with requirements of this part, users must comply with the pesticide product labeling, except as provided for in §§ 170.601, 170.603 and 170.607.

§ 170.305 Definitions.

Terms used in this part have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this part, shall have the following meanings:

Agricultural employer means any person who is an owner of, or is responsible for the management or condition of, an agricultural establishment, and who employs any worker or handler.

Agricultural establishment means any farm, forest operation, or nursery engaged in the outdoor or enclosed space production of agricultural plants. An establishment that is not primarily agricultural is an agricultural establishment if it produces agricultural plants for transplant or use (in part or their entirety) in another location instead of purchasing the agricultural plants.

Agricultural plant means any plant, or part thereof, grown, maintained, or otherwise produced for commercial purposes, including growing, maintaining or otherwise producing plants for sale or trade, for research or experimental purposes, or for use in part or their entirety in another location. Agricultural plant includes, but is not limited to, grains, fruits and vegetables; wood fiber or timber products; flowering and foliage plants and trees; seedlings and transplants; and turf grass produced for sod. Agricultural plant does not include pasture or rangeland used for grazing.

Application exclusion zone means the area surrounding the application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications.

Chemigation means the application of pesticides through irrigation systems.

Closed system means an engineering control used to protect handlers from pesticide exposure hazards when mixing and loading pesticides.

Commercial pesticide handler employer means any person, other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment. A labor contractor who does not provide pesticide application services or supervise the performance of handler activities, but merely employs laborers who perform handler activities at the direction of an agricultural or handler employer, is not a commercial pesticide handler employer.

Commercial pesticide handling establishment means any enterprise, other than an agricultural establishment, that provides pesticide handler or crop advising services to agricultural establishments.

Crop advisor means any person who is assessing pest numbers, damage, pesticide distribution, or the status or requirements of agricultural plants.

Designated representative means any persons designated in writing by a worker or handler to exercise a right of access on behalf of the worker or handler to request and obtain a copy of the pesticide application and hazard information required by § 170.309(h) in accordance with § 170.311(b) of this part.

Early entry means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

Employ means to obtain, directly or through a labor contractor, the services of a person in exchange for a salary or wages, including piece-rate wages, without regard to who may pay or who may receive the salary or wages. It includes obtaining the services of a self-employed person, an independent contractor, or a person compensated by a third party, except that it does not include an agricultural employer obtaining the services of a handler through a commercial pesticide handler employer or a commercial pesticide handling establishment.

Enclosed cab means a cab with a nonporous barrier that totally surrounds

the occupant(s) of the cab and prevents dermal contact with pesticides that are being applied outside of the cab.

Enclosed space production means production of an agricultural plant indoors or in a structure or space that is covered in whole or in part by any nonporous covering and that is large enough to permit a person to enter.

Fumigant means any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state.

Hand labor means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with plants, plant parts, or soil and other surfaces that may contain pesticide residues, except that hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing crop advisor tasks.

Handler means any person, including a self-employed person, who is employed by an agricultural employer or commercial pesticide handler employer and performs any of the following activities:

(1) Mixing, loading, or applying pesticides.

(2) Disposing of pesticides.

(3) Handling opened containers of pesticides, emptying, triple-rinsing, or cleaning pesticide containers according to pesticide product labeling instructions, or disposing of pesticide containers that have not been cleaned. The term does not include any person who is only handling unopened pesticide containers or pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions.

(4) Acting as a flagger.

(5) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.

(6) Assisting with the application of pesticides.

(7) Entering an enclosed space after the application of a pesticide and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by § 170.405(b)(3) or the labeling has been met to operate ventilation equipment, monitor air levels, or adjust or remove coverings used in fumigation.

(8) Entering a treated area outdoors after application of any soil fumigant during the labeling-specified entry-restricted period to adjust or remove coverings used in fumigation.

(9) Performing tasks as a crop advisor during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established by § 170.405(b)(3) or the pesticide product labeling has been met.

Handler employer means any person who is self-employed as a handler or who employs any handler.

Immediate family is limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. ''First cousin'' means the child of a parent's sibling, *i.e.,* the child of an aunt or uncle.

Labor contractor means a person, other than a commercial pesticide handler employer, who employs workers or handlers to perform tasks on an agricultural establishment for an agricultural employer or a commercial pesticide handler employer.

Outdoor production means production of an agricultural plant in an outside area that is not enclosed or covered in any way that would obstruct the natural air flow.

Owner means any person who has a present possessory interest (*e.g.,* fee, leasehold, rental, or other) in an agricultural establishment. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this part.

Personal protective equipment means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

Restricted-entry interval means the time after the end of a pesticide application during which entry into the treated area is restricted.

Safety data sheet has the same meaning as the definition at 29 CFR 1900.1200(c).

Treated area means any area to which a pesticide is being directed or has been directed.

Use, as in ''to use a pesticide'' means any of the following:

(1) Pre-application activities, including, but not limited to:

(i) Arranging for the application of the pesticide.

(ii) Mixing and loading the pesticide.

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(2) Application of the pesticide.

(3) Post-application activities intended to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during and after the restricted-entry interval, including responsibilities related to worker notification, training of workers or early-entry workers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(4) Other pesticide-related activities, including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

Worker means any person, including a self-employed person, who is employed and performs activities directly relating to the production of agricultural plants on an agricultural establishment.

Worker housing area means any place or area of land on or near an agricultural establishment where housing or space for housing is provided for workers or handlers by an agricultural employer, owner, labor contractor, or any other person responsible for the recruitment or employment of agricultural workers.

§ 170.309 Agricultural employer duties.

Agricultural employers must:

(a) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this part, when applied on the agricultural establishment.

(b) Ensure that each worker and handler subject to this part receives the protections required by this part.

(c) Ensure that any handler and any early entry worker is at least 18 years old.

(d) Provide to each person, including labor contractors, who supervises any workers or handlers information and directions sufficient to ensure that each

worker and handler receives the protections required by this part. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this part.

(e) Require each person, including labor contractors, who supervises any workers or handlers to provide sufficient information and directions to each worker and handler to ensure that they can comply with the provisions of this part.

(f) Provide emergency assistance in accordance with this paragraph. If there is reason to believe that a worker or handler has experienced a potential pesticide exposure during his or her employment on the agricultural establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within 72 hours after his or her employment on the agricultural establishment, and needs emergency medical treatment, the agricultural employer must do all of the following promptly after learning of the possible poisoning or injury:

(1) Make available to that person transportation from the agricultural establishment, including any worker housing area on the establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(2) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide on the agricultural establishment.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(g) Ensure that workers or other persons employed by the agricultural establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under § 170.501. Before allowing any person not directly employed by the agricultural establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the agricultural employer must provide all of the following information to such person:

(1) Pesticide application equipment may be contaminated with pesticides.

(2) The potentially harmful effects of exposure to pesticides.

(3) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(4) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(h) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with § 170.311 if workers or handlers are on the establishment and within the last 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment.

(i) Ensure that before a handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(j) Ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or replaced.

(k) Ensure that whenever handlers employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler employer is provided information about, or is aware of, the specific location and description of any treated areas on the agricultural establishment where a restricted-entry interval is in effect that the handler may be in (or may walk within ¼ mile of), and any restrictions on entering those areas.

(l) Ensure that workers do not enter any area on the agricultural establishment where a pesticide has been applied until the applicable pesticide application and hazard information for each pesticide product applied to that area is displayed in accordance with § 170.311(b), and until after the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by § 170.603 of this part.

(m) Provide any records or other information required by this part for inspection and copying upon request by an employee of EPA or any duly authorized representative of a Federal, State or Tribal government agency responsible for pesticide enforcement.

§ 170.311 Display requirements for pesticide safety information and pesticide application and hazard information.

(a) *Display of Pesticide Safety Information.* Whenever pesticide safety information and pesticide application and hazard information are required to be provided under § 170.309(h), pesticide safety information must be displayed in accordance with this paragraph.

(1) *General.* The pesticide safety information must be conveyed in a manner that workers and handlers can understand.

(2) *Content prior to January 1, 2018.* Prior to January 1, 2018, the safety information must include all of the following points:

(i) Help keep pesticides from entering your body. Avoid getting on your skin or into your body any pesticides that may be on plants and soil, in irrigation water, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.

(vii) Follow directions about keeping out of treated or restricted areas.

(viii) The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display.

(ix) There are Federal rules to protect workers and handlers, including a requirement for safety training.

(3) *Content after January 1, 2018.* After January 1, 2018, the pesticide safety information must include all of the points in § 170.311(a)(3)(i)–(x) instead of the points listed in § 170.311(a)(2)(i)–(ix).

(i) Avoid getting on the skin or into the body any pesticides that may be on or in plants, soil, irrigation water, tractors, and other equipment, on used personal protective equipment, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) If pesticides are spilled or sprayed on the body use decontamination supplies to wash immediately, or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(vii) Follow directions about keeping out of treated areas and application exclusion zones.

(viii) Instructions to employees to seek medical attention as soon as possible if they believe they have been poisoned, injured or made ill by pesticides.

(ix) The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display.

(x) The name, address and telephone number of the State or Tribal pesticide regulatory agency.

(4) *Changes to pesticide safety information.* The agricultural employer must update the pesticide safety information display within 24 hours of notice of any changes to the information required in §§ 170.311(a)(2)(viii) or 170.311(a)(3)(ix).

(5) *Location.* The pesticide safety information must be displayed at each of the following sites on the agricultural establishment:

(i) The site selected pursuant to § 170.311(b)(2) for display of pesticide application and hazard information.

(ii) Anywhere that decontamination supplies must be provided on the agricultural establishment pursuant to §§ 170.411, 170.509 or 170.605, but only when the decontamination supplies are located at permanent sites or being provided at locations and in quantities to meet the requirements for 11 or more workers or handlers.

(6) *Accessibility.* When pesticide safety information is required to be displayed, workers and handlers must be allowed access to the pesticide safety information at all times during normal work hours.

(7) *Legibility.* The pesticide safety information must remain legible at all times when the information is required to be displayed.

(b) *Keeping and displaying pesticide application and hazard information.* Whenever pesticide safety information and pesticide application and hazard information is required to be provided under § 170.309(h), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed, retained, and made accessible in accordance with this paragraph.

(1) *Content.* The pesticide application and hazard information must include all of the following information for each pesticide product applied:

(i) A copy of the safety data sheet.

(ii) The name, EPA registration number, and active ingredient(s) of the pesticide product.

(iii) The crop or site treated and the location and description of the treated area.

(iv) The date(s) and times the application started and ended.

(v) The duration of the applicable labeling-specified restricted-entry interval for that application.

(2) *Location.* The pesticide application and hazard information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and where it can be readily seen and read.

(3) *Accessibility.* When the pesticide application and hazard information is required to be displayed, workers and handlers must be allowed access to the location of the information at all times during normal work hours.

(4) *Legibility.* The pesticide application and hazard information must remain legible at all times when the information is required to be displayed.

(5) *Timing.* The pesticide application and hazard information for each pesticide product applied must be displayed no later than 24 hours after the end of the application of the pesticide. The pesticide application and hazard information must be displayed continuously from the beginning of the display period until at least 30 days after the end of the last applicable restricted-entry interval, or until workers or handlers are no longer on the establishment, whichever is earlier.

(6) *Record retention.* Whenever pesticide safety information and pesticide application and hazard information is required to be displayed in accordance with this paragraph (b), the agricultural employer must retain the pesticide application and hazard information described in § 170.311(b)(1) on the agricultural establishment for two years after the date of expiration of the restricted-entry interval applicable to the pesticide application conducted.

(7) *Access to pesticide application and hazard information by a worker or handler.*

(i) If a person is or was employed as a worker or handler by an establishment during the period that particular pesticide application and hazard information was required to be displayed and retained for two years in accordance with §§ 170.311(b)(5) and 170.311(b)(6), and the person requests a copy of such application and/or hazard information, or requests access to such application and/or hazard information after it is no longer required to be displayed, the agricultural employer must provide the worker or handler with a copy of or access to all of the requested information within 15 days of the receipt of any such request. The worker or handler may make the request orally or in writing.

(ii) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, non-discriminatory administrative costs (*i.e.,* search and copying expenses but not including overhead expenses) for a request by the worker or handler for additional copies of the record.

(8) Access to pesticide application and hazard information by treating medical personnel. Any treating medical personnel, or any person acting under the supervision of treating medical personnel, may request, orally or in writing, access to or a copy of any information required to be retained for two years by § 170.311(b)(6) in order to inform diagnosis or treatment of a worker or handler who was employed on the establishment during the period that the information was required to be displayed. The agricultural employer must promptly provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment after receipt of the request.

(9) *Access to pesticide application and hazard information by a designated representative.*

(i) Any worker's or handler's designated representative may request access to or a copy of any information required to be retained for two years by § 170.311(b)(6) on behalf of a worker or handler employed on the establishment during the period that the information was required to be displayed. The agricultural employer must provide access to or a copy of the requested information applicable to the worker's or handler's time of employment on the establishment within 15 days after receiving any such request, provided the request meets the requirements specified in § 170.311(b)(9)(ii).

(ii) A request by a designated representative for access to or a copy of any pesticide application and/or hazard

information must be in writing and must contain all of the following:

(A) The name of the worker or handler being represented.

(B) A description of the specific information being requested. The description should include the dates of employment of the worker or handler, the date or dates for which the records are requested, type of work conducted by the worker or handler (*e.g.,* planting, harvesting, applying pesticides, mixing or loading pesticides) during the period for which the records are requested, and the specific application and/or hazard information requested.

(C) A written statement clearly designating the representative to request pesticide application and hazard information on the worker's or handler's behalf, bearing the worker's or handler's printed name and signature, the date of the designation, and the printed name and contact information for the designated representative.

(D) If the worker or handler requests that the pesticide application and/or the hazard information be sent, direction for where to send the information (*e.g.,* mailing address or email address).

(iii) If the written request from a designated representative contains all of the necessary information specified in § 170.313(b)(9)(ii), the employer must provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment to the designated representative within 15 days of receiving the request.

(iv) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, non-discriminatory administrative costs (*i.e.,* search and copying expenses but not including overhead expenses) for a request by the designated representative for additional copies of the record.

§ 170.313 Commercial pesticide handler employer duties.

Commercial pesticide handler employers must:

(a) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this part, when applied on an agricultural establishment by a handler employed by the commercial pesticide handling establishment.

(b) Ensure each handler employed by the commercial pesticide handling establishment and subject to this part receives the protections required by this part.

(c) Ensure that any handler employed by the commercial pesticide handling establishment is at least 18 years old.

(d) Provide to each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, information and directions sufficient to ensure that each handler receives the protections required by this part. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this part.

(e) Require each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, to provide sufficient information and directions to each handler to ensure that the handler can comply with the provisions of this part.

(f) Ensure that before any handler employed by the commercial pesticide handling establishment uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(g) Ensure that, before each day of use, equipment used by their employees for mixing, loading, transferring, or applying pesticides is inspected for leaks, obstructions, and worn or damaged parts, and any damaged equipment is repaired or is replaced.

(h) Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler is provided information about, or is aware of, the specific location and description of any treated areas where a restricted-entry interval is in effect, and the restrictions on entering those areas.

(i) Provide the agricultural employer all of the following information before the application of any pesticide on an agricultural establishment:

(1) Specific location(s) and description of the area(s) to be treated.

(2) The date(s) and start and estimated end times of application.

(3) Product name, EPA registration number, and active ingredient(s).

(4) The labeling-specified restricted-entry interval applicable for the application.

(5) Whether posting, oral notification or both are required under § 170.409.

(6) Any restrictions or use directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons during or after application.

(j) If there are any changes to the information provided in § 170.313(i)(1), § 170.313(i)(4), § 170.313(i)(5), § 170.313(i)(6) or if the start time for the application will be earlier than originally forecasted or scheduled, ensure that the agricultural employer is provided updated information prior to the application. If there are any changes to any other information provided pursuant to § 170.313(i), the commercial pesticide handler employer must provide updated information to the agricultural employer within two hours after completing the application. Changes to the estimated application end time of less than one hour need not be reported to the agricultural employer.

(k) Provide emergency assistance in accordance with this paragraph. If there is reason to believe that a handler employed by the commercial pesticide handling establishment has experienced a potential pesticide exposure during his or her employment by the commercial pesticide handling establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within 72 hours after his or her employment by the commercial pesticide handling establishment, and needs emergency medical treatment, the commercial pesticide handler employer must do all of the following promptly after learning of the possible poisoning or injury:

(1) Make available to that person transportation from the commercial pesticide handling establishment, or any agricultural establishment on which that handler may be working on behalf of the commercial pesticide handling establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(2) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(l) Ensure that persons directly employed by the commercial pesticide handling establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under § 170.501. Before allowing any person not directly employed by the commercial pesticide handling establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the commercial pesticide handler employer

must provide all of the following information to such persons:

(1) Notice that the pesticide application equipment may be contaminated with pesticides.

(2) The potentially harmful effects of exposure to pesticides.

(3) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(4) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(m) Provide any records or other information required by this part for inspection and copying upon request by an employee of EPA or any duly authorized representative of a Federal, State or Tribal government agency responsible for pesticide enforcement.

§ 170.315 Prohibited actions.

No agricultural employer, commercial pesticide handler employer, or other person involved in the use of a pesticide to which this part applies, shall intimidate, threaten, coerce, or discriminate against any worker or handler for complying with or attempting to comply with this part, or because the worker or handler provided, caused to be provided or is about to provide information to the employer or the EPA or any duly authorized representative of a Federal, State or Tribal government regarding conduct that the worker or handler reasonably believes violates this part, has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this part, or has objected to, or refused to participate in, any activity, policy, practice, or assigned task that the worker or handler reasonably believed to be in violation of this part. Any such intimidation, threat, coercion, or discrimination violates FIFRA section 12(a)(2)(G), 7 U.S.C. 136j(a)(2)(G).

§ 170.317 Violations of this part.

(a) Under FIFRA section 12(a)(2)(G), it is unlawful for any person ''to use any registered pesticide in a manner inconsistent with its labeling.'' When this part is referenced on a label, users must comply with all of its requirements, except those that are inconsistent with product-specific instructions on the pesticide product labeling, except as provided for in §§ 170.601, 170.603 and 170.607.

(b) A person who has a duty under this part, as referenced on the pesticide product labeling, and who fails to perform that duty, violates FIFRA section 12(a)(2)(G) and is subject to a civil penalty under section 14. A person who knowingly violates section 12(a)(2)(G) is subject to section 14 criminal sanctions.

(c) FIFRA section 14(b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA. The term ''acting for'' includes both employment and contractual relationships, including, but not limited to, labor contractors.

(d) The requirements of this part, including the decontamination requirements, must not, for the purposes of section 653(b)(1) of Title 29 of the U.S. Code, be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by the OSHA Field Sanitation Standard, 29 CFR 1928.110, or other agricultural non-pesticide hazards.

■ 6. Subpart E is added to part 170 to read as follows:

Subpart E—Requirements for Protection of Agricultural Workers

Sec.

§ 170.401 Training requirements for workers.
§ 170.403 Establishment-specific information for workers.
§ 170.405 Entry restrictions associated with pesticide applications.
§ 170.407 Worker entry restrictions after pesticide applications.
§ 170.409 Oral and posted notification of worker entry restrictions.
§ 170.411 Decontamination supplies for workers.

§ 170.401 Training requirements for workers.

(a) *General requirement.* Before any worker performs any task in a treated area on an agricultural establishment where within the last 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that each worker has been trained in accordance with this section within the last 12 months, except as provided in paragraph (b) of this section.

(b) *Exceptions.* The following workers need not be trained under this section:

(1) A worker who is currently certified as an applicator of restricted use pesticides under part 171 of this chapter.

(2) A worker who has satisfied the handler training requirements in § 170.501.

(3) A worker who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or the State or Tribal agency responsible for pesticide enforcement, provided that such certification or licensing requires pesticide safety training that includes all the topics in § 170.501(c)(2) or § 170.501(c)(3) as applicable depending on the date of training.

(c) *Training programs.* (1) Pesticide safety training must be presented to workers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the workers can understand, such as through a translator. The training must be conducted by a person who meets the worker trainer requirements of paragraph (c)(4) of this section, and who must be present during the entire training program and must respond to workers' questions.

(2) The training must include, at a minimum, all of the following topics:

(i) Where and in what form pesticides may be encountered during work activities.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes through which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures, including emergency eye flushing techniques.

(viii) Hazards from chemigation and drift.

(ix) Hazards from pesticide residues on clothing.

(x) Warnings about taking pesticides or pesticide containers home.

(xi) Requirements of this subpart designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

(3) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within 180 days after a notice of availability of such training materials appears in the **Federal Register**, but no earlier than January 1, 2018, training programs required under this section must include, at a minimum, all of the topics

listed in § 170.401(c)(3)(i)–(xxiii) instead of the topics listed in § 170.401(c)(2)(i)–(xi).

(i) The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been trained on pesticide safety, providing pesticide safety and application and hazard information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.

(ii) How to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide treated areas on the establishment.

(iii) How to follow directions and/or signs about keeping out of pesticide treated areas subject to a restricted-entry interval and application exclusion zones.

(iv) Where and in what forms pesticides may be encountered during work activities, and potential sources of pesticide exposure on the agricultural establishment. This includes exposure to pesticide residues that may be on or in plants, soil, tractors, application and chemigation equipment, or used personal protective equipment, and that pesticides may drift through the air from nearby applications or be in irrigation water.

(v) Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

(vi) Routes through which pesticides can enter the body.

(vii) Signs and symptoms of common types of pesticide poisoning.

(viii) Emergency first aid for pesticide injuries or poisonings.

(ix) Routine and emergency decontamination procedures, including emergency eye flushing techniques, and if pesticides are spilled or sprayed on the body to use decontamination supplies to wash immediately or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(x) How and when to obtain emergency medical care.

(xi) When working in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

(xii) Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide treated areas.

(xiii) Potential hazards from pesticide residues on clothing.

(xiv) Wash work clothes before wearing them again and wash them separately from other clothes.

(xv) Do not take pesticides or pesticide containers used at work to your home.

(xvi) Safety data sheets provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with. The responsibility of agricultural employers to do all of the following:

(A) Display safety data sheets for all pesticides used on the establishment.

(B) Provide workers and handlers information about the location of the safety data sheets on the establishment.

(C) Provide workers and handlers unimpeded access to safety data sheets during normal work hours.

(xvii) The rule prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

(xviii) The responsibility of agricultural employers to provide specific information to workers before directing them to perform early-entry activities. Workers must be 18 years old to perform early-entry activities.

(xix) Potential hazards to children and pregnant women from pesticide exposure.

(xx) Keep children and nonworking family members away from pesticide treated areas.

(xxi) After working in pesticide treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

(xxii) How to report suspected pesticide use violations to the State or Tribal agency responsible for pesticide enforcement.

(xxiii) The rule prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this rule, or because the worker or handler provided, caused to be provided or is about to provide information to the employer or the EPA or its agents regarding conduct that the employee reasonably believes violates this part, and/or made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this rule.

(4) The person who conducts the training must meet one of the following criteria:

(i) Be designated as a trainer of certified applicators, handlers or workers by EPA or the State or Tribal agency responsible for pesticide enforcement.

(ii) Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of workers.

(iii) Be currently certified as an applicator of restricted use pesticides under part 171 of this chapter.

(d) *Recordkeeping.* (1) For each worker required to be trained under paragraph (a), the agricultural employer must maintain on the agricultural establishment, for two years from the date of the training, a record documenting each worker's training including all of the following:

(i) The trained worker's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of § 170.401(c)(4) at the time of training.

(v) The agricultural employer's name.

(2) An agricultural employer who provides, directly or indirectly, training required under paragraph (a) must provide to the worker upon request a copy of the record of the training that contains the information required under § 170.401(d)(1).

§ 170.403 Establishment-specific information for workers.

Before any worker performs any activity in a treated area on an agricultural establishment where within the last 30 days a pesticide product has been used, or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that the worker has been informed of, in a manner the worker can understand, all of the following establishment-specific information:

(a) The location of pesticide safety information required by § 170.311(a).

(b) The location of pesticide application and hazard information required by § 170.311(b).

(c) The location of decontamination supplies required by § 170.411.

§ 170.405 Entry restrictions associated with pesticide applications.

(a) *Outdoor production pesticide applications.* (1) The application exclusion zone is defined as follows:

(i) The application exclusion zone is the area that extends 100 feet horizontally from the application equipment in all directions during application when the pesticide is applied by any of the following methods:

(A) Aerially.

(B) Air blast application.

(C) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns).

(D) As a fumigant, smoke, mist, or fog.

(ii) The application exclusion zone is the area that extends 25 feet horizontally from the application equipment in all directions during application when the pesticide is applied not as in § 170.405(a)(1)(i)(A)–(D) and is sprayed from a height of greater than 12 inches from the planting medium using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater).

(iii) There is no application exclusion zone when the pesticide is applied in a manner other than those covered in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the treated area or an application exclusion zone that is within the boundaries of the establishment until the application is complete.

(3) After the application is complete, the area subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in § 170.407 is the treated area.

(b) *Enclosed space production pesticide applications.* (1) During any enclosed space production pesticide application described in column A of the Table under paragraph (b)(4) of this section, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the area specified in column B of the Table under paragraph (b)(4) of this section during the application and until the time specified in column C of the Table under paragraph (b)(4) of this section has expired.

(2) After the time specified in column C of the Table under paragraph (b)(4) of this section has expired, the area subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in § 170.407 is the area specified in column D of the Table under paragraph (b)(4) of this section.

(3) When column C of the Table under paragraph (b)(4) of this section specifies that ventilation criteria must be met, ventilation must continue until the air concentration is measured to be equal to or less than the inhalation exposure level required by the labeling. If no inhalation exposure level is listed on the labeling, ventilation must continue until after one of the following conditions is met:

(i) Ten air exchanges are completed.

(ii) Two hours of ventilation using fans or other mechanical ventilating systems.

(iii) Four hours of ventilation using vents, windows, or other passive ventilation.

(iv) Eleven hours with no ventilation followed by one hour of mechanical ventilation.

(v) Eleven hours with no ventilation followed by two hours of passive ventilation.

(vi) Twenty-four hours with no ventilation.

(4) The following Table applies to paragraphs (b)(1), (2), and (3) of this section.

TABLE—ENTRY RESTRICTIONS DURING ENCLOSED SPACE PRODUCTION PESTICIDE APPLICATIONS

A. When a pesticide is applied:	B. Workers and other persons, other than appropriately trained and equipped handlers, are prohibited in:	C. Until:	D. After the expiration of time specified in column C, the area subject to the restricted-entry interval is:
(1) As a fumigant	Entire enclosed space plus any adjacent structure or area that cannot be sealed off from the treated area.	The ventilation criteria of paragraph (b)(3) of this section are met.	No post-application entry restrictions required by § 170.407 after criteria in column C are met.
(2) As a (i) Smoke, or (ii) Mist, or (iii) Fog, or (iv) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns).	Entire enclosed space	The ventilation criteria of paragraph (b)(3) of this section are met.	Entire enclosed space.
(3) Not as in (1) or (2), and for which a respiratory protection device is required for application by the pesticide product labeling.	Entire enclosed space	The ventilation criteria of paragraph (b)(3) of this section are met.	Treated area.
(4) Not as in (1), (2) or (3), and: (i) From a height of greater than 12 inches from the planting medium, or (ii) As a spray using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater).	Treated area plus 25 feet in all directions of the treated area, but not outside the enclosed space.	Application is complete	Treated area.
(5) Otherwise	Treated area	Application is complete	Treated area.

§ 170.407 Worker entry restrictions after pesticide applications.

(a) After the application of any pesticide to an area of outdoor production, the agricultural employer must not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide product labeling has expired and all treated area warning signs have been removed or covered, except for early-entry activities permitted by § 170.603.

(b) After the application of any pesticide to an area of enclosed space production, the agricultural employer must not allow or direct any worker to enter or to remain in the areas specified in column D of the Table in § 170.405(b)(4), before the restricted-entry interval specified on the pesticide product labeling has expired and all treated area warning signs have been removed or covered, except for early-entry activities permitted by § 170.603.

(c) When two or more pesticides are applied to a treated area at the same time, the applicable restricted-entry interval is the longest of all applicable restricted-entry intervals.

§ 170.409 Oral and posted notification of worker entry restrictions.

(a) *General Requirement.* The agricultural employer must notify workers of all entry restrictions required by §§ 170.405 and 170.407 in accordance with this section.

(1) *Type of notification required*—(i) *Double notification.* If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer must post signs in accordance with paragraph (b) of this section and must also provide oral notification of the application to workers in accordance with paragraph (c) of this section.

(ii) *Outdoor production areas subject to restricted-entry intervals greater than 48 hours.* If a pesticide with product labeling that requires a restricted-entry interval greater than 48 hours is applied to an outdoor production area, the agricultural employer must notify workers of the application by posting warning signs in accordance with paragraph (b) of this section.

(iii) *Outdoor production areas subject to restricted-entry intervals equal to or less than 48 hours.* If a pesticide with product labeling that requires a restricted-entry interval equal to or less than 48 hours is applied to an outdoor production area, the agricultural employer must notify workers of the application either by posting warning signs in accordance with paragraph (b) of this section or by providing workers with an oral warning in accordance with paragraph (c) of this section.

(iv) *Enclosed space production areas subject to restricted-entry intervals greater than four hours.* If a pesticide with product labeling that requires a restricted-entry interval greater than four hours is applied to an enclosed space production area, the agricultural employer must notify workers of the application by posting warning signs in accordance with paragraph (b) of this section.

(v) *Enclosed space production areas subject to restricted-entry intervals equal to or less than four hours.* If a pesticide with product labeling that requires a restricted-entry interval equal to or less than four hours is applied to an enclosed space production area, the agricultural employer must notify workers of the application either by posting warning signs in accordance with paragraph (b) of this section or by providing workers with an oral warning in accordance with paragraph (c) of this section.

(2) *Exceptions.* Notification does not need to be given to a worker if the agricultural employer can ensure that one of the following is met:

(i) From the start of the application in an enclosed space production area until the end of any restricted-entry interval, the worker will not enter any part of the entire enclosed structure or space.

(ii) From the start of the application to an outdoor production area until the end of any restricted-entry interval, the worker will not enter, work in, remain in, or pass on foot through the treated area or any area within ¼ mile of the treated area on the agricultural establishment.

(iii) The worker was involved in the application of the pesticide as a handler, and is aware of all information required by paragraph (c)(1) of this section.

(b) *Requirements for posted warning signs.* If notification by posted warning signs is required pursuant to paragraph (a) of this section, the agricultural employer must, unless otherwise prescribed by the label, ensure that all warning signs meet the requirements of this paragraph. When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker entry is prohibited for the entire area while the signs are posted, except for entry permitted by § 170.603 of this part.

(1) *General.* The warning signs must meet all of the following requirements:

(i) Be one of the three sizes specified in paragraph (b)(3) of this section and comply with the posting placement and spacing requirements applicable to that sign size.

(ii) Be posted prior to but no earlier than 24 hours before the scheduled application of the pesticide.

(iii) Remain posted throughout the application and any restricted-entry interval.

(iv) Be removed or covered within three days after the end of the application or any restricted-entry interval, whichever is later, except that signs may remain posted after the restricted-entry interval has expired as long as all of the following conditions are met:

(A) The agricultural employer instructs any workers on the establishment that may come within ¼ mile of the treated area not to enter that treated area while the signs are posted.

(B) The agricultural employer ensures that workers do not enter the treated area while the signs remain posted, other than entry permitted by § 170.603 of this part.

(v) Remain visible and legible during the time they are required to be posted.

(2) *Content.* (i) The warning sign must have a white background. The words ''DANGER'' and ''PELIGRO,'' plus ''PESTICIDES'' and ''PESTICIDAS,'' must be at the top of the sign, and the words ''KEEP OUT'' and ''NO ENTRE'' must be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in white. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the size and appearance of the sign or change the meaning of the required information. An example of a warning sign meeting these requirements, other than the size and color requirements, follows:

(ii) The agricultural employer may replace the Spanish language portion of the warning sign with equivalent terms in an alternative non-English language if that alternative language is the language read by the largest group of workers at that agricultural establishment who do not read English. The alternative language sign must be in the same format as the original sign and conform to all other requirements of paragraph (b)(2)(i) of this section.

(3) *Size and posting.* (i) The standard sign must be at least 14 inches by 16 inches with letters at least one inch in height.

(ii) When posting an outdoor production area using the standard sign, the signs must be visible from all reasonably expected points of worker entry to the treated area, including at least each access road, each border with any worker housing area within 100 feet of the treated area and each footpath and other walking route that enters the treated area. Where there are no reasonably expected points of worker entry, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iii) When posting an enclosed space production area using the standard sign and the entire structure or space is subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in § 170.407, the signs must be posted so they are visible from all reasonably expected points of worker entry to the structure or space. When posting treated areas in enclosed space production using the standard sign and the treated area only comprises a subsection of the structure or space, the signs must be posted so they are visible from all reasonably expected points of worker entry to the treated area including each aisle or other walking route that enters the treated area. Where there are no reasonably expected points of worker entry to the treated area, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iv) If a smaller warning sign is used with ''DANGER'' and ''PELIGRO'' in letters at least 7/8 inch in height and the remaining letters at least 1/2 inch in height and a red circle at least three inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than 50 feet apart around the perimeter of the treated area in addition to the locations specified in paragraphs (b)(3)(ii) or (b)(3)(iii) of this section.

(v) If a smaller sign is used with ''DANGER'' and ''PELIGRO'' in letters at least 7/16 inch in height and the remaining letters at least 1/4 inch in height and a red circle at least one and a half inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than 25 feet apart around the perimeter of the treated area in addition to the locations specified in paragraphs (b)(3)(ii) or (b)(3)(iii) of this section.

(vi) A sign with ''DANGER'' and ''PELIGRO'' in letters less than 7/16 inch in height or with any words in letters less than 1/4 inch in height or a red circle smaller than one and a half inches in diameter containing an upraised hand and a stern face will not satisfy the requirements of the rule.

(c) *Oral warnings—Requirement.* If oral notification is required pursuant to paragraph (a) of this section, the agricultural employer must provide oral warnings to workers in a manner that the workers can understand. If a worker will be on the establishment when an application begins, the warning must be given before the application begins. If a worker arrives on the establishment while an application is taking place or a restricted-entry interval for a pesticide application is in effect, the warning must be given at the beginning of the worker's work period. The warning must include all of the following:

(1) The location(s) and description of any treated area(s) subject to the entry restrictions during and after application specified in §§ 170.405 and 170.407.

(2) The dates and times during which entry is restricted in any treated area(s) subject to the entry restrictions during and after application specified in §§ 170.405 and 170.407.

(3) Instructions not to enter the treated area or an application exclusion zone during application, and that entry to the treated area is not allowed until the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by § 170.603 of this part.

§ 170.411 Decontamination supplies for workers.

(a) *Requirement.* The agricultural employer must provide

decontamination supplies for routine washing and emergency decontamination in accordance with this section for any worker on an agricultural establishment who is performing an activity in an area where a pesticide was applied and who contacts anything that has been treated with the pesticide, including, but not limited to, soil, water, and plants.

(b) *Materials and quantities.* The decontamination supplies required in paragraph (a) of this section must include at least 1 gallon of water per worker at the beginning of each worker's work period for routine washing and emergency decontamination, soap, and single-use towels. The supplies must meet all of the following requirements:

(1) *Water.* At all times when this part requires agricultural employers to make water available to workers, the agricultural employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(2) *Soap and single-use towels.* The agricultural employer must provide soap and single-use towels for drying in quantities sufficient to meet the workers' reasonable needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(c) *Timing.* (1) If any pesticide with a restricted-entry interval greater than four hours was applied, the decontamination supplies must be provided from the time workers first enter the treated area until at least 30 days after the restricted-entry interval expires.

(2) If the only pesticides applied in the treated area are products with restricted-entry intervals of four hours or less, the decontamination supplies must be provided from the time workers first enter the treated area until at least seven days after the restricted-entry interval expires.

(d) *Location.* The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to the workers. The decontamination supplies must not be more than 1/4 mile from where workers are working, except that where workers are working more than 1/4 mile from the nearest place of vehicular access or more than 1/4 mile from any non-treated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

■ 7. Subpart F is added to part 170 to read as follows:

Subpart F—Requirements for Protection of Agricultural Pesticide Handlers

Sec.

§ 170.501 Training requirements for handlers.
§ 170.503 Knowledge of labeling, application-specific, and establishment-specific information for handlers.
§ 170.505 Requirements during applications to protect handlers, workers, and other persons.
§ 170.507 Personal protective equipment.
§ 170.509 Decontamination and eye flushing supplies for handlers.

§ 170.501 Training requirements for handlers.

(a) *General requirement.* Before any handler performs any handler activity involving a pesticide product, the handler employer must ensure that the handler has been trained in accordance with this section within the last 12 months, except as provided in paragraph (b) of this section.

(b) *Exceptions.* The following handlers need not be trained under this section:

(1) A handler who is currently certified as an applicator of restricted use pesticides under part 171 of this chapter.

(2) A handler who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or the State or Tribal agency responsible for pesticide enforcement, provided that a requirement for such certification or licensing is pesticide safety training that includes all the topics set out in § 170.501(c)(2) or § 170.501(c)(3) as applicable depending on the date of training.

(c) *Training programs.* (1) Pesticide safety training must be presented to handlers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the handlers can understand, such as through a translator. The training must be conducted by a person who meets the handler trainer requirements of paragraph (c)(4) of this section, and who must be present during the entire training program and must respond to handlers' questions.

(2) The pesticide safety training materials must include, at a minimum, all of the following topics:

(i) Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes by which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures.

(viii) Need for and appropriate use of personal protective equipment.

(ix) Prevention, recognition, and first aid treatment of heat-related illness.

(x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(xi) Environmental concerns such as drift, runoff, and wildlife hazards.

(xii) Warnings about taking pesticides or pesticide containers home.

(xiii) Requirements of this subpart that must be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and the protection against retaliatory acts.

(3) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within 180 days after a notice of availability of such training materials appears in the **Federal Register**, but no earlier than January 1, 2018, training programs required under this section must include, at a minimum, all of the topics listed in § 170.501(c)(3)(i)–(xiv) instead of the points listed in § 170.501(c)(2)(i)–(xiii).

(i) All the topics required by § 170.401(c)(3).

(ii) Information on proper application and use of pesticides.

(iii) Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.

(iv) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.

(v) Need for and appropriate use and removal of all personal protective equipment.

(vi) How to recognize, prevent, and provide first aid treatment for heat-related illness.

(vii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(viii) Environmental concerns, such as drift, runoff, and wildlife hazards.

(ix) Handlers must not apply pesticides in a manner that results in contact with workers or other persons.

(x) The responsibility of handler employers to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.

(xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.

(xii) Handlers must be at least 18 years old.

(xiii) The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.

(xiv) The responsibility of agricultural employers to post treated areas as required by this rule.

(4) The person who conducts the training must have one of the following qualifications:

(i) Be designated as a trainer of certified applicators or pesticide handlers by EPA or the State or Tribal agency responsible for pesticide enforcement.

(ii) Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of handlers.

(iii) Be currently certified as an applicator of restricted use pesticides under part 171 of this chapter.

(d) *Recordkeeping.* (1) Handler employers must maintain records of training for handlers employed by their establishment for two years after the date of the training. The records must be maintained on the establishment and must include all of the following information:

(i) The trained handler's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of § 170.501(c)(4) at the time of training.

(v) The handler employer's name.

(2) The handler employer must, upon request by a handler trained on the establishment, provide to the handler a copy of the record of the training that contains the information required under § 170.501(d)(1).

§ 170.503 Knowledge of labeling, application-specific, and establishment-specific information for handlers.

(a) *Knowledge of labeling and application-specific information.* (1) The handler employer must ensure that before any handler performs any handler activity involving a pesticide product, the handler either has read the portions of the labeling applicable to the safe use of the pesticide or has been informed in a manner the handler can understand of all labeling requirements and use directions applicable to the safe use of the pesticide.

(2) The handler employer must ensure that the handler has access to the applicable product labeling at all times during handler activities.

(3) The handler employer must ensure that the handler is aware of requirements for any entry restrictions, application exclusion zones and restricted-entry intervals as described in §§ 170.405 and 170.407 that may apply based on the handler's activity.

(b) *Knowledge of establishment-specific information.* Before any handler performs any handler activity on an agricultural establishment where within the last 30 days a pesticide product has been used, or a restricted-entry interval for such pesticide has been in effect, the handler employer must ensure that the handler has been informed, in a manner the handler can understand, all of the following establishment-specific information:

(1) The location of pesticide safety information required by § 170.311(a).

(2) The location of pesticide application and hazard information required by § 170.311(b).

(3) The location of decontamination supplies required by § 170.509.

§ 170.505 Requirements during applications to protect handlers, workers, and other persons.

(a) *Prohibition from contacting workers and other persons with pesticides during application.* The handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application.

(b) *Suspending applications.* After January 1, 2018, the handler performing the application must immediately suspend a pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in the application exclusion zone described in § 170.405(a)(1) or the area specified in column B of the Table in § 170.405(b)(4).

(c) *Handlers using highly toxic pesticides.* The handler employer must ensure that any handler who is performing any handler activity with a pesticide product that has the skull-and-crossbones symbol on the front panel of the pesticide product label is monitored visually or by voice communication at least every two hours.

(d) *Fumigant applications in enclosed space production.* The handler employer must ensure all of the following:

(1) Any handler in an enclosed space production area during a fumigant application maintains continuous visual or voice contact with another handler stationed immediately outside of the enclosed space.

(2) The handler stationed outside the enclosed space has immediate access to and uses the personal protective equipment required by the fumigant labeling for applicators in the event that entry becomes necessary for rescue.

§ 170.507 Personal protective equipment.

(a) *Handler responsibilities.* Any person who performs handler activities involving a pesticide product must use the clothing and personal protective equipment specified on the pesticide product labeling for use of the product, except as provided in § 170.607 of this part.

(b) *Employer responsibilities for providing personal protective equipment.* The handler employer must provide to the handler the personal protective equipment required by the pesticide product labeling in accordance with this section. The handler employer must ensure that the personal protective equipment is clean and in proper operating condition. For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, although such work clothing must be worn if required by the pesticide product labeling.

(1) If the pesticide product labeling requires that ''chemical-resistant'' personal protective equipment be worn, it must be made of material that allows no measurable movement of the

pesticide being used through the material during use.

(2) If the pesticide product labeling requires that ''waterproof'' personal protective equipment be worn, it must be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(3) If the pesticide product labeling requires that a ''chemical-resistant suit'' be worn, it must be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(4) If the pesticide product labeling requires that ''coveralls'' be worn, they must be loose-fitting, one- or two-piece garments that cover, at a minimum, the entire body except head, hands, and feet.

(5) Gloves must be the type specified on the pesticide product labeling.

(i) Gloves made of leather, cotton, or other absorbent materials may not be worn while performing handler activities unless gloves made of these materials are listed as acceptable for such use on the pesticide product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with non-separable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than 10 hours of use or within 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners must not be reused. Contaminated liners must be disposed of in accordance with any Federal, State, or local regulations.

(6) If the pesticide product labeling requires that ''chemical-resistant footwear'' be worn, one of the following types of footwear must be worn:

(i) Chemical-resistant shoes.

(ii) Chemical-resistant boots.

(iii) Chemical-resistant shoe coverings worn over shoes or boots.

(7) If the pesticide product labeling requires that ''protective eyewear'' be worn, one of the following types of eyewear must be worn:

(i) Goggles.

(ii) Face shield.

(iii) Safety glasses with front, brow, and temple protection.

(iv) Full-face respirator.

(8) If the pesticide product labeling requires that a ''chemical-resistant apron'' be worn, a chemical-resistant apron that covers the front of the body from mid-chest to the knees must be worn.

(9) If the pesticide product labeling requires that ''chemical-resistant headgear'' be worn, it must be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(10) The respirator specified by the pesticide product labeling must be used. Whenever a respirator is required by the pesticide product labeling, the handler employer must ensure that the requirements of paragraphs (b)(10)(i) through (iii) of this section are met before the handler performs any handler activity where the respirator is required to be worn. The handler employer must maintain for two years, on the establishment, records documenting the completion of the requirements of paragraphs (b)(10)(i) through (iii) of this section.

(i) Handler employers must provide handlers with fit testing using the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of 29 CFR 1910.134.

(ii) Handler employers must provide handlers with training in the use of the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of 29 CFR 1910.134(k)(1)(i) through(vi).

(iii) Handler employers must provide handlers with a medical evaluation by a physician or other licensed health care professional that conforms to the provisions of 29 CFR 1910.134 to ensure the handler's physical ability to safely wear the respirator specified on the pesticide product labeling.

(c) *Use of personal protective equipment.* (1) The handler employer must ensure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(2) The handler employer must ensure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(d) *Cleaning and maintenance.* (1) The handler employer must ensure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it must be washed thoroughly in detergent and hot water.

(2) If any personal protective equipment cannot or will not be cleaned properly, the handler employer must ensure the contaminated personal protective equipment is made unusable as apparel or is made unavailable for further use by employees or third parties. The contaminated personal protective equipment must be disposed of in accordance with any applicable laws or regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with a pesticide that has the signal word ''DANGER'' or ''WARNING'' on the label must not be reused and must be disposed of as specified in this paragraph. Handler employers must ensure that any person who handles contaminated personal protective equipment described in this paragraph wears the gloves specified on the pesticide product labeling for mixing and loading the product(s) comprising the contaminant(s) on the equipment. If two or more pesticides are included in the contaminants, the gloves worn must meet the requirements for mixing and loading all of the pesticide products.

(3) The handler employer must ensure that contaminated personal protective equipment is kept separate from non-contaminated personal protective equipment, other clothing or laundry and washed separately from any other clothing or laundry.

(4) The handler employer must ensure that all washed personal protective equipment is dried thoroughly before being stored or reused.

(5) The handler employer must ensure that all clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(6) The handler employer must ensure that when filtering facepiece respirators are used, they are replaced when one of the following conditions is met:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of eight hours of cumulative use.

(7) The handler employer must ensure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges are

replaced before further respirator use when one of the following conditions is met:

(i) At the first indication of odor, taste, or irritation.

(ii) When the maximum use time is reached as determined by a change schedule conforming to the provisions of 29 CFR 1910.134(d)(3)(iii)(B)(2).

(iii) When breathing resistance becomes excessive.

(iv) When required according to manufacturer's recommendations or pesticide product labeling instructions, whichever is more frequent.

(v) In the absence of any other instructions or indications of service life, at the end of eight hours of cumulative use.

(8) The handler employer must inform any person who cleans or launders personal protective equipment of all the following:

(i) That such equipment may be contaminated with pesticides and there are potentially harmful effects from exposure to pesticides.

(ii) The correct way(s) to clean personal protective equipment and how to protect themselves when handling such equipment.

(iii) Proper decontamination procedures that should be followed after handling contaminated personal protective equipment.

(9) The handler employer must ensure that handlers have a place(s) away from pesticide storage and pesticide use areas where they may do all of the following:

(i) Store personal clothing not worn during handling activities.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(10) The handler employer must not allow or direct any handler to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(e) *Heat-related illness.* Where a pesticide's labeling requires the use of personal protective equipment for a handler activity, the handler employer must take appropriate measures to prevent heat-related illness.

§ 170.509 Decontamination and eye flushing supplies for handlers.

(a) *Requirement.* The handler employer must provide decontamination and eye flushing supplies in accordance with this section for any handler that is performing any handler activity or removing personal protective equipment at the place for changing required by § 170.507(d)(9).

(b) *General conditions.* The decontamination supplies required in paragraph (a) of this section must include: at least three gallons of water per handler at the beginning of each handler's work period for routine washing and potential emergency decontamination; soap; single-use towels; and clean clothing for use in an emergency. The decontamination and eye flushing supplies required in paragraph (a) of this section must meet all of the following requirements:

(1) *Water.* At all times when this section requires handler employers to make water available to handlers for routine washing, emergency decontamination or eye flushing, the handler employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination or eye flushing supplies, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(2) *Soap and single-use towels.* The handler employer must provide soap and single-use towels for drying in quantities sufficient to meet the handlers' needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(3) *Clean change of clothing.* The handler employer must provide one clean change of clothing, such as coveralls, for use in an emergency.

(c) *Location.* The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to each handler during the handler activity. The decontamination supplies must not be more than 1/4 mile from the handler, except that where the handler activity is more than 1/4 mile from the nearest place of vehicular access or more than 1/4 mile from any non-treated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

(1) *Mixing sites.* Decontamination supplies must be provided at any mixing site.

(2) *Exception for pilots.* Decontamination supplies for a pilot who is applying pesticides aerially must be in the aircraft or at the aircraft loading site.

(3) *Exception for treated areas.* The decontamination supplies must be outside any treated area or area subject to a restricted-entry interval, unless the soap, single-use towels, water and clean change of clothing are protected from pesticide contamination in closed containers.

(d) *Emergency eye-flushing.* (1) Whenever a handler is mixing or loading a pesticide product whose labeling requires protective eyewear for handlers, or is mixing or loading any pesticide using a closed system operating under pressure, the handler employer must provide at each mixing/loading site immediately available to the handler, at least one system that is capable of delivering gently running water at a rate of least 0.4 gallons per minute for at least 15 minutes, or at least six gallons of water in containers suitable for providing a gentle eye-flush for about 15 minutes.

(2) Whenever a handler is applying a pesticide product whose labeling requires protective eyewear for handlers, the handler employer must provide at least one pint of water per handler in portable containers that are immediately available to each handler.

■ 8. Subpart G is added to part 170 to read as follows:

Subpart G—Exemptions, Exceptions and Equivalency

Sec.
§ 170.601 Exemptions.
§ 170.603 Exceptions for entry by workers during restricted-entry intervals.
§ 170.605 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval.
§ 170.607 Exceptions to personal protective equipment requirements specified on pesticide product labeling.
§ 170.609 Equivalency requests.

§ 170.601 Exemptions.

(a) *Exemption for owners of agricultural establishments and their immediate families.* (1) On any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family, the owner(s) of the establishment are not required to provide the protections of the following provisions to themselves or members of their immediate family when they are performing handling activities or tasks related to the production of agricultural plants that would otherwise be covered by this part on their own agricultural establishment.

(i) Section 170.309(c).

(ii) Section 170.309(f) through (j).

(iii) Section 170.311.

(iv) Section 170.401.
(v) Section 170.403.
(vi) Section 170.409.
(vii) Sections 170.411 and 170.509.
(viii) Section 170.501.
(ix) Section 170.503.
(x) Section 170.505(c) and (d).
(xi) Section 170.507(c) through (e).
(xii) Section 170.605(a) through (c) and (e) through (j).

(2) The owners of agricultural establishments must provide all of the applicable protections required by this part for any employees or other persons on the establishment that are not members of their immediate family.

(b) Exemption for certified crop advisors. Certified crop advisors may make their own determination for the appropriate personal protective equipment for entry into a treated area during a restricted-entry interval and substitute their self-determined set of personal protective equipment for the labeling-required personal protective equipment, and the requirements of §§ 170.309(e), 170.309(f), 170.313(k), 170.503(a), 170.507 and 170.509 of this part do not apply to certified crop advisors provided the application is complete and all of the following conditions are met:

(1) The crop advisor is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or a State or Tribal agency responsible for pesticide enforcement.

(2) The certification or licensing program requires pesticide safety training that includes all the information in § 170.501(c)(2) or § 170.501(c)(3) as applicable depending on the date of training.

(3) The crop advisor who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

§ 170.603 Exceptions for entry by workers during restricted-entry intervals.

An agricultural employer may direct workers to enter treated areas where a restricted-entry interval is in effect to perform certain activities as provided in this section, provided that the agricultural employer ensures all of the applicable conditions of this section and § 170.605 of this part are met.

(a) *Exception for activities with no contact.* A worker may enter a treated area during a restricted-entry interval if the agricultural employer ensures that all of the following conditions are met:

(1) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants. This exception does not allow workers to perform any activities that involve contact with treated surfaces even if workers are wearing personal protective equipment.

(2) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required by § 170.405(b)(3) or the pesticide product labeling have been met.

(b) *Exception for short-term activities.* A worker may enter a treated area during a restricted-entry interval for short-term activities, if the agricultural employer ensures that all of the following requirements are met:

(1) No hand labor activity is performed.

(2) The time in treated areas where a restricted-entry interval is in effect does not exceed one hour in any 24-hour period for any worker.

(3) No such entry is allowed during the first 4 hours after the application ends.

(4) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required by § 170.405(b)(3) or the pesticide product labeling have been met.

(c) *Exception for an agricultural emergency.* (1) An agricultural emergency means a sudden occurrence or set of circumstances that the agricultural employer could not have anticipated and over which the agricultural employer has no control, that requires entry into a treated area during a restricted-entry interval, and when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. Losses resulting from mismanagement cannot be included when determining whether a loss is substantial.

(2) A worker may enter a treated area where a restricted-entry interval is in effect in an agricultural emergency to perform tasks necessary to mitigate the effects of the agricultural emergency, including hand labor tasks, if the agricultural employer ensures that all the following criteria are met:

(i) The State department of agriculture, or the State or Tribal agency responsible for pesticide enforcement declares an agricultural emergency that applies to the treated area, or agricultural employer has determined that the circumstances within the treated area are the same as circumstances the State department of agriculture, or the State or Tribal agency responsible for pesticide enforcement has previously determined would constitute an agricultural emergency.

(ii) The agricultural employer determines that the agricultural establishment is subject to the circumstances that result in an agricultural emergency meeting the criteria of paragraph (c)(1) of this section.

(iii) If the labeling of any pesticide product applied to the treated area requires workers to be notified of the location of treated areas by both posting and oral notification, then the agricultural employer must ensure that no individual worker spends more than four hours out of any 24-hour period in treated areas where such a restricted-entry interval is in effect.

(iv) No such entry is allowed during the first 4 hours after the application ends.

(v) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required by § 170.405(b)(3) or the pesticide product labeling have been met.

(d) *Exceptions for limited contact and irrigation activities.* A worker may enter a treated area during a restricted-entry interval for limited contact or irrigation activities, if the agricultural employer ensures that all of the following requirements are met:

(1) No hand labor activity is performed.

(2) No worker is allowed in the treated area for more than eight hours in a 24-hour period.

(3) No such entry is allowed during the first 4 hours after the application ends.

(4) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required by § 170.405(b)(3) or the pesticide product labeling have been met.

(5) The task is one that, if not performed before the restricted-entry interval expires, would cause substantial economic loss, and there are no alternative tasks that would prevent substantial loss.

(6) With the exception of irrigation tasks, the need for the task could not have been foreseen.

(7) The worker has no contact with pesticide-treated surfaces other than

minimal contact with feet, lower legs, hands, and forearms.

(8) The labeling of the pesticide product that was applied does not require that workers be notified of the location of treated areas by both posting and oral notification.

§ 170.605 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval.

If an agricultural employer directs a worker to perform activities in a treated area where a restricted-entry interval is in effect, all of the following requirements must be met:

(a) The agricultural employer must ensure that the worker is at least 18 years old.

(b) Prior to early entry, the agricultural employer must provide to each early-entry worker the information described in paragraphs (b)(1) through (8) of this section. The information must be provided orally in a manner that the worker can understand.

(1) Location of early-entry area where work activities are to be performed.

(2) Pesticide(s) applied.

(3) Dates and times that the restricted-entry interval begins and ends.

(4) Which exception in § 170.603 is the basis for the early entry, and a description of tasks that may be performed under the exception.

(5) Whether contact with treated surfaces is permitted under the exception.

(6) Amount of time the worker is allowed to remain in the treated area.

(7) Personal protective equipment required by the pesticide product labeling for early entry.

(8) Location of the pesticide safety information required by § 170.311(a) and the location of the decontamination supplies required by § 170.605(h).

(c) Prior to early entry, the agricultural employer must ensure that each worker either has read the applicable pesticide product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements and statements related to human hazards or precautions, first aid, and user safety.

(d) The agricultural employer must ensure that each worker who enters a treated area during a restricted-entry interval is provided the personal protective equipment specified in the pesticide product labeling for early entry. The agricultural employer must ensure that the worker uses the personal protective equipment as intended according to manufacturer's instructions and follows any other applicable requirements on the pesticide product labeling. Personal protective equipment must conform to the standards in § 170.507(b)(1) through (9).

(e) The agricultural employer must maintain the personal protective equipment in accordance with § 170.507(c) and (d).

(f) The agricultural employer must ensure that no worker is allowed or directed to wear personal protective equipment without implementing measures sufficient to prevent heat-related illness and that each worker is instructed in the prevention, recognition, and first aid treatment of heat-related illness.

(g) The agricultural employer must instruct each worker on the proper use and removal of the personal protective equipment, and as appropriate, on its cleaning, maintenance and disposal. The agricultural employer must not allow or direct any worker to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(h) During any early-entry activity, the agricultural employer must provide decontamination supplies in accordance with § 170.509, except the decontamination supplies must be outside any area being treated with pesticides or subject to a restricted-entry interval, unless the decontamination supplies would otherwise not be reasonably accessible to workers performing early-entry tasks.

(i) If the pesticide product labeling of the product applied requires protective eyewear, the agricultural employer must provide at least one pint of water per worker in portable containers for eyeflushing that is immediately available to each worker who is performing early-entry activities.

(j) At the end of any early-entry activities the agricultural employer must provide, at the site where the workers remove personal protective equipment, soap, single-use towels and at least three gallons of water per worker so that the workers may wash thoroughly.

§ 170.607 Exceptions to personal protective equipment requirements specified on pesticide product labeling.

(a) *Body protection.* (1) A chemical-resistant suit may be substituted for coveralls. If a chemical-resistant suit is substituted for coveralls, any labeling requirement for an additional layer of clothing beneath the coveralls is waived.

(2) A chemical-resistant suit may be substituted for coveralls and a chemical-resistant apron.

(b) *Boots.* If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(c) *Gloves.* If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during activities with plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they must be worn only with chemical-resistant liners and they must not be worn for any other use.

(d) *Closed systems.*(1) When pesticides are being mixed or loaded using a closed system that meets all of the requirements in paragraph (d)(2) of this section, and the handler employer meets the requirements of paragraph (d)(3) of this section, the following exceptions to labeling-specified personal protective equipment are permitted:

(i) Handlers using a closed system to mix or load pesticides with a signal word of ''DANGER'' or ''WARNING'' may substitute a long-sleeved shirt, long pants, shoes and socks, chemical-resistant apron, protective eyewear, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Handlers using a closed system to mix or load pesticides other than those specified in paragraph (d)(1)(i) of this section may substitute protective eyewear, long-sleeved shirt, long pants, and shoes and socks for the labeling-specified personal protective equipment.

(2) The exceptions of paragraph (d)(1) of this section apply only in the following situations:

(i) Where the closed system removes the pesticide from its original container and transfers the pesticide product through connecting hoses, pipes and couplings that are sufficiently tight to prevent exposure of handlers to the pesticide product, except for the negligible escape associated with normal operation of the system.

(ii) When loading intact, sealed, water soluble packaging into a mixing tank or system. If the integrity of a water soluble packaging is compromised (for example, if the packaging is dissolved, broken, punctured, torn, or in any way allows its contents to escape), it is no longer a closed system and the labeling-specified personal protective equipment must be worn.

(3) The exceptions of paragraph (d)(1) of this section apply only where the handler employer has satisfied the requirements of § 170.313 and all of the following conditions:

(i) Each closed system must have written operating instructions that are clearly legible and include: Operating procedures for use, including the safe removal of a probe; maintenance, cleaning and repair; known restrictions or limitations relating to the system, such as incompatible pesticides, sizes (or types) of containers or closures that cannot be handled by the system; any limits on the ability to measure a pesticide; and special procedures or limitations regarding partially-filled containers.

(ii) The written operating instructions for the closed system must be available at the mixing or loading site and must be made available to any handlers who use the system.

(iii) Any handler operating the closed system must be trained in its use and operate the closed system in accordance with its written operating instructions.

(iv) The closed system must be cleaned and maintained as specified in the written operating instructions and as needed to make sure the system functions properly.

(v) All personal protective equipment specified in the pesticide product labeling is immediately available to the handler for use in an emergency.

(vi) Protective eyewear must be worn when using closed systems operating under pressure.

(e) *Enclosed cabs.* (1) If a handler applies a pesticide from inside a vehicle's enclosed cab, and if the conditions listed in paragraph (e)(2) of this section are met, exceptions to the personal protective equipment requirements specified on the product labeling for applicators are permitted as provided in paragraph (e)(3) of this section.

(2) All of the personal protective equipment required by the pesticide product labeling for applicators must be immediately available and stored in a sealed container to prevent contamination. Handlers must wear the applicator personal protective equipment required by the pesticide product labeling if they exit the cab within a treated area during application or when a restricted-entry interval is in effect. Once personal protective equipment is worn in a treated area, it must be removed before reentering the cab to prevent contamination of the cab.

(3) Handlers may substitute a long-sleeved shirt, long pants, shoes and socks for the labeling-specified personal protective equipment for skin and eye protection. If a filtering facepiece respirator (NIOSH approval number prefix TC–84A) or dust/mist filtering respirator is required by the pesticide product labeling for applicators, then that respirator need not be worn inside the enclosed cab if the enclosed cab has a properly functioning air ventilation system which is used and maintained in accordance with the manufacture's written operating instructions. If any other type of respirator is required by the pesticide labeling for applicators, then that respirator must be worn.

(f) *Aerial applications*—(1) *Use of gloves.* The wearing of chemical-resistant gloves when entering or leaving an aircraft used to apply pesticides is optional, unless such gloves are required on the pesticide product labeling. If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(2) *Open cockpit.* Handlers applying pesticides from an open cockpit aircraft must use the personal protective equipment specified in the pesticide product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A helmet with a face shield lowered to cover the face may be substituted for protective eyewear.

(3) *Enclosed cockpit.* Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(g) *Crop advisors.* (1) Provided the conditions of paragraphs (g)(2) through (g)(4) of this section are met, crop advisors and their employees entering treated areas to perform crop advising tasks while a restricted-entry interval is in effect may substitute either of the following sets of personal protective equipment for the personal protective equipment specified on the pesticide labeling for handler activities:

(i) The personal protective equipment specified on the pesticide product labeling for early entry.

(ii) Coveralls, shoes plus socks and chemical-resistant gloves made of any waterproof material, and eye protection if the pesticide product labeling applied requires protective eyewear for handlers.

(2) The application has been complete for at least four hours.

(3) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required by § 170.405(b)(3) or the pesticide product labeling have been met.

(4) The crop advisor or crop advisor employee who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

§ 170.609 Equivalency requests.

(a) States and Tribes that have promulgated worker protection regulations to protect agricultural workers and pesticide handlers from occupational pesticide exposure effective prior to January 1, 2016, have the option of requesting authority to continue implementing any provision(s) of the State's or Tribe's existing regulations that provides equivalent or greater protection in lieu of implementing any similar provision(s) in this part.

(b) States or Tribes must submit requests for the authority to continue implementing State or Tribal regulation provision(s) in lieu of any similar provision(s) in this part by *June 29, 2016.* The request must be in the form of a letter from the State or Tribe to EPA that includes all of the following:

(1) Identification of the provision(s) of this part for which the State or Tribe is requesting regulatory equivalency.

(2) Appropriate documentation establishing that the pertinent State or Tribal worker protection provision(s) provides environmental and human health protection that meets or exceeds the protections provided by the identified provision(s) in this part.

(3) Identification of any additional modifications to existing State or Tribal regulations that would be necessary in order to provide environmental and human health protection that meets or exceeds the similar provisions of this part, and an estimated timetable for the State or Tribe to effect these changes.

(4) The expected economic impact of requiring compliance with the requirement(s) of this part in comparison with compliance with the State or Tribal requirement(s), and an explanation of why it is important that employers subject to the State or Tribal authority comply with the State or Tribal requirement(s) in lieu of similar provision(s) in this part.

(5) The signature of the designated representative of the State or Tribal agency responsible for pesticide enforcement.

(c) EPA's Office of Pesticide Programs will review the State's or Tribe's letter and supporting materials and determine whether the State or Tribal provision(s) provide environmental and human health protection that meets or exceeds the comparable provision(s) of this part.

(d) EPA's Office of Pesticide Programs will inform the State or Tribe of its determination through a letter. The letter will either:

(1) Authorize the State or Tribe to continue implementing its worker protection regulatory provision(s) in lieu of the comparable provision(s) of this part; or

(2) Deny the State or Tribe authorization to continue implementing its worker protection regulatory provision(s) in lieu of the comparable provision(s) of this part and detail any reasons for declining authorization.

(e) *Subsequent revisions.* Any State or Tribe that has received authorization from EPA through the process outlined in this section to continue implementing its State or Tribal worker protection regulatory provision(s) must inform EPA by letter within six months of any revision to the State or Tribal worker protection laws or regulations. The letter must contain the same information outlined in paragraph (b) of this section. The State or Tribe may continue implementing provisions of its worker protection regulations identified under paragraph (b) of this section unless and until EPA informs the State or Tribe through a letter that EPA has determined that the State's or Tribe's worker protection regulations no longer provide environmental and human health protection that meets or exceeds the comparable provision(s) of this part based on the revisions.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 447

Medicaid Program; Methods for Assuring Access to Covered Medicaid Services; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2328–FC]

RIN 0938–AQ54

Medicaid Program; Methods for Assuring Access to Covered Medicaid Services

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period provides for a transparent data-driven process for states to document whether Medicaid payments are sufficient to enlist providers to assure beneficiary access to covered care and services consistent with section 1902(a)(30)(A) of the Social Security Act (the Act) and to address issues raised by that process. The final rule with comment period also recognizes electronic publication as an optional means of providing public notice of proposed changes in rates or ratesetting methodologies that the state intends to include in a Medicaid state plan amendment (SPA). We are providing an opportunity for comment on whether future adjustments would be warranted to the provisions setting forth requirements for ongoing state reviews of beneficiary access.

DATES: *Effective Date:* These regulations are effective on January 4, 2016.

Comment Date: To be assured of consideration, comments on § 447.203(b)(5) must be received at one of the addresses provided below, no later than 5 p.m. on January 4, 2016.

ADDRESSES: In commenting, please refer to file code CMS–2328–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2328–FC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2328–FC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jeremy Silanskis, (410) 786–1592.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Provisions for Public Comment: We are issuing this final rule with comment period to provide the opportunity for further comment on § 447.203(b)(5) to determine whether further adjustments to the access review requirements would be warranted, including the scope of regular state access reviews in the absence of a triggering circumstance. After consideration of public comments, this final rule with comment period limits the scope of services for which states will be required to review beneficiary access, in order to balance the need for stronger data and processes to ensure beneficiary access with minimizing administrative burden. We believe that additional input would be useful to determine whether modifications of these state access review requirements may be warranted. Therefore, we are providing an opportunity for comment specifically on the access review requirements, including the service categories required for ongoing review, elements of the review, and the timeframe for submission. CMS also requests comment on whether we should allow exemptions based on state program characteristics (for example, high managed care enrollment), the provisions of this rule from which states could be exempted based on these specific program characteristics, and alternatives to ensuring compliance with section 1902(a)(30)(A) of the Act for any exempted services in lieu of the procedures described in this final rule with comment period. For example, the proposed rule included the requirement for states to conduct an access review for all services every 5 years and this final rule with comment period will require that states conduct an access review on five specific service categories (and other categories when the state or CMS has received a significantly higher than usual volume of beneficiary or provider access complaints for a geographic area) every 3 years. The changes in this final rule with comment period resulted in large part from our consideration of comments received from the public, including requests for additional clarity with respect to some of these matters. While we believe these changes will assist states in implementing the access review and monitoring requirements, we are seeking additional comment on

these provisions so that we can determine whether future adjustment of these requirements through additional rulemaking would be warranted. In addition, we are publishing a request for information (RFI) that solicits feedback from stakeholders on whether and which core access measures, thresholds, and appeals processes would provide additional information or approaches that would be useful to us and states in ensuring access to care for Medicaid beneficiaries. We are interested in access measures that would apply regardless of the service delivery approach adopted by the state, and would include access measures applicable for populations enrolled in managed care. Ultimately, our RFI-related goals are to better measure, monitor, and ensure Medicaid access across state program and delivery systems and understand the economic and policy factors that affect access to care. The RFI is published elsewhere in this **Federal Register** along with information on where respondents can send their responses.

I. Background

A. General Information

In the May 6, 2011 **Federal Register** (76 FR 26342), we published the ''Medicaid Program; Methods for Assuring Access to Covered Medicaid Services'' proposed rule (hereinafter referred to as the ''May 6, 2011 proposed rule'') that outlined a standardized, transparent, data-driven process for states to document that provider payment rates are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area as required by section 1902(a)(30)(A) of the Social Security Act (the Act). In the May 6, 2011 proposed rule, we recognized that states must have some flexibility in designing appropriate approaches to demonstrate and monitor access to care, which reflects unique and evolving state service delivery models and service rate structures. Within the proposed rule, we discussed how a uniform approach to meeting the statutory requirement under section 1902(a)(30)(A) of the Act could prove difficult given current limitations on data, local variations in service delivery, beneficiary needs, and provider practice roles. For these reasons, we proposed federal guidelines to frame alternative approaches for states to demonstrate consistency with the access requirement using a standardized, transparent process, rather than setting nationwide standards.

In this final rule with comment period, we are providing increased state flexibility within a framework to document measures supporting beneficiary access to services. This final rule with comment period implements methods for states to use in complying with section 1902(a)(30)(A) of the Act by requiring that states review data and trends to evaluate access to care for covered services and conduct public processes to obtain public input on the adequacy of access to covered services in the Medicaid program. This information will be updated and monitored regularly. Should the data reveal short-comings in Medicaid beneficiaries' access to care, states must take corrective actions. The final rule with comment period also recognizes electronic publication as an optional means of providing public notice of proposed changes in rates or ratesetting methodologies that the state intends to include in a Medicaid state plan amendment (SPA). This final rule with comment period will meet the expectations of the May 6, 2011 proposed rule to establish a transparent data-driven process that ensures that rates are consistent with section 1902(a)(30)(A) of the Act.

B. State Ratesetting and Access to Care

The Medicaid statute requires that states provide coverage to certain groups of individuals, and also requires that such coverage include certain minimum benefits. States may elect to cover other populations and benefits. To give meaning to coverage requirements and options, beneficiaries must have meaningful access to the health care items and services that are within the scope of the covered benefits. This is consistent with the requirements of section 1902(a)(30)(A) of the Act, which provides that states must have methods and procedures to assure that payments to providers are ''sufficient to enlist enough providers so that care and services are available under the plan at least to the same extent that such care and services are available to the general population in the geographic area,'' which we refer to as the ''access requirement.'' Many factors affect whether beneficiaries have access to Medicaid services, including but not limited to: The beneficiaries' health care needs and characteristics; state or local service delivery models; procedures for enrolling and reimbursing qualified providers; the availability of providers in the community; the capacity of Medicaid participating providers; and Medicaid service payment rates to providers. To align with the statutory requirements, states may employ any number of strategies to ensure or improve access to care that are targeted toward one or more of these factors.

We have not previously defined through federal regulation an approach to guide states in meeting the statutory access requirement at section 1902(a)(30)(A) of the Act. In the absence of federal guidance and a clear process for monitoring and ensuring access, at times budget-driven payment changes in state Medicaid programs led to confusion and litigation for states and to possible access problems for beneficiaries. CMS's review of state payment rate methodologies for compliance with this requirement was on a case-by-case basis and was hampered by the lack of consistent information related to beneficiary access. We historically relied on state certifications and available supporting information to conclude that Medicaid payment rates met the statutory standards.

In the May 6, 2011 proposed rule, we proposed to adopt an approach for states to analyze access to care for Medicaid services through data and information from beneficiaries and providers. The approach specifically focused on: (1) The extent to which enrollee needs are met; (2) the availability of care and providers; and (3) changes in beneficiary utilization. The purpose of the proposed regulation was not to create an access standard or rate thresholds that each state must meet, but to develop a standard process for each state to follow in documenting access to care. The regulation proposed to require that states conduct regular reviews of Medicaid access to care that rely upon: Payment data, trends in utilization, provider enrollment, feedback from providers and beneficiaries, and other pertinent information that describes access to Medicaid services. The access data reviews would be used to inform state payment changes as well as our approval decisions when states proposed provider payment reductions. In addition, the proposed rule specified that states must conduct a public process when reducing Medicaid payment rates and monitor changes in access to care after payment reductions are approved by us and go into effect.

Earlier this year, the Supreme Court decided in *Armstrong* v. *Exceptional Child Center, Inc.,* 135 S. Ct. 1378 (2015) that the Medicaid statute does not provide a private right of action to providers to enforce state compliance with section 1902(a)(30)(A) of the Act in

federal court. As a result, provider and beneficiary legal challenges are not available to supplement CMS review and enforcement to ensure beneficiary access to covered services. To strengthen CMS review and enforcement capabilities, this final rule with comment period provides for the development of needed information to monitor and measure Medicaid access to care. The final rule with comment period will provide more transparency on access in Medicaid fee-for-service (FFS) systems than ever before and allow us to make informed data-driven decisions and document our decisions when considering proposed rate reductions and other methodology changes that may reduce beneficiaries' abilities to receive needed care. In addition, because the proposed rule was issued several years prior to the Armstrong decision and therefore does not address CMS' or states' role in light of Armstrong's limits on providers' and beneficiaries' ability to take legal action regarding access, CMS is also issuing a Request for Information to obtain public input into additional approaches to Medicaid's statutory access requirements for CMS to consider.

While states will continue to have the discretion to set program rates and improve access to care through a variety of strategies, this final rule, and any additional measures we adopt, will increase the information available to CMS, to ensure that rates meet the requirements of section 1902(a)(30)(A) of the Act and that access improvement strategies work to improve care delivery when there are deficiencies. We are also developing internal standard operating procedures to bolster the administrative record that is used to document compliance with the final rule for individual SPAs and ensure that there is consistent national application of these policies.

C. Medicaid Service Delivery Systems and Provider Payment Methodologies

States have broad flexibility under the Act to establish service delivery systems for covered health care items and services, to design the procedures for enrolling providers of such care, and to set the methods for establishing provider payment rates. For instance, many states provide medical assistance primarily through capitated managed care arrangements, while others use FFS payment arrangements (with or without primary care case management). Increasingly, states are developing service delivery models that emphasize medical homes, health homes, or broader integrated care models to provide and coordinate medical services. The delivery system design and accompanying payment methodologies can significantly shape beneficiaries' abilities to access needed care by facilitating the availability of such care. In addition, the delivery system model and payment methodologies can improve access to care by making available care management teams, physician assistants, community care coordinators, telemedicine and telehealth, nurse help lines, health information technology and other methods for providing coordinated care and services and support in a setting and timeframe that meet beneficiary needs.

We have issued a series of State Medicaid Directors (SMD) letters to promote and provide guidance on pathways to implementing integrated care models which can provide higher quality care at lower cost. We have also worked with states to explore innovative approaches to improving care and lowering cost through the Innovation Accelerator Program, the Medicaid Value-Based Learning Collaborative series, group workshop sessions, and one-to-one technical assistance discussions. All of these efforts seek to drive systemic changes in the Medicaid program that manage program costs consistent with the economy and efficiency provisions of section 1902(a)(30)(A) of the Act while also promoting the quality of care.

As state delivery system models have evolved, so have their provider payment systems. For most services, states develop rates based on the costs of providing the service, a review of the amount paid by commercial payers in the private market, or as a percentage of rates paid under the Medicare program for equivalent services. Often, rates are updated based on specific trending factors such as the Medicare Economic Index or a Medicaid trend factor that incorporates a state-determined inflation adjustment rate. Rates may include incentive payments that encourage providers to serve Medicaid populations and improve care. For instance, some states have authorized Medicaid providers to receive separate payments for treatment services and for care coordination and care management. Some states have increased provider payments based on achievement of certain specified quality or health outcome measures.

We have worked with states to design payment and service delivery systems to ensure program savings are aligned with better care quality and promote rather than reduce access to services. Although states may experience reductions in service utilization or overall provider payments for high cost services as a result of program innovations that emphasize preventive care and divert individuals into more appropriate treatment modalities, including serving them in the most integrated setting appropriate to the needs of the individual consistent with *Olmstead* v. *L.C.* 527 S.Ct. 581 (1999), we do not see those reductions as being at odds with the statutory requirements or provisions described in this final rule with comment period. The provisions of the final rule with comment period allow states the opportunity to transparently discuss the methods and analyses that they use to demonstrate compliance with section 1902(a)(30)(A) of the Act. The analysis and the follow-up monitoring data should clarify whether and how changes in care and payment data result from delivery and payment systems reform rather than reductions in access to care.

The flexibility in designing service delivery systems and provider payment methodologies, as described above, is consistent with the requirement in section 1902(a)(30)(A) of the Act that state Medicaid plans must provide: Such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan as may be necessary to safeguard against unnecessary utilization of such care and services. As well, states must assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the same extent that such care and services are available to the general population in the geographic area.

Consistent with the requirement in section 1902(a)(30)(A) of the Act to provide payment for quality care in an effective and efficient manner, states can use their ratesetting policies to seek the best value. Achieving best value has been a key strategy for some states that have attempted to reduce costs in the Medicaid program in these difficult fiscal times. We do not intend to impair states' abilities to pursue that goal, or to impair states' abilities to explore innovative approaches to providing services and lowering costs for other reasons. In this final rule with comment period, we hope to clarify that, although states must demonstrate that beneficiaries have access to covered services at least comparable to others in the geographic area, this access can be through service delivery networks, using payment methodologies different from other individuals in the geographic area. Comparable access does not

necessarily require that beneficiaries obtain services from the same providers, or the same number of providers, as other individuals in the geographic area.

D. Modifications to State Payment Rates

Payment rates should be neither too low nor too high to ensure access to care for Medicaid beneficiaries and to ensure the economy and efficiency of Medicaid services and spending. Setting total payments too high does not necessarily improve beneficiary access. This is particularly true when higher payments are targeted to select providers and do not necessarily translate into improved access to services. Payment reductions or other adjustments to payment rates can help to manage Medicaid program costs and ensure efficiency of service provision, without necessarily violating requirements to ensure access to care. For example, a state may amend its program to use a selective contract to provide incontinence supplies which results in lower payment rates for those supplies while maintaining statewide access to those supplies. Or a state may reduce payments for hospital readmissions to encourage the hospital to collaborate with a primary care case management provider in the community. A state may also rebalance its long term services and supports spending consistent with *Olmstead* v. *L.C.* 527 S. Ct. 581 (1999) to ensure that older adults and individuals with disabilities can receive high quality community-based services.

However, payment reductions or other adjustments can, in some circumstances, compromise beneficiary access to services. Consequently, we affirm in this final rule with comment period that such payment rate changes be made only with consideration of the potential impact on access to care for Medicaid beneficiaries and with effective processes for assuring access. Payment rate changes do not comply with the Medicaid access requirements if they result in a denial of sufficient access to covered care and services. Non-compliant changes could adversely affect beneficiaries' abilities to obtain needed, cost-effective preventive care, create stress on safety-net providers, and counteract state delivery reform efforts that seek to reduce cost and increase quality.

At times, budget-driven payment changes have led to confusion among states and providers about the analysis required to demonstrate compliance with Medicaid access requirements at section 1902(a)(30)(A) of the Act. States attempting to reduce Medicaid costs through payment rate changes have increasingly been faced with litigation challenging payment rate reductions as inconsistent with the statutory access provision. Further, resulting court decisions have not offered consistent approaches to compliance. These decisions have at times left states, providers, and beneficiaries without clear and consistent guidelines and resulted in uncertainty in moving forward in designing service delivery systems and payment methodologies. For instance, several federal Courts of Appeals have addressed access and payment issues, but there has been no consensus concerning the data or standards that would be relevant in determining compliance with the Medicaid statute. More recently, in March 2015, the Supreme Court ruled in *Armstrong* v. *Exceptional Child Center, Inc.,* 135 S. Ct. 1378 (2015) that the Medicaid statute does not provide a private right of action for providers and beneficiaries to challenge payment rates in federal court. The lack of a private right of action underscores the need for stronger non-judicial processes to ensure access, including stronger processes at both the state and federal levels for developing data on beneficiary access and reviewing the effect on beneficiary access of changes to payment methodologies. In issuing this final rule with comment period, we have reviewed options to ensure that states are adhering to the statute in light of the absence of a private right of action for noncompliance in federal court following the Armstrong decision.

In the May 6, 2011 proposed rule, we intended to establish consistent procedures that all states would follow in reviewing and understanding Medicaid access to care on an ongoing basis and monitoring access after reducing or restructuring rates. Specifically, we proposed that states conduct ongoing access reviews for all Medicaid services over 5-year periods that evaluate: The extent to which enrollee needs are met; the availability of care and providers; and changes in beneficiary utilization of covered services. We proposed that within the reviews, states would need to include information about access gathered through ongoing beneficiary feedback mechanisms and comparisons of Medicaid payments to Medicare, commercials rates, or Medicaid service costs. We proposed that when states reduce or restructure rates in ways that could harm access to care, they consider concerns raised by beneficiaries and stakeholders and develop and monitor indices to ensure sustained access after implementing the rate changes. States would have the discretion to choose the data used to measure and analyze access to care and mechanisms to receive information from beneficiaries and other stakeholders.

This final rule with comment period recognizes the importance of stronger processes and data to ensure access to care while supporting state flexibility to design the appropriate measures to demonstrate and monitor access to care, which reflect the unique and evolving state service delivery models and service rate structures. A uniform approach to meeting the statutory requirement under section 1902(a)(30)(A) of the Act could prove challenging at this time, given local variations in service delivery, beneficiary needs, provider practice roles, and limitations on data. At this time, we are issuing this final rule with comment period to establish approaches for states to demonstrate consistency with the access requirement using a consistent, transparent process, rather than setting nationwide standards. These approaches will also strengthen our ability to make sound and data-driven decisions about the adequacy of state payment rates.

This final rule with comment period will not directly require states to adjust payment rates; nor will it require states to adopt policies that are inconsistent with efficiency, economy, and quality of care. Even if access issues are discovered as a result of the analysis that is required under this rule, states may be able to resolve those issues through means other than increasing payment rates. This rule requires that beneficiary access must be considered in setting and adjusting payment methodologies for Medicaid services. If a problem is identified, any number of steps, including payment increases, might be appropriate to address the problem, such as: Redesigning service delivery strategies or improving provider enrollment and retention efforts. This final rule with comment period provides that we will review these access issues in making SPA approval decisions, and describes a more consistent and transparent way for states to collect and analyze the necessary information to support such reviews.

We consider the requirements of this final rule with comment period as a component of a broader strategy to ensure access in the Medicaid program. However, the 2011 proposed rule did not anticipate the Supreme Court decision: *Armstrong* v. *Exceptional Child Center, Inc.,* 135 S. Ct. 1378 (2015), which underscored the primacy of CMS's role in ensuring access. For this reason, CMS may consider

additional approaches to promote access to care. We will, for example, examine the feasibility of establishing a core set of access metrics and thresholds that can be universally applied across all states and services, as well as appropriate ways to gather that information. Additionally, we will assess the feasibility of processes that target and resolve access to care issues at an individual level, such as robust complaint resolution or formal hearings processes.

Specifically, as we issue this final rule with comment period, we are concurrently issuing a request for information (RFI) that solicits feedback from stakeholders on whether and which core access measures, thresholds, and appeals processes would provide additional information or approaches that would be useful to us and states in ensuring access to care for Medicaid beneficiaries. We are interested in access measures that would apply regardless of the service delivery approach adopted by the state, and would include access measures applicable for populations enrolled in managed care. Ultimately, our RFI-related goals are to better measure, monitor, and ensure Medicaid access across state program and delivery systems and understand the economic and policy factors that affect access to care. The RFI is published elsewhere in this **Federal Register** along with information on where respondents can send their responses.

In addition to issuing this final rule with comment period and the RFI, we also will improve our administrative processes associated with documenting the basis for approval and disapprovals when states propose SPAs that reduce rates or restructure payments in ways that may affect access to care. The information that is gathered by states through the processes described in this final rule with comment, as well as through additional state and CMS processes for ensuring Medicaid access to care, will be the basis for our approval decisions and we will build our administrative SPA records with this information.

II. Summary of Proposed Provisions

We proposed to address state processes for setting payment rates by amending existing regulations at § 447.203, § 447.204, and § 447.205. The following is a summary of our proposals.

A. Documentation of Access to Care and Service Payment Rates

We proposed to revise § 447.203(b) to require state Medicaid agencies to demonstrate access to care by documenting in an access monitoring review plan their consideration of: Enrollee needs; the availability of care and providers; and the utilization of services. The experiences of beneficiaries should be a primary determinant of whether access is sufficient. We solicited comments that would serve to help states narrow the focus of the data review to core elements that would demonstrate sufficient access to care. We received, through public comments, many suggested elements that states could incorporate into access reviews, but there was no consensus among commenters as to measures that could be universally applied across all services. We will continue to study whether a core set of measures and thresholds should be applied to Medicaid access to care and are soliciting more information from stakeholders on this question through the RFI process.

Proposed § 447.203(b)(1)(i) through (iii) would have required states to review and make publically available data trends and factors that measure: Enrollee needs; availability of care and providers; and utilization of services. Consistent with the statutory requirement, we proposed that states review this data by state designated geographic location.

We proposed revisions to § 447.203(b)(1)(iii)(B) to require that the review must include: (1) An estimate of the percentile which Medicaid payment represents of the estimated average customary provider charges; (2) an estimate of the percentile which Medicaid payment represents of one, or more, of the following: Medicare payment rates, the average commercial payment rates, or the applicable Medicaid allowable cost of the services; and (3) an estimate of the composite average percentage increase or decrease resulting from any proposed revision in payment rates.

We proposed in § 447.203(b)(1)(iii)(B)(3) that the Medicaid payment rates must include both base and supplemental payments for Medicaid services. Since states often reimburse service providers according to different payment schedules based on governmental status, we proposed at § 447.203(b)(1)(iii)(C) that states stratify the access review data by state government owned or operated, non-state government owned or operated and private providers.

In § 447.203(b)(1)(iii)(D), we proposed to describe the minimum content that must be in included in the rate review. Specifically, we proposed to require that states describe the measures that were used to conduct the review and their relationship to enrollee needs, the availability of care and providers, service utilization and Medicaid payment rates as compared to other payment structures.

Proposed § 447.203(b)(2) described the timeframe for states to conduct the data review and make the information available to the public through accessible public records or Web sites on an on-going basis for all covered services. We proposed that the annual reviews begin no later than 2013, so states would have the discretion to determine a timeframe to review each covered Medicaid service, as long as the state reviewed a subset of services each year and each covered service is reviewed at least once every 5 years. We provided states this 5-year cycle to reduce the burden while accommodating the need for review to assure compliance with section 1902(a)(30)(A) of the Act.

Because of the need to demonstrate service access in the context of a payment rate reduction, we proposed in § 447.203(b)(3)(i) that states would need to conduct the review relevant to the affected service prior to submission of a SPA implementing a reduction. If the state had already reviewed access relating to the types of services that are subject to the rate reduction within 12 months prior to the proposed rate reduction, and maintained an ongoing monitoring mechanism for beneficiary complaints, its review relative to the rate reduction could be referenced in the previous review. To ensure sustained access to care, we included provisions at § 447.203(b)(3)(ii) that would require states to develop ongoing monitoring procedures through which they periodically review indices to measure sustained access to care. We also proposed at § 447.203(b)(4) to require states to have a mechanism for beneficiary input on access to care, such as hotlines, surveys, ombudsman or other equivalent mechanisms. Additionally, we proposed at § 447.203(b)(5) a corrective action procedure requiring states to submit a remediation plan should access issues be discovered through the access review or monitoring processes. These requirements were proposed to ensure that states would oversee and address future access concerns.

B. Medicaid Provider Participation and Public Process To Inform Access to Care

In § 447.204, we proposed to implement the statutory requirement that Medicaid payment rates must be consistent with efficiency, economy,

and quality and are sufficient to enlist enough providers so that services under the plan are available to beneficiaries at least to the extent that those services are available to the general population. We proposed to revise § 447.204(a)(1) through (a)(2) to require that states consider, when proposing to reduce or restructure Medicaid payment rates, the data collected through the proposed requirement at § 447.203 and undertake a public process that solicits input on the potential impact of the proposed reduction of Medicaid service payment rates on beneficiary access to care. In § 447.204(b), we also proposed to clarify that we may disapprove a proposed rate reduction or restructuring SPA that does not include or consider the data review and a public process. Disapproving the SPA means that a state would not have authority to implement the proposed rate reduction or restructuring and would continue to pay providers according to the rate methodology described in the state plan.

C. Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates

We proposed to clarify and modernize changes to the public notice requirement at § 447.205. We also solicited comments on whether it is advisable to delete the term ''significant'' from § 447.205(a) and explicitly state that notice is required for any change in rates. Alternatively, we solicited comments on whether to adopt a threshold for significance and what that threshold might be.

Further, we proposed to recognize electronic publication as an optional means of publishing payment notice. To do so, we proposed adding § 447.205(d)(iv), which would allow notice to be published on a Web site developed and maintained by the single state Medicaid agency or other responsible state agency that is accessible to the general public on the Internet.

III. Analysis of and Responses to Public Comments

We received at total of 181 comments from states, advocacy groups, providers, provider organizations and individuals on the May 6, 2011 proposed rule. The comments ranged from support for the proposal to specific questions or comments regarding the proposed changes. We received some comments that were outside of the scope of the proposed rule, and therefore, not addressed in this final rule with comment period.

The following are brief summaries of the public comments received, and our responses to those public comments:

A. General Comments

We received many comments that were general in nature and were not specific to any of the provisions of the May 6, 2011 proposed rule. We have summarized and responded to those comments below.

Comment: Several commenters urged CMS to delay implementation of the final rule and work with states to find alternative approaches to measuring access. Commenters also recommended that CMS convene a workgroup with state Medicaid agencies to develop access thresholds. One commenter wrote that CMS and states would be better served to work together to identify reasonable criteria under which state legislatures could make timely and meaningful adjustments to provider rates and states could document the potential impact to access.

Response: We have worked with states and federal partners to identify appropriate access measures and a manageable process for state Medicaid agencies to meet the statutory requirements of section 1902(a)(30)(A) of the Act. This included listening sessions with the National Association of Medicaid Directors to hear state concerns regarding Medicaid access to care and how states were working to address access issues. We worked with many states and providers individually to understand state-specific access issues and the types of information that states and providers rely upon to discuss access to care. Finally, we worked with HHS' Assistant Secretary for Planning and Evaluation (ASPE) to investigate if there are national access measures that may be applied across all states and services for compliance with section 1902(a)(30)(A) of the Act. The policies reflected in this final rule with comment period are consistent with these efforts and the public comments we received. This final rule with comment period is being published after extensive consultation, 4 years after we issued the proposed rule. Further delaying this rule could result in confusion as to the application of the access requirements of section 1902(a)(30)(A) of the Act, especially given the Supreme Court's decision in *Armstrong* v. *Exceptional Child Center, Inc.,* 135 S. Ct. 1378 (2015), which specifically stated that providers do not have a private right of action to enforce section 1902(a)(30)(A) of the Act and that CMS is ultimately responsible for enforcing the statutory requirements. This final rule with comment provides a more systematic approach than currently exists in the Medicaid program for states and us to evaluate beneficiary access to services. The regulatory framework also seeks to ensure that states will have the information necessary to consider and evaluate access issues. We will continue to work closely with states and other partners to appropriately review access to care and address access issues, while remaining cognizant that states need to make program adjustments and operate within budgets. In addition, the RFI will solicit further information on whether and which core access measures, thresholds and appeals processes would provide additional information or approaches that would be useful to us and states in ensuring access to care to Medicaid beneficiaries.

Comment: A number of commenters requested that CMS provide an incentive mechanism to encourage states to address access issues in a timely manner. Commenters specifically suggested that an enhanced administrative matching rate be made available for costs associated with the final rule.

Response: To receive federal financial participation (FFP) for Medicaid services, states must comply with the applicable statutory and regulatory requirements. To the extent that state activities described in this final rule with comment period are for the proper and efficient administration of the Medicaid state plan, the administrative match rate is available to states. We do not have the statutory authority to provide an enhanced administrative match rate for these activities.

Comment: Several commenters requested that CMS clarify what constitutes a payment change. A commenter noted that providers often view years when rates do not increase as payment reductions. Another noted that the preamble of the May 6, 2011 proposed rule refers to ''payments'' and ''rates'' interchangeably but that courts have defined payments to include all Medicaid provider revenues rather than only Medicaid FFS rates. The commenter stated that if the final rule considers all Medicaid revenues received by providers, states may be challenged to make any change to the Medicaid program that might reduce provider revenues. The commenter also suggested that the final rule clarify that the statute refers to specific service rates under the Medicaid state plan or waiver rather than all Medicaid provider payments.

Response: The statute requires that states have methods and procedures relating to Medicaid payment rates so

that such rates are sufficient to enlist enough providers to ensure access to care. The final rule refers to actions to reduce or restructure rates which may result in less access to care. While the final rule applies only to Medicaid fee-for-service rates for state plan covered services, which may not include all Medicaid revenues received by a provider, the rule does contemplate broader payment changes that may affect access, such as reductions to supplemental provider payments. In addition, reviewing additional data will enable CMS to better identify and work with states to address access deficiencies that may arise if rates are not updated for many years, and if necessary to address them through compliance action. At this time, we generally do not review individual Medicaid payment rates as part of the SPA process, but we review the methodologies that states apply to set their provider rates or payments.

This final rule with comment period requires states to review access information on an ongoing basis for primary care services, including physician, federally qualified health centers (FQHC), clinic, dental care, etc.; physician specialist services (for example, cardiology, urology, radiology); behavioral health services, including mental health and substance abuse disorder treatment; pre- and post-natal obstetric services including labor and delivery; and home health services (as defined in § 440.70), whether or not the payment methodologies change. States may also choose to select additional services to review through the access monitoring review plan. In addition, when changes to payment methodologies are made through the SPA process, the state must be able to support that change with documentation that access to care will not be adversely affected, and must monitor access after the change is made. If, for example, a state removes an annual inflation adjustment and therefore freezes rates from 1 year to the next when an increase in inflation was anticipated, a current access review will be required to support approval of a SPA, and the state will also need to continue to monitor access. In addition, whether or not the state changes payment methodologies (including for services outside of the ongoing monitoring and review requirements), required ongoing mechanisms to receive beneficiary and provider feedback would indicate to states and CMS access issues that arise for any Medicaid service.

Comment: Several commenters suggested the final rule clarify that all state actions pertaining to provider payment rate setting, including legislatively mandated rate reductions, are subject to the access analysis and public process requirements and that legislatively mandated rate cuts cannot be implemented retroactively.

Response: We agree with the commenters that it is important for states to evaluate access any time the state proposes a change to its Medicaid reimbursement methodologies that will result in a reduction or restructuring of provider rates. This final rule with comment period does not provide for exceptions to this requirement to review access when there is a state legislative requirement. But nothing in this rule changes the longstanding policies that permit a state to submit a SPA with an effective date as early as the first day of the quarter in which a plan is submitted (but only after public notice of the new rates have been issued). This policy permits states flexibility to implement approvable rate changes without delay while it undergoes federal review. Thus, states may continue to implement rate reductions retroactively to the first day of the quarter in which an approvable SPA is submitted to CMS.

Comment: Several commenters requested that we make the following data public for all providers, beneficiaries, and stakeholders to review and comment upon: (1) Data analysis and any supporting documentation; (2) SPA submissions and supporting documentation; and (3) all communication between CMS and states pertaining to data analysis and SPAs.

Response: In this rule, we require states to make the data analysis and supporting documentation available both to the public and to CMS. While publication of specific information related to SPA submissions and disposition is not required under this final rule with comment period, these materials may be available through Freedom of Information Act (FOIA) requests. We recommend that states publish the access monitoring review plans and subsequent data collected through those plans on their Web sites for full transparency. Furthermore, we continue to post approved SPAs on the *www.Medicaid.gov* Web site and will post state access review plans so that they are publicly available. Issuing all of the communications and documentation associated with the SPA review process as it is ongoing would add burden without adding significant relevant information, and would significantly slow the process for CMS to review and approve state submissions, many of which are time sensitive.

Comment: Many commenters requested that we broaden the proposed regulatory framework to apply to provider payment rates beyond those authorized under the Medicaid state plan. Commenters specifically requested that the regulation apply to rates paid by Medicaid managed care organizations and rates paid under Medicaid waiver programs. Many commenters were concerned that a proposal to address access issues under managed care delivery systems is needed. Some commenters called for specific revisions to managed care regulations to set forth clearer standards for managed care rate reviews. One commenter suggested that CMS should incorporate into the actuarial soundness review, standards for transparency in rate setting for managed care organizations and require states to evaluate the impact of managed care rate cuts on access. Another commenter offered that the rule should be extended to apply to children enrolled in managed care.

Response: As stated in the May 6, 2011 proposed rule, section 1902(a)(30)(A) of the Act specifically applies to payment for care and services available under the state plan, which we interpret to refer to payments to providers and not to capitated payments to managed care entities. While Medicaid access to services under managed care arrangements is an important issue, that issue is addressed through reviews of network sufficiency and managed care quality review processes. As a result, we are not addressing access to care under managed care arrangements in this rulemaking effort. Similarly, methods to assure access to care, including payment methodologies, are reviewed in the approval process for Medicaid waiver and demonstration programs (and, when appropriate, may be monitored in the evaluation of a demonstration program). As a result, we did not specifically address those programs within the context of this rulemaking process. Separate recent CMS initiatives have addressed the framework for Medicaid managed care and home and community based service programs, including access and quality review methods. In January 16, 2014, we issued the ''Home and Community-Based State Plan Services Program, Waivers, and Provider Payment Reassignments'' final rule (79 FR 2947–3039), and on June 1, 2015, we published the ''Medicaid Managed Care, CHIP Delivered in Managed Care, Medicaid and CHIP Comprehensive Quality Strategies, and Revisions related to Third Party Liability'' proposed rule (80 FR 31097–

31297) which proposed to align the rules governing Medicaid managed care with those of other major sources of coverage, including coverage through Qualified Health Plans and Medicare Advantage plans. The Medicaid managed care proposed rule specifically discusses requirements for network adequacy.

Comment: A commenter requested that the regulation explicitly state that all Medicaid long-term services and supports options must be included in these reviews.

Response: All Medicaid services covered under the state plan are included within the scope of the regulatory requirements of this final rule with comment period. We will require an access analysis to support a request for approval of any rate reduction or restructuring for any service in the state plan. As a baseline, the final rule with comment period will require that states review and publish access studies for primary care services; physician specialist services; behavioral health services, including mental health and substance abuse disorder treatment; pre- and post-natal obstetric services including labor and delivery; and home health services on an ongoing basis. States may also select additional services to add to this list. In addition, access studies and continued monitoring will be required for covered services when payment rates have been reduced or restructured, or when the state receives a significant volume of public input raising access to care issues. We are requesting public comment on the service categories selected for inclusion in baseline access analysis. Additional services will need to be reviewed as reductions to payment rates or as access issues become apparent. These additional services must be monitored periodically for a minimum of 3 years following the initial rate reduction.

Comment: One commenter stated that providers can practice cost-shifting by overcharging some patients to make up for low Medicaid rates. The commenter noted that cost-shifting permits equal access even if Medicaid rates are not consistent with economy and efficiency.

Response: The focus of this rule is to provide a reasonable approach for states to document access to care for Medicaid services under the state plan. While we agree with the commenter that the adequacy of payment rates in meeting provider costs are not necessarily the only or the decisive factor in ensuring access to care, in this final rule with comment period, we do not require that states establish access by reviewing the relationship of payment rates to provider costs. Ultimately Medicaid payment rates must sufficient to ensure beneficiary access to care, whether or not providers are shifting costs to other payers.

Comment: A commenter suggested that CMS exempt the effects of care coordination initiatives from access documentation requirements. Other commenters more specifically suggested that CMS should exempt from access documentation requirements services to which beneficiary access is limited by coordination of care activities of home and community based providers, especially when these activities may result in loss of access to care in medically underserved or rural areas.

Response: Care coordination is an important aspect of a well-designed health care system and this regulation does not intend to discourage states from implementing care coordination programs or other efforts that seek to lower cost and improve the quality of care. Such activities should enhance access to care by arranging for individuals to receive appropriate care when needed. Therefore, we do not agree that exemptions to the requirements of this final rule with comment period should be applied to states that offer care coordination.

Comment: Commenters requested specific exceptions to the procedures described in the final rule based on state Medicaid program features. As examples, commenters requested exceptions for states with a majority of individuals enrolled in managed Medicaid and relatively few enrolled in FFS systems, states with all payer payment systems, states that pay Medicare rates, and for services where Medicaid is the only or primary payer of care. The commenters stated that requiring states with these program features to follow the procedures described in the rule would be inefficient.

Response: This final rule with comment period applies to all covered services under the state plan for which payment is made on a FFS basis. However we are soliciting comments through the final rule with comment period on whether we should consider further rulemaking or guidance, as appropriate, to allow for such exemptions to the scope of required access reviews required under § 447.203(b)(5), including whether to permit streamlined approaches to measuring access to care based on specific circumstances within states. For instance, we are particularly interested in whether states with higher percentages of beneficiaries enrolled with managed care organizations should be exempt from conducting the ongoing access data reviews and/or the rate reduction monitoring procedures and what threshold for such exemptions would be appropriate. We understand that many states carve out certain services from managed care capitation rates and continue to pay for those services through FFS. We also understand that many of the individuals who remain in state FFS systems may have complex care needs. We note that states already have significant flexibility within the final provisions of the rule to choose measures within their access monitoring review plans that are tailored to state delivery systems. This could allow, for instance, a state with high levels of managed care enrollment to focus on specific care needs of the populations that remain in FFS after a managed care transition.

Comment: A number of commenters offered that the rule inhibits a state's ability to make adjustments to payment rates that may be necessary to deal with state economic and fiscal crisis. Commenters also noted that CMS should acknowledge that states cannot dismiss local budgetary issues or casually increase revenue to address perceived access to care issues. Other commenters stated that the rule will infringe on states' abilities to make budget decisions. Some commenters raised concerns that the timing of a state legislative session makes it difficult for states to comply with the due dates of the access monitoring review plans.

Response: The final rule with comment period does not prohibit states from implementing (through a SPA) payment rate reductions, as long as beneficiaries will maintain sufficient access to care. In the May 6, 2011 proposed rule, we acknowledged the reality that state budgets often play a role in Medicaid rate-setting. This final rule with comment period requires that states have a process in place to review and monitor access to care to determine the impact various program changes have on beneficiary access. The rule does not prescribe specific state actions to address access to care issues. The rule instead requires procedures that will inform states and CMS of access concerns before SPA approval and on an ongoing basis. This information should be useful to state legislators as they make budgetary decisions and is not intended to hamper the legislative process.

Comment: A commenter requested that we clarify how CMS would handle access issues that arise due to events that are not within the state's control, such as through competitive bidding programs for certain Durable Medical

Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS).

Response: There may be any number of issues that contribute to inadequate service access within state Medicaid programs. Though some causes of access issues may be out of a state's control, the statutory requirements still apply and a state must implement appropriate remediation measures in an effort to address access issues. The strategies for remediation are not limited to increases in payments and states may employ any number of approaches to assuring better access to Medicaid state plan services. To competitively bid for medical devices and supplies, states are currently required to waive ''freedom of choice'' through the exception provided under section 1915(a)(1)(B) of the Act and federal regulation at 42 CFR 431.54(d). Section 1915(a)(1)(B)(i) and the regulation at § 431.54(d) expressly require that adequate services or devices must be available to recipients under a competitive bidding program. States should consider this requirement in structuring their competitive bidding programs and drafting requests for bids. If a state's competitive bidding program does not meet this standard, than it is not in compliance with § 431.54(d) and section 1915(a)(1)(B) of the Act.

Comment: One commenter requested that CMS clarify whether states would need to have CMS approval for a change to payment rates or methodologies prior to implementing a change. The commenter noted that a SPA should be necessary any time a state proposes to implement changes in law, policy, or practice that may result in reduction of payment, regardless of whether it requires modification of existing plan language. Similarly, commenters urged that state Medicaid programs cannot implement provider payment reductions until they have complied with the proposed regulatory process for assuring access to care and CMS has approved the state's SPA to reduce provider payments.

Response: Without exception, our policy, as set forth in § 447.201(b), is that states must receive approval through the SPA process to modify Medicaid payment methodologies. CMS approval ensures that the changes in service payment methodologies comply with all applicable regulatory and statutory requirements and are eligible for FFP. SPAs may be effective no earlier than the first day of the quarter in which a state submits an amendment. While there is no specific regulatory or statutory requirement that a state wait until SPA approval to implement a reduction in payment rates, the state must reimburse providers at approved state plan rates, and thus would need to make corrective payments if the amendment is disapproved.

Comment: Many commenters offered that CMS should require higher standards for services with known access issues. Many providers and provider groups highlighted access challenges unique to the services that they provide. These providers noted access challenges specific to many services, including, but not limited to: Primary care services; mental health services; maternity services; long term care and supports; family planning and contraception; pharmacy; specialty care; dental care; hospital services; End Stage Renal Disease (ESRD) services; physical therapy; transplants for essential body organs; and community and ambulatory care. Similarly, commenters wrote that state access reviews should be segmented to identify the needs of children and individuals with particular health care needs that may go unmet.

Response: We agree that there are unique qualities in service categories, delivery systems, and populations that require independent analysis and that certain categories of service are known to be more prone to access to care issues in the Medicaid program. This is one of the challenges that CMS and states face in selecting access data and measures that are appropriate and also addressing concerns on the part of states regarding administrative burden. Based on the public comments we received, the final rule with comment period requires that ongoing access reviews focus on the following categories of services: Primary care services; physician specialist services (for example, cardiology, urology, radiology); behavioral health services, including mental health and substance abuse disorder treatment; pre- and post-natal obstetric services including labor and delivery; and home health services. We believe these services are both in high demand and commonly utilized by Medicaid beneficiaries (see: The Kaiser Commission on Medicaid and the Uninsured. Medicaid Moving Forward. Julia Paradise. March 2015). States may also select additional services to add to this list. This final rule with comment period also requires that all services that are subject to reduced rates or restructured rates and that could impact access will also need to be reviewed and monitored as part of a state's access monitoring review plan.

We will work with states to identify, based on feedback from beneficiaries and providers and other available information and data, additional services that may require more regular review based on data analysis or known concerns. We are soliciting comments in this final rule with comment period on whether additional categories of service should be added to the list of required ongoing reviews included in the rule.

Comment: Commenters suggested that as part of the final rule, CMS should recognize that some states are entirely or in part Health Professional Shortage Areas (HPSA) or Medically Underserved Areas (MUA) which makes increasing access a more difficult challenge, particularly in a 12-month frame.

Response: We appreciate that some states or geographic areas within states are in HPSAs or MUAs, which present challenges in improving access to care. We are restating that this final rule with comment period does not require specific improvements or timeframes for improvement in access to care when Medicaid access is consistent with the statute and the availability of care for the general population in a geographic area. We recognize that some areas within states may face particular challenges in meeting the health needs of the individuals residing in those areas, and states should describe the challenges within their access reviews and discuss how they affect the Medicaid program in particular.

Comment: Some commenters stated that the proposed rule did not provide an appropriate balance between economy and efficiency and access by allowing states to invoke cost as a constraint only when they can address access issues in some way other than an increase in payment rates. Other commenters noted that emphasizing access to care over economy and efficiency is at odds with many state innovation strategies that aim to lower cost and improve care.

Response: The rule does not limit a state's ability to reduce or restructure rates based on information that the rates are not economic and efficient; rather, it ensures that states take appropriate measures to document access to care consistent with section 1902(a)(30)(A) of the Act. Under the Act, rates are neither economic nor efficient if they do not also ensure that individuals have appropriate access to covered services. We interpret section 1902(a)(30)(A) of the Act as a balanced approach to Medicaid rate-setting and we encourage states to utilize appropriate information and program experience to develop rates to meet all of its requirements. Further, we expect states to document that Medicaid rates are economic and efficient when the state submits changes to payment methodologies through a SPA. We will continue to document as part of our SPA review process why the methodology is in line with statutory

requirements. We will continue to work with state leaders and stakeholders and will consider issuing policy guidance on standards for economy and efficiency through future rulemaking efforts. We are actively working with states toward innovative delivery system designs that promote economy and efficiency through person centered coordinated care and value-based purchasing. We do not view the requirements described in this final rule with comment period or the access provisions under section 1902(a)(30)(A) of the Act in conflict with these efforts.

Comment: A commenter noted that by using only access metrics, it would be very unlikely that state access reviews would ever show that emergency room rates violate the statute because hospitals, in practice, usually do not opt out of serving Medicaid patients. The commenter further stated that rates to Medicaid hospitals could sustain equal access to emergency room services, but could simultaneously be entirely inconsistent with efficiency, economy, and quality of care.

Response: This final rule with comment period focuses specifically on documenting compliance with the access to care requirements of section 1902(a)(30)(A) of the Act. This rule includes a multi-faceted approach to reviewing access data, soliciting feedback from beneficiaries, providers and other stakeholders, and public processes to raise issues specific to state rate actions that may impact access to care. We do not disagree that providers that have a requirement or mission to provide care could still receive Medicaid payment that falls short of their full cost of providing the care furnished. This is an issue that is relevant to the state's rate-setting process, but not necessarily an access issue. These issues could be raised by hospitals in the rate-setting procedures required under section 1902(a)(13)(A) of the Act, but we agree that there could be additional opportunities for public input. We are including in the final rule with comment period, requirements that states develop mechanisms for ongoing provider feedback, which should allow hospitals and other providers who seek higher rates to raise concerns to states.

Comment: A commenter stated that the proposed rule does not provide sufficient discretion to consider market considerations and expressed concern that the proposed rule should require states to implement a process to evaluate access regardless of whether a state is seeking changes to rates. Further, the commenter expressed concern regarding the establishment of a price floor for Medicaid services.

Response: The statute requires Medicaid payment rates to be sufficient to ensure access to care and services for beneficiaries, and this final rule with comment provides considerable flexibility to consider relevant factors including market rates. The requirement to assure access to services is not limited in scope to when a state is proposing a change to its payment rate methodology, but rather, applies to current rates as well. If a state has not changed its Medicaid payment methodology for many years, we believe it is just as important to assess those rates to determine if the rates are still sufficient to ensure access as it is to evaluate the effect of proposed changes to rate methodologies. The provisions of the final rule with comment period allow for state flexibility to take into account market conditions in carrying out their access monitoring review plans. We have considered state concerns with the burden associated with the rule and have focused the ongoing access reviews on: primary care services; physician specialist services (for example, cardiology, urology, radiology); behavioral health services, including mental health and substance abuse disorder treatment; pre- and post-natal obstetric services including labor and delivery; and home health services. Access to these services should be indicators that beneficiaries have ongoing access to primary sources of care. States may also select additional services to add to this list. Ongoing access concerns with other services can be addressed through public input processes also required under this final rule with comment period. We note that the final rule with comment period does not require a payment floor for any Medicaid service.

Comment: One commenter recommended that CMS clearly explain in the rule that the statute includes strong policy against over-utilization of medical services, and it is both appropriate and desirable that states adopt rate policies that will discourage unnecessary utilization of services and embody incentives for more efficient use of health care resources. Commenters wrote that measuring utilization of covered services to determine appropriate access is in conflict with and ignores many states' efforts to ensure appropriate utilization. To remedy this conflict, commenters suggested that CMS clarify the law requires states to enroll enough providers to ensure access rather than ensure that people are actively seeking treatment. These commenters also objected to measuring enrollee needs and the comparison of Medicaid rates to other payer systems.

Response: We agree that state oversight efforts and rate setting policies should discourage over-utilization. We support state efforts to identify utilization associated with inappropriate care through processes that can include prior authorization, claims review, and care management initiatives. Regulations at 42 CFR part 456 specifically discuss the requirements concerning control of the utilization of Medicaid services in certain settings, or for certain services. The regulatory framework presented in this final rule with comment period describes several data points that may be indicators of access within a given state; however, we recognize that no one measure offers a precise indication of sufficient or insufficient access to care. If a state experiences a severe decline in service utilization without a plausible explanation, there may be an access concern worthy of investigation. The same is true of beneficiary needs. If a state experiences a spike in beneficiaries who experience difficulty receiving a particular service in a geographic region, this could indicate access issues and should be investigated. Because the statutory provisions at section 1902(a)(30)(A) of the Act refer to payment rates and comparisons to the general population, it is necessary for states to compare Medicaid payment rates to the rates of Medicare or private payers. We expect that states will evaluate access in consideration of outcome-based care as new approaches to payment and deliver systems take form. The final rule with comment period allows states broad flexibility to consider the impact of new types of payments and care delivery in the access monitoring review plans.

Comment: One commenter requested that CMS specifically examine out-of-state Medicaid payments, particularly in states with historically high-volume, out-of-state use of services.

Response: We have not set out specific requirements for out-of-state providers in this final rule with comment period. To the extent that individuals in the state obtain access to a particular type of service through out-of-state providers, including through telemedicine or telehealth, or to the extent that individuals in a geographic area generally obtain services through out-of-state providers, the state will need to consider such providers in reviewing access to care.

Comment: One commenter stated that the regulatory effort should be expanded to address section 1902(a)(30)(A) of the Act's quality of care requirements.

Response: We currently have several initiatives in place to improve upon quality within Medicaid delivery systems and strengthen quality measures. We are actively engaged with states and other stakeholders in developing quality guidelines, for example the Child and Adult Core Health Care Quality Measurement Sets developed in conjunction with the National Quality Forum. While the focus of this final regulation is limited in scope to access to care, we will continue our work to promote quality improvement within state Medicaid programs and may, in the future, develop regulatory or subregulatory guidance on quality standards. We also recognize that access and quality can be related and beneficiaries may provide beneficial input to states on this relationship through the processes states develop in accordance with this rule.

Comment: Several commenters stated that the requirements of the notice of proposed rule-making create a stricter standard than what is required under the statute. Some commenters offered that the requirement will be difficult to meet and would effectively preclude a state from making program changes.

Response: Prior to the issuance of this final rule with comment period, several states implemented a number of the regulatory provisions we proposed in the May 6, 2011 proposed rule. These states recognized the need to review and monitor data and to work with stakeholders to address potential access issues in light of cuts to Medicaid payment rates. Based on the work of these states, we consider the requirements of the final rule with comment period to be reasonable and achievable. As discussed in the May 6, 2011 proposed rule and in this final rule with comment period, the requirements of the rule do not limit state flexibility in program operation. Nor do the regulatory requirements go beyond the scope of what is necessary to reasonably document beneficiary access to care. Instead, the rule provides states with procedures to document compliance with the statutory requirement to ensure access to care. These procedures permit states considerable flexibility in the analysis of data reflecting access, and in the measures that a state must take to respond to access concerns.

Comment: One commenter stated that Medicare and Social Security have not experienced the same challenges facing Medicaid, likely because their beneficiaries have considerable political clout. The commenter stated that policymakers must factor in this reality when reviewing the proposed rule comments and provide special consideration to comments from those who advocate on behalf Medicaid beneficiaries.

Response: The public comment period is a unique opportunity for the public to contribute to the regulatory process. All comments are considered in the development of final regulations. Input from beneficiaries and their advocates is essential because that input most directly reflects the success or failure to obtain beneficiary access to care. And the importance of that input is not limited to the rulemaking process. This is why this final rule with comment period requires that states maintain ongoing systems to collect and analyze beneficiary comments and complaints concerning access to care. The importance of beneficiary needs and ongoing feedback are highlighted in the framework described in the proposed and final rules.

B. Documentation of Access to Care and Service Payment Rates (§ 447.203)

Comment: Many commenters agreed that it is important for states to conduct access reviews to examine access and related data in different geographic regions throughout the state.

Response: We appreciate support for the proposed data analysis requirements. We have adopted without change many of the proposed requirements in this final rule with comment period.

Comment: Many commenters suggested that we modify the access review procedures to require baseline access analysis prior to taking action to approve provider rate reductions, ongoing monitoring to detect problems, and corrective action when problems are detected. Some commenters offered that CMS should suspend the rate reduction until corrective measures are taken.

Response: Consistent with the commenters' suggestion, this final rule with comment period requires that states conduct baseline reviews of the core services defined in this regulation and monitor access data to ensure compliance with section 1902(a)(30)(A) of the Act. States are also required to review and submit access data when states submit rate proposals that may have a negative impact on access to care and continue monitoring for 3 years afterwards through the process outlined in the access monitoring review plan. In addition, we have revised the ongoing access monitoring review plan activities to require a review of primary care services; physician specialist services; behavioral health services, including mental health and substance abuse disorder treatment; pre- and post-natal obstetric services including labor and delivery; and home health services. We have made this change in consideration of state burden and to focus ongoing access monitoring on highly needed and utilized services. States may also select additional services to add to this list. While the suspension of a rate reduction may be an appropriate corrective action, we are not requiring a specific approach to addressing access issues within the final rule with comment period and we will work with states on appropriate remedies.

Comment: A commenter requested that CMS provide a list of the covered services and benefits that fall under the 5-year access review cycles described in the May 6, 2011 proposed rule to ensure that all services are included.

Response: We proposed that states review all services covered in the Medicaid state plan over 5-year cycles. Medicaid allows states the option to cover certain services and the list of services that individual states would have been required to review would vary. The scope of services proposed for review are described in regulation at 42 CFR part 440. Based on public comments, we have revised the access review requirements in this final rule with comment period to be more targeted so as to only require measurement of a discrete set of services, which provides additional data on access while reducing administrative burden on states. States must conduct access monitoring reviews every 3 years for the following categories of service: Primary care services; physician specialist services (for example, cardiology, urology, radiology); behavioral health services, including mental health and substance abuse disorder treatment; pre- and post-natal obstetric services including labor and delivery; and home health services. States may also need to add additional services to the access monitoring review plan based on access to care concerns that arise out of the information received by states through the public input processes described in this final rule with comment period. We note that states may have additional alternative processes to identify access to care issues for services in addition to those required under the final rule. This rule is not intended to preclude states from continuing to use those processes and does not intend to limit additional state access to care review activities for Medicaid services that are already effective.

Comment: We received several comments that requested additional guidance on how states should review access to consider geography.

Commenters recommended that CMS define the relevant ''geographic area'' that states should use for access comparisons, while others specifically suggested that CMS should require states to assess Medicaid beneficiary access in designated rural geographic locations of a state. One commenter suggested that we require states to review trends and factors as they vary by state geography and to emphasize the importance of geographic variation through specific changes to the regulatory text.

Response: To clarify, states must assure that access is available to Medicaid beneficiaries to the extent that care is available to the general population in a geographic area. The actual definition of geographic area may vary by state and the extent and need to which states review and monitor access based on geographic area may depend on the data and other information that states are required to review as part of the framework of this final rule with comment period. For instance, states may receive information that access to care is an issue in one specific region within the state and focus monitoring and remediation strategies on that region. Other states may have more statewide access concerns that require a county-by-county analysis and strategy to address access on a statewide basis. At this time, we are not defining state geographic areas or the specific geographic considerations that states must include in access reviews. CMS will rely on states and the processes described in this final rule with comment period, including the public processes that allow stakeholders to comment on the access monitoring review plans, to determine appropriate geographic considerations.

Comment: Commenters requested that we clarify the difference between a ''comparable population'' to Medicaid and statutory designation of ''the general population in a geographic area.'' A few commenters wrote that the regulations need to acknowledge that the law requires Medicaid to be compared to the general population. Some commenters stated that the appropriate comparison is between Medicaid and those in the general population regardless of insurance status, while others stated that the comparison to the general population is unrealistic and should be removed from consideration.

Response: The regulation adopts the statutory standard of ''the general population'' and we have applied this in this final rule with comment period. States are allowed to analyze access issues within broad parameters in a manner that appropriately reflects the local health care delivery system of each state, as outlined in this final rule with comment period. A state's rate of insured and uninsured may not be directly related to the ability of an individual on Medicaid to access a covered Medicaid benefit since the ability to access care is different from having the means to pay for care. While the final rule with comment period does not specify how states should make such comparisons to the general population, we note that a state's analysis should be robust and consider both demands for care and whether individuals have an ability to pay for such care if individuals without coverage are included in the analysis.

Comment: Several commenters noted that courts have determined that the term ''general population'' only means people who have private insurance and not the uninsured and requiring Medicaid to compare its coverage to private plans without accounting for the access of the uninsured is an artificial standard.

Response: The final rule does not define standards for measuring medical services available to the general population in a geographic area. States are instead allowed to analyze access issues within broad parameters in a manner that appropriately reflects the local health care delivery system of each state, as outlined in this final rule with comment period.

Comment: Several commenters requested clarification as to how the agency will evaluate the data from access reviews. The commenters also sought clarification as to how CMS would apply or evaluate the data when deciding to approve or disapprove a SPA.

Response: Under this final rule with comment period, states will follow specific procedures to review and monitor access to care and to solicit feedback from stakeholders through ongoing public processes. We also require a public review timeframe for the access monitoring review plan which will allow interested parties to review and comment on states' access monitoring review plans for a period no less than 30 days before the monitoring plan is finalized and submitted to CMS. We will review this information in total when reviewing SPAs but have not, at this time, required any specific thresholds that would determine an amendment to be approved or disapproved. We will document as part of our SPA review process that states are following the process described in this final rule with comment period, that access to care is consistent with the statutory requirements, and the reasons for our determination. We continue to consider whether core measures and access thresholds would help states and CMS assure access to care in the Medicaid program and we are accordingly issuing a RFI, as well as this final rule with comment period, to gather additional information on this topic.

Comment: Commenters requested that we clarify scenarios when restructuring rate methodologies would result in access issues and trigger the requirements of this rule.

Response: There may be any number of payment methodology changes that could harm access to care and we cannot set forth an exhaustive list. One common type of restructuring is a change in the targeting of supplemental payments. States may alter payments in ways that are budget neutral as a whole for the amendment action, but would reduce payments for some providers. For instance, some states make up for low base payment rates through lump sum supplemental provider payments. The supplemental payments are often targeted to certain providers and may be dependent upon the availability of local governments to fund the nonfederal share of payments. A change in supplemental payments that reduces the total amounts that providers receive or shifts funds from one provider to another could result in access to care issues and is one example of a potential payment restructuring that could negatively impact access to care. Where there is uncertainty, we will work with states to help identify other situations where the processes described in this final rule with comment period should apply.

Comment: Several commenters requested that CMS mandate that states make the annual data reviews publically available. Commenters further requested that CMS require states to disclose the reports with a sufficient amount of time to review the data and provide comments prior to the state's submission of a SPA.

Response: We are finalizing the provision to require that states make access data reviews available to the public and to CMS for review. In addition, prior to submitting a SPA that reduces or restructures Medicaid payment rates or otherwise have a negative impact on access to care, states are required to conduct a public process that solicits feedback from stakeholders in consideration of the access reviews conducted by the states. Access monitoring review plans will be published and made available to the public for review and comment for a

period of no less than 30 days, prior to being finalized and furnished to CMS for review.

Comment: We received many comments that requested more detail on how a state can sufficiently demonstrate access to care, including thresholds for sufficient access. Some commenters raised concerns that without mandatory thresholds states would never know CMS' expectations for meeting the requirements of the statute. Other commenters recommended that we provide states with the flexibility to determine the elements most appropriate for review of access to care that are meaningful for their specific populations and programs.

Response: Currently, there are no national standards to demonstrate access for each Medicaid covered service that would take into account differences in state geographic locations. Since the issuance of the May 6, 2011 proposed rule, we have worked with many states to review state data sources and develop monitoring plans to demonstrate compliance with the statute. That experience and the public comments received through this rulemaking process have further suggested that particular measures may be specific to individual services and systems and that states should have some flexibility and discretion in determining the measures and thresholds, to allow states to take into account varying circumstances. We requested comments on specific thresholds that states could use to measure access within their Medicaid programs. While we received some comments with suggestions of thresholds, we did not receive suggestions for metrics that could be applied across all states without additional consideration or compelling evidence that the standards offered in comments would necessarily ensure consistency with section 1902(a)(30)(A) of the Act. We will continue to study whether a core set of measures or thresholds should be applied to the Medicaid program and are soliciting more information from stakeholders through the RFI process described earlier.

Therefore, while we continue to study this issue, in this final rule with comment period we are adopting the proposed multi-faceted approach to reviewing access to care that includes data analysis and feedback from beneficiaries, providers and stakeholders rather than national thresholds. The analysis of this information must also weigh relevant state-specific circumstances. As a result, we are requiring states to have a public review timeframe for the access monitoring review plan which will allow interested parties to review and comment on the state's monitoring plans for a period of no less than 30 days before the monitoring plan is finalized and submitted to CMS.

Comment: Commenters requested that the ongoing access reviews include the agency's summary of the views of beneficiaries and of providers of the covered service obtained through the input of medical care advisory committee under § 431.12(e).

Response: We agree that feedback from beneficiaries and providers on access to care is important and should be considered by states in evaluating access and as they make decisions about Medicaid rates. This final rule with comment period requires that states have a mechanism for ongoing beneficiary input and that states log the volume and nature of responses to beneficiary input. In addition, we have added a requirement that states establish and maintain a similar provider feedback mechanism. Both feedback mechanisms are incorporated into state access monitoring review plans within the final rule with comment period. CMS will rely on information from the beneficiary and provider feedback mechanisms to understand real-time access to care concerns and may require states add services to their access monitoring review plans based on this information. Depending on the nature of the concerns, states may need to take actions to address more immediate needs though, as the concerns may vary, CMS is not specifying actions or timeframes that states must take at this time.

States are expected to solicit feedback during the development of the access monitoring review plan and corrective action plans and could also use the existing Medical Care Advisory Committees for input into the process.

Comment: Several commenters suggested that CMS should develop a template for access monitoring review plans that includes the Medicaid payment rate comparisons, stakeholder feedback, and provider feedback.

Response: Each state Medicaid program is unique, and as such, this final rule with comment period allows states the flexibility to design and implement access measures specific to the characteristics of their state. At this time, we are not issuing a template or specific format for states to conduct their access monitoring review plans. However, CMS will identify model plans for states to consider as they develop their own plans.

Comment: Several comments suggested that the scope of access reviews should be limited to mandatory services. Other comments urged that access reviews only be required where there is considerable empirical evidence of an access problem such as: Primary care; and physician specialist services; and dental services for children. Additional commenters suggested state access reviews should focus on access to specialists, especially pediatric subspecialists.

Response: After careful consideration of all the comments received, we are revising this final rule with comment period to eliminate the requirement that states review all covered services within a 5-year period, and instead will require that states review a discrete set of services provided by various provider types and site of service that are related to particular types of beneficiary needs every 3 years. These are: Primary care services; physician specialist services (for example, cardiology, urology, radiology); behavioral health services (including both mental health and substance abuse disorder treatment services); pre- and post-natal obstetric services including labor and delivery; and home health services. These categories represent frequently used services in Medicaid and can serve as indicators that beneficiaries are receiving access to care. States may at their discretion add additional services to their access review monitoring plans. In addition, we have included a requirement for states to review additional service categories as determined necessary based on the public input processes described in this rule. We note that states may have alternative processes to identify access to care issues for services in addition to those required under the final rule. This rule is not intended to preclude states from continuing to use those processes and does not intend to limit additional state access to care review activities for Medicaid services that are already effective.

Comment: One commenter suggested that FQHC reimbursement rates be given a separate category in the access review process as they receive an advantageous Medicaid reimbursement rate which could skew the lower rates for many Medicaid family planning services.

Response: The final rule requires states to identify payment rate comparisons for service by provide type and site of service. This should address the commenters concerns. We recognize the important role FQHCs play in delivering health care services to Medicaid beneficiaries. We expect that states would include them, as

appropriate, in the ongoing access to care reviews for the types of services that they provide. The statute requires that states pay an all-inclusive prospective payment system (PPS) rate to FQHC providers or an alternative payment methodology that results in payment at least at the PPS rate. The PPS rate recognizes costs associated with all of the Medicaid services that FQHCs provide and is not specific to particular service. So, while services furnished by FQHCs may increase beneficiary access to certain categories of care, payments made to FQHCs are not going to be relevant to the payments made to other types of providers.

Comment: Several commenters suggested that state-level reviews of beneficiary access to specialty pharmacies are critically important for assisting states in determining whether Medicaid beneficiaries' access to specialty pharmacy services under the state plan is at least equivalent to that available to the general population is the geographic area. Commenters also noted that access issues may already exist in most states due to the combination of low dispensing fee rates and insufficient reimbursement for specialty products.

Response: As discussed, this final rule with comment period will require states to review a certain subset of services every 3 years, including primary care services; physician specialist services; behavioral health services, including mental health and substance abuse disorder treatment; pre- and post-natal obstetric services including labor and delivery; and home health services. While we have not included specialty pharmacies, we have included the requirement for states to review access for additional services based on a significantly higher than usual level of beneficiary or provider access complaints. States may also select additional services to add to reviews at their discretion.

Comment: Another commenter expressed concern that states will attempt to satisfy pharmacy access requirements simply by demonstrating or offering the availability of mail order pharmacy, which may not be adequate for certain Medicaid beneficiaries.

Response: Access requirements are not met by the ''availability'' of provider types if the Medicaid population cannot obtain needed services from those provider types. To the extent that mail order pharmacies are not adequate or appropriate for some Medicaid beneficiaries, availability of mail order pharmacies would not constitute access to pharmacy services.

Comment: Several commenters requested that CMS clarify the anticipated approach for reviewing access when a state adds a new service or benefit.

Response: This final rule with comment period clarifies that states must conduct a baseline access review for new services within 3 years of the effective date of the SPAs that authorizes the service for FFP if the service falls under a certain subset of service categories defined in this regulation. All other new services will fall under the rate reduction or payment restructuring protocol outlined in this final rule with comment period whereby SPAs reducing or restructuring payment rates for the services are submitted with an analysis of access to care and are monitored periodically for a minimum period of 3 years.

Comment: Some commenters suggested that CMS allow independent third parties to conduct the access reviews, stating that access reviews should be objective and conducted by an organization/academic institution that is impartial.

Response: Ultimately, states are responsible for ensuring compliance with statutory and regulatory requirements. States have flexibility in determining the available resources to meet the regulatory requirement described in this final rule with comment period. While we are not requiring use of an independent third party to conduct access reviews, the option is certainly available to states. Additionally, we will consider alternative approaches to addressing Medicaid access issues that beneficiaries face through a hearing or complaint driven process. We intend to solicit feedback on the feasibility and implementation options for such an approach through an RFI process.

1. Access Review Data Requirements

Comment: Several commenters suggested that CMS should require states to disclose payment and other claims data states use to conduct their access reviews.

Response: Section 447.203(b)(1) will require states to review and make publically available data trends and factors that measure access, as represented by beneficiary needs, availability of care and providers, utilization of services, and service payment information. These publically available measures will support the SPA submission.

Comment: Comments suggested provider and service specific metrics, threshold, and considerations should be incorporated into the final rule. For instance, one commenter suggested that CMS require an impact analysis of rate cuts on the ability of high Medicaid volume providers to meet staffing requirements and quality and safety standards. Other commenters recommended that the numbers of providers willing to care for Medicaid patients be compared to some measure of patient need to provide an indication of whether access is adequate. Commenters lamented that the rule did not specifically address circumstances related to care in hospitals, family planning centers, long term services and supports and many additional benefit categories.

Response: While we are not adopting any specific metrics at this time, we are continuing to evaluate the feasibility of establishing a set of core metrics and thresholds and are soliciting input from stakeholders on these approaches through the RFI. We considered these comments in developing this final rule with comment period, and hope that the information provided through the public comment process informs state access monitoring review plans. We included examples of a number of metrics that states should consider within the regulatory text. These measures represent the type and scope of information that states should review through the access monitoring review process. As we review state access monitoring review plans, our expectation will be that the plans are robust and are carefully designed to indicate access to care issues as they develop. We also anticipate that stakeholders will provide feedback on state access monitoring review plans, including on proposed, baselines, metrics and thresholds, and that states will review the feedback and make appropriate changes to their monitoring plans.

Comment: Some commenters suggested that the proposed regulations should be revised to allow for some metrics that establish a prima facie assurance that care and services for Medicaid enrollees are available at least to the extent that they are available to the general population in the geographic area. For instance, if at least 80 percent or more of the service providers for a particular service such as hospitals, physicians, labs, etc. in a geographic area are enrolled in the Medicaid program, the commenter offered that would reasonably mean access is available.

Response: As we discussed in the preamble of the May 6, 2011 proposed rule, CMS is not currently proposing national standards to be applied across all service categories or uniformly for all

states. We also think it is important to note that enrollment alone in the Medicaid program does not mean sufficient access is available. There are other factors that must be considered. However, we are continuing to study whether a core set of measures or thresholds should be applied to Medicaid, and, if so, what those specific measures would be, and are soliciting input through the RFI process.

Comment: Several commenters suggested that specific information for specific populations be required data elements within the access reviews. In particular, one commenter suggested children and young adults with ESRD should have specific consideration in access reviews since they have complex care needs. Other commenters suggested that states should examine the needs of adolescents ages 12 to 21 as a distinct subgroup in the pediatric population due to their significant unmet health needs. Others requested that CMS articulate that child and adolescent mental health services are a high priority for monitoring access in recognition of the severe shortages of child and adolescent mental health professionals.

Response: We do not dispute the importance of these types of services and we understand the commenters' concerns. To the extent that states understand that there are specific access issues for certain populations, it would be prudent to develop remediation plans that focus on improving access for those populations. States will be required to review, at a minimum, primary care services; physician specialist services; behavioral health services, including mental health and substance abuse disorder treatment; pre- and post-natal obstetric services including labor and delivery, home health services, and other service categories when the state or CMS has received a significantly higher than usual volume of beneficiary or provider access complaints for a geographic area. States may also select additional services to add to this list. We are requesting comments on the selected categories of services outlined above.

Comment: One commenter suggested that CMS should require that Medicaid payment analyses determine the degree to which Medicaid payments are sufficient by, at a minimum, following the same set of analyses that MedPAC undertakes when assessing the adequacy of Medicare Payments.

Response: States have significant discretion in establishing payment methods across services, providers, and states, whereas Medicare uses national rates adjusted for geography for all services. While some states pay for services through rates based on Medicare fee structures, many services are reimbursed through cost reconciliation or other methodologies that do not follow Medicare approaches. Therefore, it would be difficult to standardize an analysis similar to the MedPAC approach for assessing adequate Medicare payments. As previously discussed, this final rule with comment period allows states considerable discretion to review access based on a state's program and local considerations as long as the review is consistent with the standardized and transparent process described in this final rule with comment period.

Comment: Some commenters suggested that the framework described in the rule relies heavily on Medicaid provider reimbursement rates, beneficiary surveys, and provider engagement, with the latter two considerations being subjective and potentially at odds with one another.

Response: This final rule with comment period requires that states review access information focused on: the availability of care and providers, enrollee needs, and service utilization. In addition, states must consider information from beneficiaries and providers, as well as provider payments. We do not view this information as conflicting, but instead a comprehensive review of access to care that considers a number of factors that may indicate compliance with the statute.

Comment: We received many comments that were critical of the framework of the May 6, 2011 proposed rule which focused on the availability of care and providers, enrollee needs and service utilization. One commenter suggested that CMS should incorporate measures through future rulemaking and guidance, but only after Medicaid and CHIP Payment and Access Commission (MACPAC) completes its process of identifying a set of measures to determine and track access levels. The commenter further suggested that for purposes of the final rule, CMS should identify existing data and measures based on its experience and existing resources rather than the framework described in the proposed rule.

Response: While we appreciate the comment and intend to continue to work with states to identify appropriate access measures, the components of the broad framework that are described in this final rule with comment period are viewed by industry experts as good indicators of access to health care services. We are considering providing states with additional guidance through future rulemaking or subregulatory guidance and are reviewing ways to standardize access monitoring and remediation efforts. In this rule, we require that states review data that considers enrollee needs, the availability of care and providers, and service utilization. Within the framework, this final rule with comment period continues to provide states with significant flexibility in reviewing data to demonstrate and monitor access to care which reflects their local healthcare delivery systems. States also have the ability to add to the framework to better represent access to services within the state.

Comment: Several commenters recommended that CMS consider identifying a set of uniform measures that states must collect data on or that CMS weighs more heavily in its analysis, based on CMS experience and existing studies. While some commenters suggested such uniform data elements would enable access comparisons across states and facilitate best practices, other commenters suggested that CMS provide flexibility to states by permitting the use of other measures based on the strength of the alternatives.

Response: We appreciate the value of common data sets to help compare access across states; however, we also recognize the importance of allowing states flexibility in designing and implementing appropriate access measures which reflect each state Medicaid program. Because each state Medicaid program faces unique challenges and it is difficult to create data sets that uniformly apply across all service categories, we are not at this time requiring specific access measures in the final rule with comment period. As discussed, we will continue to study and solicit feedback on standard data sets through a RFI process.

Comment: Several commenters suggested that consideration be given to race, ethnicity, rural, and urban, primary language spoken, eligibility subgroup, geography, age and income of Medicaid beneficiaries.

Response: We appreciate these suggestions. We have not specified the level of detail at which states are required to investigate access to care. States have the option to add the above elements to their access monitoring efforts and we hope that the access monitoring review plans become more sophisticated over time.

2. Beneficiary Information

Comment: Most commenters expressed support for the provisions requiring a mechanism to solicit

feedback from beneficiaries on access issues. In addition to the feedback mechanisms for beneficiaries, many commenters also suggested mechanisms to gain feedback from service providers, caregivers, and advocates. A few commenters urged that we target feedback on specific issues (for example, mental health, and women's health) and mandate types of feedback mechanisms, while other commenters urged CMS to allow states flexibility to determine the best tools to obtain feedback. Commenters also requested clarification regarding the types of feedback mechanisms CMS would consider acceptable and the standards that CMS would use when reviewing beneficiary input.

Response: We appreciate the commenters' support for this provision and we are finalizing § 447.203(b)(4) that requires states to have mechanisms for obtaining ongoing beneficiary feedback through hotlines, surveys, ombudsman, or other equivalent mechanisms. We continue to offer states the ability to implement feedback mechanisms tailored to their program characteristics and to use feedback mechanisms that are already in place and working to meet the objectives of this final rule with comment period. In consideration of comments from providers and provider groups, we are adding a requirement within the final rule with comment period that states have a mechanism for ongoing provider feedback. While CMS will not formally approve state feedback mechanisms, states are required in this final rule with comment period to maintain a record of the volume and nature of responses to beneficiary feedback.

Comment: One commenter suggested that CMS establish a mechanism for beneficiaries and stakeholders to raise concerns about access issues directly to CMS.

Response: Because each state designs and administers its own Medicaid program within the federal framework, we believe it is most appropriate for beneficiaries and stakeholders to raise access concerns with the state directly, rather than to CMS. To the extent that a beneficiary or stakeholder's access concerns are not addressed by the state adequately, those concerns may be raised to CMS although we are not establishing a formal process at the federal level. As part of the final rule with comment period, states will be required to promptly respond to specific access problems, with an appropriate investigation, analysis, and response. In addition, we are exploring the feasibility of requiring a state level formal hearings process where access to care concerns will be independently heard by a hearings officer. We may propose this process through future rulemaking, which will include notice and opportunity for public comment.

Comment: One commenter encouraged CMS to work with state Medicaid agencies to collect Consumer Assessment of Healthcare Providers and Systems (CAHPS) data for FFS beneficiaries in a similar manner to what is collected for Medicare FFS beneficiaries.

Response: We are currently working with state Medicaid agencies to collect and use the CAHPS survey data for institutional and primary care settings and we will continue to assist states in collecting this or similar data in the future. To the extent possible, we will work with states to use the CAHPS survey data to support the analysis and oversight procedures described in this final rule with comment period.

Comment: Commenters suggested that states should also obtain provider and beneficiary feedback during the development of corrective action plans so that beneficiary and provider experience may better inform the state's actions.

Response: We are finalizing § 447.203(b)(4), which requires states to have a mechanism for obtaining ongoing beneficiary feedback through hotlines, surveys, ombudsman, or other equivalent mechanisms. We are also adding a provision that requires states to have similar mechanisms in place for provider feedback. One mechanism that states could use is the Medical Care Advisory Committees that are already required in federal regulations. We believe that states should solicit feedback during the development of corrective action plans or use the existing Medical Care Advisory Committees for input into the process.

3. Access Review Medicaid Payment Data

Comment: We received numerous comments regarding which factors should or should not be included in the payment rate analysis. Many commenters requested CMS exclude Disproportionate Share Hospital (DSH) payments in the analysis, while other commenters stated these payments should be included. Commenters also suggested that uncompensated care pool payments, Health Information Technology (HIT) payments and other types of supplemental payments be excluded from the rate analysis. One commenter suggested that states should separately show percentiles with and without supplemental payments. Additional commenters stated the payment rate analysis should only include the net amount of payments, including supplemental payments, to the provider, and that payment data should appropriately deduct, or account for any taxes or assessments that are required to be paid by Medicaid providers. Some commenters even suggested a separate payment rate metric to reflect public hospitals and providers that pay the non-federal share of the Medicaid payments.

Response: Section 1902(a)(30)(A) of the Act describes payment rates for Medicaid care and services. Our regulatory purview is to review all state payment rate methodologies through the SPA process to ensure the payment rates are economic, efficient, and sufficient to assure access. The requirements contained in this final rule with comment period set forth a framework for states to use to demonstrate their payment rate methodologies are sufficient to ensure access. To the extent that payments are made to providers outside of a state plan rate methodology (for example, uncompensated care pool payments, Medicaid DSH, or HIT payments), such payments would not be directly included in the state's rate analysis. But rate analysis is only one part of an overall access analysis, and these other payments may affect provider's participation rates in Medicaid by providing additional incentive to serve Medicaid patients.

Comment: We received a significant number of comments regarding the proposed requirement to compare Medicaid rates to the rates of other payers; some commenters supported the proposed requirement while other commenters opposed it. One commenter suggested that the only way CMS could demonstrate that Medicaid access is at least comparable to that of the general population is through a comparison to commercial rates. Another commenter contended that it is difficult to determine actual commercial rates because often this information is considered proprietary. One state expressed concern about not being able to meet this requirement because there are no large commercial plans within the state. Other commenters suggested that it is ineffective to base rate comparisons on other payers' rates alone and some states may be relying on unsound data for comparisons. A few commenters cautioned against using Medicare rates as a comparison, citing that Medicare does not offer the same benefits as Medicaid (for example, comprehensive dental and pediatric) and that the Medicare payment rates do not reflect the costs incurred by the Medicare provider to provide the

services. One commenter sought clarification on whether the review must include all three proposed comparisons or could be limited to at least one.

Response: The framework in the final rule with comment period recognizes that access to covered services may be affected by multiple factors. One such factor is the Medicaid payment rates in comparison to other payers. We maintain that a comparison can be a useful tool for states in determining the adequacy of their rates; however, it should not be relied upon without taking into account other factors that impact access. To the extent a state has issues making comparisons to private or public health payer rates because the data is not available for a particular service, we would expect the state to explain this as part of its analysis and conduct other appropriate reviews of Medicaid rates.

Comment: Some commenters expressed support for a two-pronged review: One comparing Medicaid FFS payments in relation to Medicare payment rates; and Medicaid FFS payments in relation to the payment rates used by Medicaid managed care organizations within the state.

Response: The final rule with comment period requires that states include percentage comparisons of Medicaid payment rates to other public and private health coverage rates within the state for all services reviewed under the access monitoring review plan by provider type and site of service (*e.g.* primary care providers within office settings). We would expect the state to include Medicaid managed care payment rates in these comparisons to the extent practical.

Comment: Some commenters suggested CMS specify that children's access to primary care, specialty care and oral health services must be included in the first reviews conducted by states. Additionally, other commenters suggested that CMS should specify that children's access to dental services must be included in the first review conducted by states, as HHS has placed considerable emphasis on this issue and 5 years is an eternity in the lifetime of a child.

Response: This final rule with comment period requires that the access monitoring review plan include a review of primary care services; physician specialist services; behavioral health services, including mental health and substance abuse disorder treatment; pre- and post-natal obstetric services including labor and delivery, home health services, and for services where either payment rates have been reduced or restructured or where a significantly higher than usual volume of beneficiary, provider, or stakeholder access complaints. Within primary care services, we are including dental care as one of the service categories states must review as part of the access monitoring review plan. We also agree that access needs may vary between pediatric and adult populations and we are requiring states to describe within their plans, the characteristics of the beneficiary populations, including considerations for care, services, and payment variations for pediatric and adult populations, as well as individuals with disabilities.

Comment: One commenter urged CMS not to require the publication of all payers' rates.

Response: This final rule with comment period does not require a state to publish the rates used by other payers. Although we are finalizing the requirement for states to conduct a percentage comparison of Medicaid payment rates to other payers within the state, this is not intended to require the publication of other payers' specific rates.

Comment: Commenters offered that the May 6, 2011 proposed rule does not clarify that access reviews of Medicaid payment data should be collected and provided for each individual item or service rather than in the aggregate. Commenters requested that CMS require transparency of the state's analysis of provider rates and access determination for stakeholders to provide meaningful input of the changes to the state and CMS. The commenters noted that aggregate numbers would not allow an adequate review of potential access issues and would lack the specificity to identify any needed corrective action for individual types of Medicaid services. Some commenters suggested that CMS analyze rates for each code and that committees be established to determine if rates for each code are sufficient. Additionally, commenters stressed the importance that states gather and compare similar data sets from commercial insurers, Medicare, and other payers within their state.

Response: We approve states' rate methodologies for compliance with regulation and statute, but generally do not approve individual service rates unless a state presents a final rate, or a fee schedule, as the output of a rate methodology. This final rule with comment period does not change that policy or imply that CMS will review individual rates for sufficiency. Reviewing individual rates within a fee schedule would not necessarily provide a better determination of whether the rates are sufficient to enlist providers into the Medicaid program or not, since generally providers do not determine whether to provide care to an individual based on the rate for a single service. This final rule with comment period requires states to provide an analysis to compare Medicaid rates to other private and public health payer rates. This analysis will only serve as an indicator of whether low rates may be a source of access issues. A better determination of whether the rates are sufficient to enlist providers into the Medicaid program will be the analysis of enrollee needs, the availability of providers and utilization trends, as well as beneficiary and stakeholder feedback that will be received through the processes described in this rule.

Comment: A commenter noted an error in the proposed regulatory text. Specifically, the May 6, 2011 proposed rule would have required that states calculate the ''percentile'' estimate which Medicaid payment represents of one, or more, of the following: Medicare payment rates, the average commercial rates, or the applicable Medicaid allowable cost of the service. The commenter notes that CMS likely intended states to calculate the ''percentage'' of which Medicaid payment represents the other payer or cost amounts.

Response: We agree with the commenter and we have corrected this in this final rule with comment period. We also note that, based on comments, we revised the payment analysis so that states are required to determine the percentage of which Medicaid payments represent other public or private payer rates for the services subject to the access monitoring review plan requirements by provider type and site of service.

Comment: Some commenters agreed that the proposed use of fee percentiles as an effective way of representing the distribution of fees charged by providers in a particular area.

Response: We are revising the regulations to require that states review percentage comparisons of Medicaid payment rates to other public or private health coverage rates within geographic areas of the state.

Comment: Many commenters suggested that CMS require states to compare Medicaid payment rates to the provider's actual cost as part of the access review. Some commenters stated CMS should specifically clarify that provider rates need not be tied to, or based on provider costs, while others suggested CMS should mandate that rates meet a certain percentage of provider cost. One commenter suggested

that CMS should require the access reviews to account for average customary provider charges and also the extent to which providers in the geographic area are requiring these charges to be paid in full. Still other commenters stated that healthcare charges have virtually no relationship to the true cost of procuring services, and therefore, are not a valid reference for comparison.

Response: The framework described in this final rule with comment period addresses how states can demonstrate and monitor sufficient access to care as required by section 1902(a)(30)(A) of the Act. Neither provider cost nor charges is a required review element in meeting the requirements of the final rule with comment period. We acknowledge and support states' efforts in working toward delivery system reforms that promote more effective care and lower cost. We have issued several guidance letters on reform models that can be supported under the Medicaid program and, within those letters, have cautioned that access to care should be considered as part of a reform model.

Comment: Commenters suggested that the regulations be revised to address ''payment'' as referring to both individual health care service rates, as well as payments for care and services on an aggregate basis such as total payments for all care and services or total payments for all acute hospital care and services.

Response: This rule only addresses how states can demonstrate and monitor sufficient access to care as required by section 1902(a)(30)(A) of the Act, which describes payment rates for Medicaid care and services. The requirements contained in this final rule with comment period set forth a framework for states to use to demonstrate their payment rate methodologies are sufficient to ensure access. We appreciate the comment but, as previously discussed, we are not requiring states to review access for each individual item, service, or procedure payment rate.

Comment: One commenter expressed concern that the proposed requirement in § 447.203(b)(3) is unreasonable and impedes the efficient operation of the Medicaid program because all changes in payment policy can be considered ''significant''.

Response: Reviews of access to care are necessary to ensure the state Medicaid program is providing sufficient services to its beneficiaries. We discussed the reasons for issuing this regulation at length in the May 6, 2011 proposed rule. Although there is some burden associated with the proposed requirements, we considered comments related to burden in developing this final rule with comment period. The requirements of the final rule with comment period are not predicated upon a significant change in payment policy, but whether the proposed changes could negatively impact access. Where there is confusion over whether a change may cause harm to access to care, we will work with states to make a determination.

Comment: Some commenters stated that Medicaid payment rates should be reviewed and analyzed as new technology is introduced into the medical community to determine whether access to the new technology is limited. Commenters also suggested that medical conditions affecting Medicaid populations may develop that substantially affect the need for certain covered items and services, such as the rise in HIV infection in the early 1980s. The commenters concluded that any similar health-related changes should require review of provider payments rates to ensure continued access to necessary items and services; this is not reflected in the proposed 5-year review structure.

Response: Our intent is to define a process by which states can effectively and consistently measure beneficiary access to medical services in the Medicaid program. To the extent that advances in technology and/or unforeseen challenges arise that have an impact on the delivery of care in the Medicaid program, we expect these types of changes to be considered when reviewing access to care but only to the extent that it increases or decreases access to services as established in section 1902(a)(30)(A) of the Act. As such, this final rule with comment period offers flexibility to states to demonstrate access within the context of each state's local health care delivery system.

Comment: We received some comments indicating that establishing a standard equivalent to commercial insurance would need to be established by the Congress and doing so through the proposed rule is an administrative expansion of the Medicaid entitlement, one that may or may not be achievable even if substantial increases in state and federal program funding were possible.

Response: We did not propose to establish a standard equivalent to commercial insurance. Rather, this rule will require states to make comparisons of Medicaid service rates to private or public health payer rates. We are aware that a number of states already perform these types of calculations for varying administrative purposes.

4. Stratification Requirements

Comment: Some commenters supported the proposed stratification requirement for the access review, while other commenters opposed such a requirement.

Response: After careful consideration, we are not finalizing this requirement. Section 1902(a)(30)(A) of the Act does not specify that beneficiaries have access to care within specific provider ownership categories, but rather that access be viewed within the service categories as a whole and within associated geographic areas. We understand that payments do vary based on provider ownership status and we intend to review those differences outside of the scope of this final rule with comment period.

5. Access Review Timeframe

Comment: Several commenters addressed the timeframe of the on-going reviews and offered alternatives to the timeframe in the May 6, 2011 proposed rule. One commenter suggested requiring that each state complete a full program access review by the end of the second full calendar year following the effective date of the regulations, request that all services be reviewed every 3 years, and that one-third of all services be reviewed each year. Other commenters suggested that rates be reviewed more frequently than every 5 years and suggested various alternative for more frequent review. While other commenters suggested that yearly reviews are excessive without a change in payments and that it is more appropriate to monitor access after implementation of rate changes to determine the impact of the change.

Response: The timeframe outlined in the May 6, 2011 proposed rule was designed to ensure a timely review of access, while accommodating the time, manpower, and data constraints of state Medicaid agencies. After considering the public comments, we have determined that a full program review over 5 years is too burdensome. Therefore, we have revised this requirement to include a review of: Primary care services; physician specialist services; behavioral health services (including mental health and substance abuse disorder treatment); pre- and post-natal obstetric services including labor and delivery; and home health services; services where either payment rates have been reduced or restructured; and services for which a higher than usual volume of beneficiaries, providers, or stakeholders have raised access to care issues. The ongoing reviews will be conducted

every 3 years and intend to measure the current status of access to services within the state. We chose to require that states conduct the ongoing reviews every 3 years based on comments indicating that the 5 year proposed review periods were too infrequent to adequately capture changes in access to care. In addition, SPAs reducing payment rates for the services other than those mentioned above must be submitted with an analysis of access to care and then reviewed for a minimum period of 3 years. States may also select additional services to review at their discretion.

Comment: Some commenters requested that CMS require states to post their access review online by January 15th each year since access reviews are to be completed by January 1st.

Response: We consider the completion date to be synonymous with the date the access monitoring review plan should be published or readily made available upon request. We have revised the final rule with comment period to require that states issue the access monitoring review plan by July 1 of each review year. This coincides with the beginning of most state fiscal years and allows states sufficient time after the issuance of this final rule with comment period to conduct the first review for service categories subject to ongoing review.

Comment: Many commenters suggested revisions to the timeline for review that would require states to conduct access studies and monitor program changes on an annual basis. For example, commenters suggested CMS require states to conduct annual reviews and compare information from year-to-year and analyze trends, averages, and notations of changes in access to care over time.

Response: We agree that comprehensive studies of access are important. However, we have also considered concerns from states over the burden associated with the data requirements discussed in the May 6, 2011 proposed rule and the resources that states estimate would be required to collect and analyze access information for all covered Medicaid services. Therefore, to comply with section 1902(a)(30)(A) of the Act, we focus access review requirements on ongoing reviews of primary care services, physician specialist services, mental health services, pre- and post-natal obstetric services including labor and delivery, and home health services and to focus state efforts on review and monitoring access to care for all other Medicaid services specific to rate methodology changes made through SPAs, as well as ongoing feedback from beneficiaries, providers and other stakeholders.

Comment: Some commenters suggested as an alternative to the proposed timeline, that states should be required to conduct a comprehensive and public access review within 180 days prior to submission of the proposed payment rate change.

Response: We believe that the changes in access to care that occur within 180 days between a review and SPA submission and a year between review and submission would be negligible. Furthermore, states are required to monitor access ongoing for 3 years once a rate reduction goes into effect so any access to care issues that arise between the initial review and SPA submission will be detected through state monitoring procedures.

Comment: We received some comments suggesting that the regulation carve out a separate effective date of January 1, 2013 for the first rate review required under the regulation and the subsequent rate reviews be conducted every 5 years thereafter. Other commenters stated that CMS should require states to begin the access reviews as soon as possible. Some commenters stated that CMS could require states to begin reviews on the sooner of the first day of the state fiscal year or the first day of the calendar year after the final rule with comment period becomes effective.

Response: We had proposed that states make available the first access data reviews beginning January 1 of the year beginning no sooner than 12 months after the effective date of the final rule with comment period. Based on comments regarding the delay in access review information, we are revising the proposed timeframe and will require states to publish the access monitoring review plans by July 1 after the effective date of this final rule with comment period. The access monitoring review plans must be updated by July 1st every 3 years thereafter. As discussed, this timeframe corresponds with the start of state fiscal years for the majority of states and provides states with time to gather the necessary data and resources to perform accurate and detailed access reviews.

Comment: Several commenters suggested that priority be given to certain services for which access problems have been documented. The list of services included physician services, dental services, mental health services, and many specialty care services.

Response: We agree with the commenters though the list of services that commenters suggested that states prioritize would have required levels of state effort similar to what we proposed. For the reasons discussed in more detail above, we will require that the access monitoring review plan include a review of primary care services; physician specialist services; behavioral health services, including mental health and substance abuse disorder treatment; pre- and post-natal obstetric services including labor and delivery; home health services, and for services where either payment rates have been reduced or restructured or where a significantly higher than usual level of beneficiary, provider or stakeholder access complaints have been received. States may also select additional services to review at their discretion.

6. Special Provisions for Proposed Provider Rate Reductions

Comment: We received many comments on the requirement that access monitoring review plans accompany SPAs that proposed rate reductions. Many commenters suggested that we modify the access review procedures to require baseline access analysis prior to taking action to reduce provider rates, ongoing monitoring processes to detect problems, and corrective action when problems are detected. Some of the commenters stated that CMS should suspend the rate reduction until corrective measures are taken. Other commenters requested that CMS eliminate the requirement that proposed rate changes be accompanied by an analysis of access or face disapproval.

Response: In the May 6, 2011 proposed rule, we discussed the basis and reasoning behind requiring access information in making SPA decisions. This final rule with comment period requires that states conduct baseline reviews and monitoring procedures when implementing rate reductions or restructuring rates in ways that may negatively affect access to care. Consistent with commenters' suggestions, this rule requires that states conduct baseline reviews and ongoing monitoring of access data to ensure compliance with section 1902(a)(30)(A) of the Act.

Based on feedback from states that ongoing 5-year access reviews for all services would overly burden state agencies, we determined a process similar to the commenters' to be the appropriate regulatory framework. Such a process will include a review of primary care services, physician specialist services, behavioral health

services including mental health, pre- and post-natal obstetric services including labor and delivery, home health services and for services where either payment rates have been reduced or restructured or for which a significantly higher than usual level of beneficiary, provider or stakeholder complaints have been received. While the suspension of a rate reduction may be an appropriate corrective action, we will not require a specific approach to addressing access issues within this rule, and we will work with states on appropriate remedies given the facts and nuances of particular situations. We intend to work with states to monitor access data and determine an appropriate course of action should access issues arise.

7. Compliance With Access Requirements

Comment: Some commenters suggested that CMS approve an access review within 90 days of receipt and if the review is deemed unacceptable, that CMS disapprove a SPA submittal or take corrective action to address inadequate access to care.

Response: While we will not formally approve or disapprove access reviews, all reviews must include the elements described in the regulations and we will review the plans using this standard. We will not approve SPAs that are unsupported by data and the processes described in this final rule with comment period, and will pursue compliance action should a state fail to conduct the baseline access data reviews.

8. Monitoring Procedures

Comment: Some commenters suggested that we revise the access demonstration to state that states must ''consider'' the access impact and commit to ongoing monitoring when appropriate.

Response: We agree that states should conduct ongoing monitoring efforts on access to care and included oversight and monitoring procedures within this final rule with comment period. To the extent that states find access to care issues as part of the access monitoring review plan processes that are ongoing or associated with specific rate actions, we expect the state to take actions to remediate those issues. If a state does not take remediation actions, the state would not be in compliance with the statute and would be at risk of losing FFP.

Comment: Commenters requested that CMS define access issues and action plans as system-wide rather than case-by-case as identified by beneficiaries or providers, and that the requirement be comparability to the private sector.

Response: Section 1902(a)(30)(A) of the Act requires that payments be sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. We expect states to address access issues, whether through a formal corrective action plan, or if more appropriate, on a case by case basis.

Comment: Some commentators requested more specific requirements for monitoring access after a rate reduction is implemented, including the request that CMS set specific timeframes for the required monitoring procedures.

Response: Section 447.203(b)(6)(ii) allows the state flexibility to develop access monitoring strategies. While monitoring procedures are required of states, each state may develop the monitoring plan that best accommodates its data and other resources, while still adequately monitoring access to services. This final rule with comment period incorporates a specified time period of 3 years for monitoring following the implementation of a SPA that reduces or restructures payment rates.

Comment: Some commenters suggested that we provide clear and broad discretion to states in managing rates, and a clear path toward expedient approval of a rate reduction, provided that the states have mechanisms in place to monitor and correct adverse impacts to access.

Response: This final rule with comment period continues to offer states broad discretion to manage rates and includes procedures to ensure that proposed changes in the program do not violate section 1902(a)(30)(A) of the Act.

Comment: Some commenters suggested that CMS should define in the regulation its role in post-implementation monitoring.

Response: We will review access to care data each time a state submits a rate reduction or restructuring of payment SPA or any time the agency is made aware of access to care issues. The monitoring procedures in the regulation are intended to be used to inform the state and federal government of the overall status of access to care in their program. In addition, CMS may use the access to care data to monitor the adequacy of rates over time, and may use it to address areas in which access is insufficient.

Comment: One commenter requested that CMS clarify if the monitoring requirements apply to all payment methodology restructuring or only those that result in rate reductions.

Response: A state must develop procedures to monitor continued access to care after implementation of state plan service rate reduction or payment restructuring that may reduce access to care. The procedures must define a periodic review of state determined indices that will serve to demonstrate sustained service access, consistent with efficiency, economy, and quality of care.

Comment: One commenter requested that CMS clarify how a state would demonstrate sustained access after implementation of a SPA that reduces or restructures rates.

Response: The monitoring procedures required in § 447.203(b)(6)(ii) require that a state develop procedures to monitor access after implementation of a SPA that results in rate reduction or payment restructuring. Such monitoring should include enrollee needs, availability of care and providers, utilization of services, and service payment information. States must conduct reviews periodically over a minimum 3-year period following implementation of a SPA that reduces or restructures rates.

Comment: Several commenters recommended changes to the review and monitoring requirements of the proposed rule. Some commenters requested that CMS provide additional flexibility to states in establishing appropriate methods for measuring and monitoring beneficiary access to services. Other commenters suggested that states should periodically review and monitor access and states determine the measures of access and beneficiary information included in such reviews allowing states to take a more balanced approach to evaluating access.

Response: This final rule with comment period offers states significant flexibility in determining the measures of access and beneficiary information included in the review as the commenter suggests. However, we believe that a defined time period for completion of the access to care reviews allows the collected data to serve as an acceptable comparative analytical tool over a number of years whenever states proposes to restructure or reduce rates or when beneficiaries alert the agency to access to care issues. Timely reviews also allow states to demonstrate ongoing compliance with the section 1902(a)(30)(A) of the Act. Section 447.203(b)(6)(ii) will require states to develop ongoing monitoring procedures through which they periodically review indices to measure sustained access to care. Our goal is to provide a consistent path for all states to document access to

care consistent with the Act but to also allow states flexibility to measure and monitor access within state means.

Comment: Some commenters stated that states should be required to use the same methodology to measure access once a rate reduction is put into place so that a fair comparison of the impact of the rate reduction may be made.

Response: We generally agree that consistency in a state's methodology may allow for better comparisons of access over a period of time; however, states may need to make adjustments and changes to the analysis based on modifications of service delivery systems, payment rates or other program changes that may affect access to care. States and CMS may also determine that an analysis is not feasible to conduct or does not accurately demonstrate access after conducting a review For these reasons, we are not restricting states from making modifications to their methodology when the changes intend to improve the analysis or present reasonable alternative approaches to reviewing access to care.

Comment: Some commenters suggested, as part of monitoring identified access issues, an annual review and public town hall meetings should be implemented.

Response: We considered requiring that states conduct a public process for monitoring activities similar to that which is described for the submission of SPA that reduce rate or restructure payment in circumstances when the changes could result in access issues. This final rule with comment period requires states to have mechanisms for ongoing beneficiary, provider, and other stakeholder feedback and those mechanisms should ensure that state monitoring activities are effective and were properly developed.

9. Mechanisms for Ongoing Input

Comment: Many commenters supported the requirement that states have ongoing mechanisms (hotlines, surveys, ombudsman, etc.) for beneficiary input on access to care. Some of the commenters suggested that we add a specific mechanism for feedback from tribes, tribal organizations, and Indian Health Providers.

Response: We appreciate the support for the requirement that states have an ongoing mechanism for beneficiary feedback. We have also considered comments from providers and provider organizations and will require that states have a similar mechanism for provider feedback. Tribes and Indian Health providers are an important part of the Medicaid community and both the beneficiary and provider feedback mechanisms must be available to Tribes and Indian Health providers. In addition, consistent with Executive Order 13175, HHS Policy, and the CMS Tribal Consultation Policy, states are required to consult with tribes to receive their input. We also encourage states to develop specialized mechanisms that would be responsive to input from beneficiaries from other populations that have particular access concerns.

Comment: Several commenters requested that states or CMS establish advisory groups to help determine whether state payment rates sufficiently provide for access to care. Commenters suggested that the groups be comprised of a variety of stakeholders, such as beneficiaries, beneficiary advocacy groups, clinicians, and provider trade organizations.

Response: Current § 431.12 requires that state Medicaid agencies establish Medical care advisory committees that include provider and beneficiary participation. We are finalizing the requirement that states have a mechanism for ongoing provider feedback, similar to the process for ongoing beneficiary feedback. This could include the Medical care advisory committee required at § 431.12.

Comment: Commenters requested that we clarify the decision to require ongoing beneficiary feedback when other requirements of the proposed rule, such as the public process, involve providers and other stakeholders. In addition, commenters requested that CMS clarify the standard against which we would require states to consider input from beneficiaries and other stakeholders. A commenter noted that the level of input and magnitude of proposed SPA changes are not always correlated.

Response: After considering the comments received, we are including in this final rule with comment period the requirement that states consider provider feedback similar to the requirement for ongoing beneficiary feedback. This could be accomplished through state Medical care advisory committees, logging of issues raised by providers, or other means. States must incorporate feedback from beneficiaries and providers are part of the access monitoring review plan procedures. There is no threshold or standard that we will apply to stakeholder feedback; rather, the requirements will assure that states understand access to care concerns from the community as they arise and consider that information as they make changes to their Medicaid program.

Comment: Some commenters suggested advocate groups should also have an opportunity for ongoing input which should be differentiated from the mechanism provided for public input.

Response: We understand that advocate groups currently have many opportunities to provide feedback to states on Medicaid issues and offer important insights for state consideration. This final rule with comment period offers advocates and other stakeholders an opportunity to provide feedback on specific state rate actions through the public process procedures. In addition, we would expect that individuals advocating on behalf of a Medicaid beneficiary would have access to the mechanism for ongoing beneficiary feedback described in this rule.

10. Addressing Access Questions and Remediation of Access Issues

Comment: We received several comments regarding the subsequent actions if an access issue is identified. Many commenters were in support of the requirement for states to submit a corrective action plan, while many commenters were opposed to such a requirement. Commenters stated opposition and expressed concern about the lack of ''threshold'' for the scope or severity of an access issue that would require the submission of a corrective action plan. While some commenters sought clarification from CMS, others implied that the state should be able to define such threshold, especially in instances that are clearly compliant with the statutory standard. Some commenters suggested that CMS should not approve a SPA or permit a payment reduction to be imposed until corrective action measures are taken. Other commenters suggested that CMS should affirmatively require states to suspend or reverse a payment reduction if an access issue is identified. A few commenters urged CMS to impose sanctions on states that fail to remedy access issues timely. Still other commenters requested that CMS remove any references to remedies for access issues that do not involve increasing payment rates. Commenters also discussed the 90-day timeframe to submit corrective action plan after discovery. Some concerns were raised that the 90-day timeframe was overly hasty, while others thought it appropriate.

Response: After careful consideration of all of the comments received, we are finalizing § 447.203(b)(8) requiring a state to develop and submit a corrective action plan to CMS within 90 days of discovery of an access deficiency. The

submitted action plan must aim to remediate the access deficiency within 12 months. This requirement ensures that the access deficiency is addressed in a timely manner while allowing the state time to address underlying causes of the access issue, be it payment rates, provider participation, etc. Section 447.203(b)(8) clarifies that states have a number of options to address access to care issues. These remediation efforts can include but are not limited to: increasing payment rates; improving outreach to providers; reducing barriers to provider enrollment; providing additional transportation to services; or improving care coordination. This is an acknowledgement that access to care is not always about payment rates but rather that when enough providers are enlisted in the program, states may need to find ways to connect beneficiaries with the care and services they need.

Comment: Some commenters stated that states need more than 12 months to implement corrective action when access issues are discovered, whereas other commenters believed that allowing states 12 months to resolve the issue was too long. Commenters stated concerns that that the 12-month time frame attached to the corrective action plan could encourage longer-term measures, which may have an adverse effect on provider participation. One commenter stated the final rule should recognize the potential need for state legislative action to address identified access issues and the 12-month timeframe could potentially be too short for a state to make these changes, especially in states with biennial legislative sessions.

Response: We are finalizing § 447.203(b)(8) that requires a state to develop and submit a corrective action plan to CMS within 90 days of discovery of an access issue. The submitted action plan must aim to remediate the access deficiency within 12 months. This timeframe has been developed to minimize the length of time beneficiaries may experience decreased access while realistically accommodating a state's resources and allowing sufficient time to address the underlying causes of identified access issues. Although longer-term measures may be needed to fully address the underlying causes of an access issue, it is imperative that a corrective action plan aim to resolve the access issue within 12 months, in the interest of preserving adequate beneficiary access.

Comment: Commenters suggested that we require states to publicly report and address any decline in access to services following rate reductions.

Response: We are finalizing § 447.203 that will require states to publish, or promptly make available upon request, the access monitoring review plan. Within the access monitoring review plan, a state must monitor continued access to care following rate reduction or payment restructuring.

Comment: A commenter suggested that CMS should implement a mechanism to fast-track any substantive access concerns that are uncovered during state-level review; states should not be permitted to wait until the start of the next calendar year to fix a substantive problem.

Response: Once access issues are identified, the state will have 90 days to submit to CMS for review a corrective action plan; the goal of this plan must be to resolve the identified access issues within 12 months. This timeframe has been developed to minimize the length of time beneficiaries may experience decreased access while realistically accommodating a state's resources, allowing sufficient time to address the underlying causes of identified access issues.

Comment: Commenters raised concerns that the remediation process could result in a SPA backlog because states would need to address access issues before moving forward with state plan changes.

Response: State plan changes must comply with statutory and regulatory requirements. To the extent a state identifies areas of inadequate access to Medicaid services, we could not approve any SPA that could potentially impede access further. We will work with states to address these issues on an as needed basis.

Comment: One commenter stated that the final rule should remove the requirement for data gathering and focus on monitoring and corrective action. The commenter further suggested that if, and when, access issues are found, a state should develop and implement a corrective action plan. These activities would be supplemented through ongoing mechanisms for obtaining beneficiary input, using hotlines, surveys and other tools.

Response: We have revised the requirements of this final rule with comment period to have a greater focus on monitoring and corrective action. Data gathering is essential to these activities and, as previously discussed, we are focusing the data review efforts in consideration of state burden.

Comment: A commenter noted that the May 6, 2011 proposed rule states that CMS may disapprove a SPA if a rate is ''modified'' without an access review; however, the term ''modified'' is not defined in the rule.

Response: We believe that in the context of the regulatory language and we are confirming here that modified means to reduce or restructure Medicaid service payment rates in circumstances when the changes could result in access issues. To the extent that states are unsure whether a change could result in access issues, we will work with states individually to make a determination.

Comment: One commenter suggested that CMS outline the remedies that beneficiaries and providers will have if access issues are discovered and the state proceeds with implementing a SPA without regard to the issues.

Response: This final rule with comment period requires that states monitor access to care after implementing Medicaid payment rate reductions and identify and remediate issues that are found as a result of the access review and monitoring efforts. The rule also requires an ongoing mechanism for beneficiaries, providers, and other stakeholders to raise concerns over access to care. States are required to maintain a record of the volume and nature of the response to those concerns. We expect that the monitoring procedures and mechanisms for ongoing input will work together to raise ongoing access concerns.

C. Medicaid Provider Participation and Public Process To Inform Access to Care (§ 447.204)

We received several comments that discussed concerns over the proposed changes to the public process requirements.

Comment: One commenter stated that the public process requirements are not enforceable because they are not a specific requirement in statute.

Response: The purpose of this final rule with comment period is to provide states with standard processes that consider and document access to care in the Medicaid program consistent with section 1902(a)(30)(A) of the Act. We respectfully disagree that the proposed changes to the public process are not contemplated within the requirements of that section. The regulatory guidance within this rule relies upon public interaction to, in part, gauge and document whether beneficiaries and stakeholders raise concerns that proposed rate changes will have a meaningful effect on beneficiary needs and the availability of care and providers. We maintain that such information is necessary to understand state rate proposals and inform CMS approval actions.

Comment: Commenters noted that the May 6, 2011 proposed rule may create a timing problem for states by requiring the public process to occur prior to the submission of a SPA. Commenters anticipate that the public process does not allow sufficient time for states to prepare and submit SPAs. Commenters also stated that the public process requirement increases the time it takes to submit a SPA by at least 30 days. As an alternative, some commenters suggested that the public process occur prior to the effective date of the SPA consistent with the public notice requirement.

Response: Under the processes required by this final rule with comment period, to the extent that a state wishes to change payment rates that may affect access, the state will need to be up to date in following the access review procedures and public input mechanisms. If the state does not have the required access review data, or has not recently prepared an access analysis, there could be a delay in its ability to submit an approvable SPA submission. We note that this rule does not affect the timing provisions for SPA effective dates. States may make SPAs effective as early as the first day within the quarter in which the SPA is submitted so even a 30-day delay should rarely change the proposed effective date of a state's SPA action. Furthermore, we also note that states are already subject to a similar process related to conducting notice prior to SPA submissions through the Tribal Notification processes established under section 1916 of the Act.

Comment: Commenters stated that the proposed changes were overly prescriptive and that CMS should allow individual states to determine how to interact with stakeholders on changes to Medicaid payment methodologies.

Response: We provided states with the flexibility to determine the appropriate mechanism to solicit input from beneficiaries and affected stakeholders. States that have these mechanisms in place are under no requirement to change their approach. This final rule with comment period requires that a state document beneficiary and stakeholder feedback and use that information to inform how they evaluate access to care to meet the statutory requirement. This information will both inform CMS's approval actions and serve as the state's public record for compliance with section 1902(a)(30)(A) of the Act.

Comment: We received many comments that requested states provide specific information as part of the public process. Commenters stated that public process should include: the proposed SPA; material submitted by the state Medicaid agency in connection with the proposed SPA; the information that CMS reviews to approve a SPA; and information on how interested parties may promptly obtain such materials. Commenters also requested that all state plans and proposed SPAs should be posted on state Web sites or the CMS Web site.

Response: This final rule with comment period does not address the public process under section 1902(a)(13)(A) of the Act that is required for institutional rate setting. This rule addresses only the procedures necessary to document compliance with section 1902(a)(30)(A) of the Act to assure that provider payment rates are sufficient for beneficiary access to care. Those procedures must include a public input mechanism for comments on access to care. This final rule with comment period provides states with considerable flexibility to determine appropriate public input mechanisms. We suggest that interested parties work with states to ensure that these mechanisms are effective.

Comment: Commenters suggested that CMS be more prescriptive in how states should conduct the public process based upon a proven methodology. One commenter suggested a formal ''Listserv'' for comments similar to the federal proposed rule listserv for public access to comments. A commenter requested that families, caregivers, and providers be able to represent their concerns to the Medicaid agencies and have processes in place that allow them to represent the voice of Medicaid beneficiaries where appropriate.

Response: While we continue to allow for states to determine exact procedures for soliciting input from beneficiaries and stakeholders, we appreciate the suggestion that states could use a listserv to reach its intended audience. The mechanisms for ongoing beneficiary feedback required in this final rule with comment period will allow beneficiaries and stakeholders to voice concerns related to access to care in multiple forums, such as hotlines and ombudsman programs. We agree that beneficiary and stakeholder feedback is vital to understanding access to care both as it pertains to specific rate proposals and on an ongoing basis.

Comment: Some commenters offered concerns that the specific requirements of public input is an unclear process and that it is difficult for states to obtain stakeholder input on all services. Commenters further stated that public process creates a substantial administrative burden for the state to implement on an ongoing basis. To overcome these issues, commenters wrote that the final rule should clarify that states have flexibility in monitoring access to care and recommend that we remove the requirements of ongoing ''beneficiary input'' since the public process and ongoing beneficiary feedback mechanisms are duplicative.

Response: This final rule with comment period does not require a particular mechanism for states to receive feedback from beneficiaries and other stakeholders that are affected by Medicaid rate-setting. The preamble to the May 6, 2011 proposed rule specifically discussed state flexibilities and the ability of states to rely on current processes to demonstrate access to care to the extent that states already have such processes in place. In this rule, we are implementing a standard set of procedures, including feedback from stakeholders, that all states must follow to document access to care consistent with section 1902(a)(30)(A) of the Act. States develop the particular mechanisms to enact the procedures either consistent with current practices or in other ways that meet beneficiary needs and address access concerns within each state. The public process requirements for institutional rates and the ongoing public input mechanisms serve different purposes. The ongoing public input mechanisms apply to all services, are not limited to input regarding proposed changes in rates, and includes a clear opportunity for beneficiary feedback on access. The beneficiary feedback mechanism allows states to understand any access to care concerns in real time as they occur. We respectfully disagree that those efforts are duplicative.

Comment: Several commenters recommended that CMS strengthen the regulation to state that any SPAs submitted without having completed the public process requirement would be disapproved. A commenter specifically proposed that the regulatory text be modified so that CMS ''must'' disapprove a SPA if submitted without a state meeting the public process requirements described at § 447.204(b).

Response: The regulations require that states provide a mechanism for public input when reducing or restructuring Medicaid payment rates in circumstances that could result in access issues. We retain the authority to consider the circumstances of and content of a SPA submittal to determine its compliance with statutory and regulatory requirements before making approval decisions.

Comment: One commenter wrote that discretionary language in § 447.204(b)

''the agency may disapprove a proposed SPA using the authority . . . or may take a compliance action'' could enjoin a rate alteration or reduction based solely on the fact that the SPA is not yet CMS-approved.

Response: As we indicated above, we do not intend in this rulemaking to change the requirements relating to the effective date of approvable SPAs. How these requirements are applied and interpreted in judicial review in the federal courts is an issue that is beyond the scope of this rulemaking.

Comment: Several commenters suggested requiring states to implement an ongoing input process for every change, regardless of the scope. Other commenters noted the rule creates a significant administrative burden for states and stated it would be an inefficient use of limited resources in situations where states are making minor changes. The commenters requested that CMS work with states to define a threshold that would trigger the need for beneficiary input. The commenters also recommended that CMS adopt language for such a process similar to that contained in the proposed ''Monitoring Access'' provisions whereby the state is able to define the procedures and process.

Response: The requirements in this final rule with comment period for public input allow states flexibility to design public input mechanisms that are appropriate for state-specific circumstances. Considering that there is so much variability in the Medicaid program and the delivery of Medicaid services, CMS is concerned that defining the significance of a rate reduction or payment restructuring before a state institutes a beneficiary feedback mechanism would undermine the inclusion of the process in this regulation. Many states have indicated to CMS through other venues that the feedback mechanism is a primary indicator of access to care.

D. Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates (§ 447.205)

Comment: We received comments that suggested various thresholds for significant changes and removal of the term significant from the public notice requirement. Some commenters requested that states be allowed to define the term ''significant'' in the regulations, while others requested that CMS define both the terms ''significant'' and ''change'' in the final rule. A number of commenters suggested thresholds for issuing public notice, including: any reduction in payment; a reduction of 5 percent or more; a reduction of 10 percent or more, a CMS-defined threshold; or any rate reduction or alteration in reimbursement methods. Many commenters also suggested that CMS should delete the term ''significant'' altogether.

Response: The public notice requirement informs providers of changes in state plan methods and standards that have either a positive or negative impact on rate-setting. As discussed in the May 6, 2011 proposed rule, it is difficult to determine a threshold of a significant change in payment methods and standards since the determination to participate or continue to participate in Medicaid is provider specific. This final rule with comment period should reduce the administrative and financial burden of issuing notice by allowing states to publish on state agency Web site. In consideration of this and comments from providers requesting the removal of the term ''significant'' and the past ambiguity in interpreting whether notice is required, we are removing the term ''significant'' in this final rule with comment period. Aside from the specific exceptions described in the regulation, notice will be required for all changes in state plan methods and standards with the effective date of this final rule with comment period.

Comment: A commenter suggested that the public notice regulation describe requirements specific to tribal consultation.

Response: While the May 6, 2011 proposed rule did not address tribal consultation, the CMS tribal consultation requirements were detailed in policy in the November 17, 2011 document entitled ''CMS Tribal Consultation Policy.'' The policy incorporates provision in the American Recovery and Reinvestment Act of 2009 (Recovery Act) and the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). Additional information regarding the CMS Tribal Consultation Policy is available at *http://www.cms.gov/Outreach-and-Education/American-Indian-Alaska-Native/AIAN/Consultation.html.* CMS will continue to consult with Tribal leaders on the delivery of health care for American Indians/Alaska Natives (AI/AN) served by the Marketplace, Medicare, Medicaid, Children's Health Insurance Program (CHIP), or any other health care program funded by CMS and make updates to the policy as necessary.

Comment: One commenter offered that the public notice requirement should be expanded so that a ''change'' includes both a change in payment rates and/or a change in the scope or definition of Medicaid benefits.

Response: We did not propose an expansion of the public notice requirement to include changes in coverage policy and the public notice regulation discusses notice of changes in statewide methods and standards for setting payment rates. Since this rule addresses policies related to section 1902(a)(30)(A) of the Act, which is specific to state plan service rates and access to care, we are not addressing changes to coverage policies at this time.

Comment: One commenter offered that the public notice requirement should be amended to tie in with the public process requirement described in the May 6, 2011 proposed rule. The commenter offered that since the new public process is required prior to a state submitting a SPA, the process should tie in with the requirements set forth in § 447.205 as to how notice should be given.

Response: The public process and public notice requirements serve different purposes. The public notice applies to any changes in state plan methods and standards, and is published 1 day prior to the effective date of a Medicaid SPA. The public notice informs the public of a proposed change in Medicaid rate-setting or policy without necessarily considering public feedback as part of the policymaking process. The public process requirement provides opportunity for the public to provide input into determining beneficiary access to care.

Comment: A few commenters objected to the use of web-based publications as an option to issue public notice. One commenter cited a number of reasons for the opposition, including: The benefit of printed notice over Internet notice; the fact that state Web sites do not have strong readership when compared to newspapers; limited access to the Internet in many poor and rural communities; potential problems that individuals with disabilities or illness may have with using the Internet; lack of assurance that states will maintain Internet sites sufficiently; and difficulty in archiving web-based publications for courts, historians, researchers and archivists. The commenter stated that the proposal would leave the public with large gaps in public information.

Response: We have addressed many of the issues raised in the comment in this final rule with comment period. For instance, the rule provides that a state's electronic publication must be regular and known. This offers significant

advantages over paper-based publications that may appear on any day in the calendar year and should alleviate some concerns over access to the state Web sites. We agree that these Web sites must meet national standard to assure access to individuals with disabilities, and we are including this requirement in the final rule with comment period. Such standards are issued by the Architectural and Transportation Barriers Compliance Board, and are referred to as ''section 508'' standards. Alternatively, the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA standards would also be considered as acceptable national standard for Web site accessibility. For more information, see the WCAG Web site at *http://www.w3.org/TR/WCAG20/*. We also note that states currently have the option to publish notice in a state register that is similar to the **Federal Register**. Like the **Federal Register**, many state registers are web-based and states already routinely use them to publish notice as an alternative to paper-based publication. Therefore, we do not view the proposed flexibility as a significant departure from the current available options. Furthermore, we believe that web-based publication will be as accessible to poor and rural communities as publication in a state register.

Comment: A commenter suggested that CMS reconsider the statement in § 447.205(b) which allows states to change reimbursement as long as the change is made to conform to Medicare without public notice. The commenter stated that Medicare serves a significantly different population than Medicaid, has different conditions of participation, and may be a relative low payer of professional services in some locations.

Response: The May 6, 2011 proposed rule did not contemplate modifying the exception to public notice in instances where the change in Medicaid rates is consistent with Medicare. At this time we are not adopting the commenter's suggestion.

IV. Provisions of the Final Regulations

This final rule with comment period incorporates many of the provisions of the May 6, 2011 proposed rule but also makes substantial modifications based on responses to the public comments. Those provisions of this final rule with comment period that differ from the proposed rule are as follows:

- The term ''access review'' is replaced throughout by the term ''access monitoring review plan'' to emphasize that the regulation is intended to establish a process by which states monitor and measure access, rather than just the requirement that data is due to CMS.
- Section 447.203(b) is revised to clarify that the states' access monitoring review plans must be developed in consultation with the state's medical care advisory committee and submitted to CMS, and will be reviewed by CMS. This section has been revised to also indicate that the plans must be made available for public review and comment for a period of no less than 30 days prior to the finalization of the plan and submission to CMS. This allows stakeholders time to comment on the appropriateness of the specific measures the state will use to determine that there is adequate access to Medicaid services.
- Section 447.203(b)(1) is revised to state that the access monitoring review plan must include the items specified under the access review procedures, as well as data sources, methodologies, assumptions, trends and factors, and thresholds so that it is clear that measurable data and analysis are essential components of the access monitoring review plans.
- Section 447.203(b)(1) is revised by replacing the term ''access review'' with ''access monitoring review plan'' for the reasons described above. We made clarifying changes to the monitoring plan framework, specifying that reviews must measure whether beneficiary needs are fully met, that the providers analyzed as part of the review are enrolled in the program, and that the access analysis must demonstrate access to care within state specified geographic areas. This is consistent with the statutory requirements. We also added a requirement that the analysis describe the characteristics of the beneficiary population (including considerations for care, service, and payment variations for pediatric and adult populations and for individuals with disabilities). This is important to understand specific access needs within geographic areas.
- Section 447.203(b)(2) is revised to specify that beneficiary and provider input must be considered within the access monitoring review plans. We have also indicated potential sources of this information, such as the public rate-setting process, medical care advisory committees, and letters to state and federal officials. In addition to the data the state will review, ongoing input from beneficiaries and providers will help states understand access issues (and suggestions to improve access) on a real-time basis and potentially target access improvements and remediation strategies.
- Section 447.203(b)(3) changes the analysis of payments to compare Medicaid payments as a percentage of other public and private health payment rates within geographic areas of the state. We proposed that states compare Medicaid rates to provider charges and Medicare payments rates, the average commercial payment rates or the applicable allowable cost of Medicaid services. We also proposed that states stratify this information based on provider ownership status. The final rule with comment period modified the requirement to streamline the information and allow states flexibility in demonstrating the comparative analysis of the Medicaid payment rates as now defined in § 447.203(b)(1)(C). The analysis required in the final rule with comment reduces administrative burden associated with the proposed requirements while continuing to provide a basis to understand how Medicaid service payments compared to other health payer payments. The statute discusses the sufficiency of rates in ensuring access to services; however, as we have stated, rates may not be the only or most important determinant of access in the Medicaid program.
- Section 447.203(b)(4) provides details on the review plan standards and methodologies. To provide additional clarity on types of information that states can use for these reviews, we have described suggested data elements for state consideration including, but not limited to: time and distance standards, providers participating in the Medicaid program, providers with open panels, providers accepting new Medicaid beneficiaries, service utilization patterns, identified beneficiary needs, logs of beneficiary and provider feedback and suggestions for improvement, etc. While not specifically required, these data elements may be used by states to address the framework described in the final rule with comment and represents the scope of the analysis that states should conduct when reviewing access to care. This responds to state and provider concerns that the data reviews in the May 6, 2011 proposed rule lacked clear direction and standards for how CMS will evaluate the sufficiency of a state's access analysis.
- Section 447.203(b)(5) regarding the ''Access Review Timeline'' has been modified to clarify that states will need to comply with the provision of this final rule with comment period. We received many comments on the timing associated with the access data reviews. In the final rule with comment, states will be required to conduct the first review for the specified subset of

ongoing services by July 1 after the effective date of the final rule with comment period and update the analysis every 3 years by July 1 of each review year. This corresponds with the start of the fiscal year for most states and provides sufficient time to develop the baseline monitoring plan.

• Section 447.203(b)(5)(ii) was revised to change the requirement that states review all covered services within a 5-year period to require that states review a subset of service categories at least once every 3 years. Language has also been added to this section to clarify that the states are required to ''complete a full review of the data collected through the monitoring plan methodology.'' Paragraphs (b)(5)(ii)A, (ii)(B), (ii)(C), (ii)(D), and (ii)(E) were added to define the specific categories of services that must be included in the access monitoring review plan. Paragraph (b)(5)(ii)(A) adds primary care services which includes physician, FQHC, clinic, dental care, etc. Paragraph (b)(5)(ii)(B) adds physician specialist services which includes services which are provided via a referral from a primary care provider, for example, cardiology, urology and radiology. Paragraph (b)(5)(ii)(C) adds behavioral health services which includes mental health, substance use disorder, etc. Paragraphs (b)(5)(ii)(D) adds pre- and post-natal obstetric services including labor and delivery. Paragraph (b)(5)(ii)(E) adds home health services. These categories were added because they are frequently used services in Medicaid, and access to these services indicates that an individual has primary sources of care, which may increase the likelihood of having their care needs met. Paragraph (b)(5)(ii)(F) has been added clarify that additional services are to be added to the access monitoring review plan when states reduce or restructure rates. Paragraph (b)(5)(ii)(G) was added to require states to review access for additional services based on a significantly higher than usual level of beneficiary, provider, or stakeholder access complaints. Paragraph (b)(5)(ii)(H) was added to allow additional types of services selected by the state. These modifications remove some burden from the states, particularly those that have continuously monitored Medicaid access to care and do not have widespread access issues. We are requesting comment on the revisions to paragraphs (b)(5)(ii)(A) through (ii)(E).

• Section 447.203(b)(6)(i) was revised to clarify that access monitoring review plans shall be updated to incorporate an access review as described under paragraph (b)(1) of this section when a state submits a SPA to reduce payment or restructure payment in circumstances when the changes could result in diminished access for the service or services affected by the SPA. We have further clarified in this paragraph that a state must update the access monitoring review plan within 12 months of the effective date of the submitted SPA.

• Section 447.203(b)(6)(ii) which describes monitoring procedures, has been retitled ''Monitoring procedures.'' The monitoring process has been modified to require incorporation of access monitoring review plans and procedures, including period review protocols and clearly defined measures and thresholds, into the Medicaid state plan reimbursement methodology and to require the first monitoring review to occur within a year after the effective date of a SPA rate change and continue periodically for a period of at least 3 years after the effective date of the SPA authorizing the payment reduction or restructuring.

• Section 447.203(b)(7) describes that states must have mechanisms for ongoing beneficiary input on access to care (through hotlines, surveys, ombudsman, or another equivalent mechanism). In response to concerns over individual access issues, we revised the provision to require states to promptly respond to public input with an appropriate investigation, analysis, and response. The state is also required to maintain records of the input and the nature of the state's responses. While CMS recognizes that services provided through home and community-based waivers or 1115 demonstrations are not bound by the procedural requirements of this rule, states may understand through these feedback mechanisms access issues that may also arise for individuals receiving services through those delivery systems.

• Section 447.203(b)(8) is revised to clarify that states have a number of options to address access to care issues that are identified through the access monitoring review plans. These remediation efforts can include but are not limited to: modifying payment rates; improving outreach to providers; reducing barriers to provider enrollment; providing additional transportation to services; improving care coordination; or changing provider licensing or scope of practice polices. This is an acknowledgement that access to care is not determined by payment rates alone but rather that when enough providers are enlisted in the program states may need to find ways to connect beneficiaries with the care and services that they need.

• In § 447.204(a), the term ''recipients'' is changed to ''beneficiaries.''

• Section 447.204(a)(1) is revised to incorporate the baseline data review requirement and as part of the information that states consider prior to the submission of a SPA that proposes to reduce or restructure Medicaid service payment rates. The results of the baseline data should inform states on compliance with section 1902(a)(30)(A) of the Act and project the potential impact of rate policies on access to care.

• Section 447.204(a)(2) is revised to indicate that prior to the submission of a SPA that proposes to reduce or restructure Medicaid service payment rates, states must consider input from providers, as well as input from beneficiaries and other affected stakeholders. This change was added based on public comments that requested that feedback from providers be considered in addition to beneficiaries as part of the public process.

• Section 447.204(b) is modified to more clearly state that with any proposed SPA affecting payment rates, states must provide the most recent access monitoring review plan, if any, together with an analysis of the effect of the change in payment rates on access, and a specific analysis of the information and concerns expressed in input from affected stakeholders. With this change, is more clearly delineated that states must furnish the information gathered under the procedures of the final rule with comment to CMS as part of the SPA submission process. We will use this information to inform our SPA approval decisions.

• Section 447.204(c) and (d) were edited to more clearly describe CMS's enforcement process if a state does not submit the supporting documentation described in the final rule with comment period along with SPAs. If a state does not submit the supporting documentation, then the SPA would be disapproved. Likewise, if a state submits a SPA and the access analysis does not demonstrate adequate access, the SPA would be disapproved. To address access deficiencies, CMS may also take a compliance action using the procedures described at § 430.35 of this chapter which is specified at 447.204(d). These edits were made for clarity and did not alter the agency's proposed approach to enforcing the provisions of the final rule with comment period.

• Section 447.205(iv) was proposed to allow states to issue public notice on Web sites maintained by the single state agency. We revised this section to provide some additional parameters

around notice publications, requiring that publication Web site must be easily reached from a hyperlink that provides general information to beneficiaries and providers and the state specific page on the federal Medicaid Web site and that the state ensures compliance with national standards to ensure access to individuals with disabilities (that is, section 508 standards). Further, we clarified that the notice must be issued as part of regular and known provider bulletin updates and maintained on the state's Web site for no less than 3 years. These changes are necessary to ensure that notices are easily accessible to the public (and CMS) and will remain available for a sufficient period of time.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In the May 6, 2011, proposed rule (76 FR 26352–26359), we solicited public comments on each of the section 3506(c)(2)(A) required issues for the following information collection requirements (ICRs). PRA-related comments were received as indicated below in section C under ''Comments Associated with the Collection of Information Requirements.''

A. Wages

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2014 National Occupational Employment and Wage Estimates for all salary estimates (*www.bls.gov/oes/current/oes_nat.htm*). In this regard, the following table presents the mean hourly wage, the cost of fringe benefits (calculated at 100 percent of salary), and the adjusted hourly wage.

NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefit ($/hr)	Adjusted hourly wage ($/hr)
Business Operations Specialist	13–1000	33.69	33.69	67.38
Computer and Information Analyst	15–1120	42.25	42.25	84.50
General and Operations Manager	11–1021	56.35	56.35	112.70
Management Analyst	13–1111	43.68	43.68	87.36
Social Science Research Assistant	19–4061	20.71	20.71	41.42

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, there is no practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

B. ICRs Carried Over From the Proposed Rule (May 6, 2011; 76 FR 26352–26359)

1. ICRs Regarding Access Monitoring Review Plans (§ 447.203(b))

Section 447.203(b) requires that states develop and make public an access monitoring review plan that considers, at a minimum: Beneficiary needs, the availability of care and providers, utilization of services, characteristics of the beneficiary population, and provider payment rates. States are also required under this provision to monitor data and beneficiary and provider input on an ongoing basis and address known access issues through corrective action.

This final rule with comment period provides states with the discretion to determine appropriate data sources that will be used to conduct the review. We believe most of the data that will be used to inform access is available to states and may already be collected by states as part of Medicaid program reviews and payment rate-setting procedures. We also note that states have flexibility to compare Medicaid rates to one or more of Medicare rates, commercial rates, or Medicaid cost, as may be appropriate to the service under review. The burden associated with these requirements is the time and effort associated with analyzing this information, making it available to the public, and periodically updating the information relative to activities states are already undertaking. We have attempted to mitigate any new burden by identifying data that states are likely to currently possess, identifying other data sources that might be informative to state access reviews, and limiting the categories of services states will be required to review.

a. Access Monitoring Review Plan Timeline

Section 1902(a)(30)(A) of the Act requires states to ensure that Medicaid beneficiaries have access to care and services that is equivalent to care provided to the general population within a geographic area. Based on public comments received we are revising the requirements of § 447.203(b) to limit the scope of Medicaid services that states must review on an ongoing basis. This final rule with comment period stipulates that states must develop an access monitoring review plan for the specified service categories and update the plan every 3 years. States will also be required to develop an access monitoring review plan when a state submits a SPA to reduce or restructure payment rates in circumstances where the changes could result in access issues for the service or services affected by the SPA. In this way, states would consider the impact that such proposals may have on access to care and demonstrate compliance with section 1902(a)(30)(A) of the Act. States may complete this review within the prior 12 months of the SPA submission.

b. Access Monitoring Review Plan Framework

The data analysis activities described in this final rule with comment period are claimable as administrative claiming activities and are reimbursable at the general 50 percent FFP rate for

administrative expenditures, insofar as they are necessary for the proper and efficient administration of the Medicaid state plan as described at section 1903(a)(7) of the Act. More specifically, utilization review is identified as an allowable Medicaid administrative activity in guidance that was issued in the form of a SMD letter dated December 20, 1994 (*www.medicaid.gov/Federal-Policy-Guidance/downloads/SMD122094.pdf*). We also believe that states may be collecting some of this information as part of current review efforts for various purposes, including program administration and oversight, quality activities, integrity and payment, and as part of other performance standards and measures required under the Affordable Care Act.

The provisions at § 447.203(b)(1) through (3) require that states develop and make publically available an access monitoring review plan using data trends and factors that considers: Beneficiary needs, availability of care and providers, and changes in beneficiary utilization of covered services. Consistent with the statutory requirement, we have clarified that states demonstrate access to care within specific geographic regions. After careful consideration of the comments received, we are finalizing the review framework with some modifications in an effort to minimize the administrative burden associated with the requirement. Though we recognize that no methodology to gauge access to care is flawless, we believe that the framework, as supported by state data sources, is appropriate to inform whether the Medicaid access requirements are met.

Section 447.203(b)(1) and (2) describes the minimum factors that states must considered when developing an access monitoring review plan. Specifically, we require the review to include feedback from both Medicaid beneficiaries and Medicaid providers, an analysis of Medicaid payment data, and a description of the specific measures the state will use to analyze access to care. We recommend that states use existing provider feedback mechanism such as medical care advisory committees described in § 431.12 to ease burden on states rather than create new requirements.

Section 447.203(b)(3) requires that states include percentage comparisons of Medicaid payment rates to other public (including, as practical, Medicaid managed care rates) or private health coverage rates within geographic areas of the state. This requirement was modified based on comments received to allow states maximum flexibility in comparing Medicaid payment rates to the rates of other payers.

Section 447.203(b)(4) describes the minimum content that must be in included in the monitoring plan. States are required to describe: The measures the state uses to analyze access to care issues, how the measures relate to the overarching framework, access issues that are discovered as a result of the review, and the state Medicaid agency's recommendations on the sufficiency of access to care based on the review.

Section 447.203(b)(5) describes the timeframe for states to develop and complete its access monitoring review plan the data review and make the information available to the public through accessible public records or Web sites on an on-going basis for the following categories of services: Primary care, physician specialist services, behavioral health, pre- and post-natal obstetric services including labor and delivery, home health services and additional services as determined necessary by the state or CMS. The initial access monitoring review plans are to be completed by July 1 after the effective date of this final rule with comment period. The plan must be updated at least every 3 years, but no later than July 1 of the update year. We estimate that the requirements to develop and make the access monitoring review plans publically available under § 447.203(b)(1) through (4) will affect all states. We have defined specific categories of services that states must develop access monitoring review plans for, while allowing states to include additional service categories as necessary. We assume states will conduct reviews in the context of rate reductions or restructuring payment rates and we consider the burden associated with rate reduction or restructuring reviews as part of the ongoing estimated burden.

The one-time burden associated with the requirements under § 447.203(b)(1) through (5) is the time and effort it would take, on average, each of the 50 state Medicaid programs and the District of Columbia (51 total respondents) to develop and make publically available an access monitoring review plan for the specific categories of Medicaid services. The uniform nature of the initial menu of services required for the access monitoring review plans are the reason we present average impacts.

We estimate that it will take 5,100 hr to develop the access monitoring review plan, 8,160 hr to collect and analyze the data, and 2,040 to publish the plan and 510 hr for a manager to review and approve the plan (15,810 total hours). We also estimate a cost of $22,631,80 per state and a total of $1,154,221.80.

In deriving these figures we used the following hourly labor rates and time to complete each task: 80 hr at $41.42/hr for a research assistant staff to gather data, 80 hr at $84.50/hr for an information analyst staff to analyze the data, 100 hr at $87.36/hr for management analyst staff to develop the content of the access monitoring review plan, 40 hr at $67.38/hr for business operations specialist staff to publish the access monitoring review plan, and 10 hr at $112.70/hr for managerial staff to review and approve the access monitoring review plan.

TABLE 1—ACCESS MONITORING REVIEW PLAN—ONE-TIME BURDEN PER STATE

Requirement	Occupation title	Burden hours	Adjusted hourly wage ($/hr)	Cost per monitoring plan ($/State)
Gathering Data	Social Science Research Assistant	80	41.42	3,313.60
Analyzing Data	Computer and Information Analyst	80	84.50	6,760
Developing Content of Access Monitoring Review Plan.	Management Analyst	100	87.36	8,736
Publishing Access Monitoring Review Plan	Business Operations Specialist	40	67.38	2,695.20
Reviewing and Approving Access Monitoring Review Plan.	General and Operations Manager	10	112.70	1,127.00
Total Burden Per State		310		22,631.80

TABLE 2—ACCESS MONITORING REVIEW PLAN—ONE-TIME TOTAL BURDEN

Anticipated number of state reviews	Total hours	Cost of review per state ($)	Total cost estimate ($)
51	15,810	22,631.80	1,154,221.80

The ongoing burden associated with the requirements under § 447.203(b)(1) through (5) is the time and effort it would take each of the 50 state Medicaid programs and the District of Columbia (51 total respondents) to develop and make publically available an access monitoring review plan for the specific categories of Medicaid services. The access monitoring review plans must be updated at least every 3 years.

We anticipate that the average initial and ongoing burden is likely to be the same since states will need to re-run the data, determine whether to add or drop measures, consider public feedback, and write-up new conclusions based on the information they review. In this regard, we estimate it will take 5,100 hr to develop the access monitoring review plan, 8,160 hr to collect and analyze the data, and 2,040 to publish the plan, and 510 hr for a manager to review and approve the plan (15,810 total hours). We also estimate a cost of $22,631,80 per state and a total of $1,154,221.80.

In deriving these figures we used the following hourly labor rates and time to complete each task: 80 hr at $41.42/hr for a research assistant staff to gather data, 80 hr at $84.50/hr for an information analyst staff to analyze the data, 100 hr at $87.36/hr for management analyst staff to update the content of the access monitoring review plan, 40 hr at $67.38/hr for business operations specialist staff to publish the access monitoring review plan, and 10 hr at $112.70/hr for managerial staff to review and approve the access monitoring review plan.

TABLE 3—ACCESS MONITORING REVIEW PLAN–ONGOING BURDEN PER STATE (ANNUAL)

Requirement	Occupation title	Burden hours	Adjusted hourly wage ($/hr)	Cost per monitoring plan ($/State)
Gathering Data	Social Science Research Assistant	80	41.42	3,313.60
Analyzing Data	Computer and Information Analyst	80	84.50	6,760
Updating Content of Access Monitoring Review Plan.	Management Analyst	100	87.36	8,736
Publishing Access Monitoring Review Plan	Business Operations Specialist	40	67.38	2,695.20
Reviewing and Approving Access Monitoring Review Plan.	General and Operations Manager	10	112.70	1,127.00
Total Burden Per State		310		22,631.80

TABLE 4—ACCESS MONITORING REVIEW PLAN—ONGOING TOTAL BURDEN (ANNUAL)

Anticipated number of state reviews	Total hours	Cost of review per state ($)	Total cost estimate ($)
51	15,810	22,631.80	1,154,221.80

The requirements and burden will be submitted to OMB under control number 0938–1134 (CMS–10391). Annualized over the three-year reporting period, we estimate 17 responses, 5,270 hr, $7,543.93 (per state), and $384,740.60 (aggregate).

2. ICRs Regarding Monitoring Procedures (§ 447.203(b)(6)(ii))

Section 447.203(b)(6)(ii) requires states to have procedures within the access monitoring review plan to monitor continued access after implementation of a SPA that reduces or restructures payment rates. The monitoring procedures must be in place for at least 3 years following the effective date of a SPA that reduces or restructures payment rates.

The ongoing burden associated with the requirements under § 447.203(b)(6)(ii) is the time and effort it would take each of the 50 state Medicaid programs and the District of Columbia to monitor continued access following the implementation of a SPA that reduces or restructures payment rates. The requirements will affect all states that implement a rate reduction or restructure payment rates. We estimate that in each SPA submission cycle, 22 states will implement these rate changes based on the number of states that proposed such reductions in FY 2010. Please note that we are using FY 2010 as the basis for our estimate because of the unusual high volume of rate reduction SPAs that states submitted during this period. By basing our estimate on FY 2010 data, we anticipate the highest potential for burden associated with this final rule with comment period.

We estimate that it will take, on average, 880 hr to develop the monitoring procedures, 528 hr to periodically review the monitoring results, and 66 hr for review and approval of the monitoring procedures (1,474 total hours). We also estimate an average cost of $5,929.14 per state and a total of $130,441.08.

In deriving these figures we used the following hourly labor rates and time to complete each task: 40 hr at $87.36/hr for management analyst staff to develop the monitoring procedures, 24 hr at $87.36/hr for management analyst staff to periodically review the monitoring results, and 3 hr at $112.70/hr for management staff to review and approve the monitoring procedures.

TABLE 5—ACCESS MONITORING PROCEDURES FOLLOWING RATE REDUCTION SPA—BURDEN PER STATE (ANNUAL)

Requirement	Occupation title	Burden hours	Adjusted hourly wage ($/hr)	Cost per data review ($/State)
Develop Monitoring Procedures	Management Analyst	40	87.36	3,494.40
Periodically Review Monitoring Results	Management Analyst	24	87.36	2,096.64
Approve Monitoring Procedures	General and Operations Manager	3	112.70	338.10
Total Burden Per State		67		5,929.14

TABLE 6—ACCESS MONITORING PROCEDURES FOLLOWING RATE REDUCTION SPA—TOTAL BURDEN (ANNUAL)

Anticipated number of state reviews	Total hours	Cost of review per state ($)	Total cost estimate ($)
22	1,474	5,929.14	130,441.08

The requirements and burden will be submitted to OMB under control number 0938–1134 (CMS–10391).

3. ICRs Regarding Ongoing Input (§ 447.203(b)(7))

Section 447.203(b)(7) requires that states have a mechanism for obtaining ongoing beneficiary, provider and stakeholder input on access to care issues, such as hotlines, surveys, ombudsman, or other equivalent mechanisms. States must promptly respond to public input with an appropriate investigation, analysis, and response. They must also maintain records of the beneficiary input and the nature of the state response.

We estimate that the requirement will affect all states that do not currently have a means of beneficiary feedback. Since we currently do not know which states have implemented these mechanisms, we are assuming in our estimate that all states will need to develop new mechanisms. The one-time burden associated with the requirements under § 447.203(b)(7) is the time and effort it would take, on average, for each of the 50 state Medicaid programs and the District of Columbia (51 total respondents) to develop and implement beneficiary feedback mechanisms.

We estimate that it will take an average 5,100 hr to develop the feedback effort and 255 hr to approve the feedback effort (5,355 total hours). We also estimate an average cost of $9,299.50 per state and a total of $474,274.50.

In deriving these figures we used the following hourly labor rates and time to complete each task: 100 hr at $87.36/hr for management analyst staff to develop the feedback effort and 5 hr at $112.70/hr for managerial staff to review and approve the feedback effort.

TABLE 7—BENEFICIARY FEEDBACK MECHANISM—ONE-TIME BURDEN PER STATE

Requirement	Occupation title	Burden hours	Adjusted hourly wage ($/hr)	Cost per data review ($/State)
Developing Feedback Effort	Management Analyst	100	87.36	8,736
Approve Feedback Effort	General and Operations Manager	5	112.70	563.50
Total Burden Per State		105		9,299.50

TABLE 8—BENEFICIARY FEEDBACK MECHANISM—ONE-TIME TOTAL BURDEN

Anticipated number of state reviews	Total hours	Cost of review per state ($)	Total cost estimate ($)
51	5,355	9,299.50	474,274.50

The ongoing burden associated with the requirements under § 447.203(b)(7) is the time and effort it would take each of the 50 state Medicaid programs and the District of Columbia (51 total respondents) to monitor beneficiary feedback mechanisms.

The overall effort associated with monitoring the feedback will primarily be incurred by analysts who will gather, review and make recommendations for and conduct follow-up on the feedback. We do not estimate that the approval of the recommendations will not require as significant effort from managers. We estimate that it will take an average of 3,825 hr to monitor the feedback results, and 255 hr to approve the feedback effort (4,080 total hours). We also estimate an average cost of $7,115.50 per state and a total of $362,890.50.

In deriving these figures we used the following hourly labor rates and time to complete each task: 75 hr at $87.36/hr for management analyst staff to monitor feedback results and 5 hr at $112.70/hr for managerial staff to review and approve the feedback effort.

TABLE 9—BENEFICIARY FEEDBACK MECHANISM—ONGOING BURDEN PER STATE (ANNUAL)

Requirement	Occupation title	Burden hours	Adjusted hourly wage ($/hr)	Cost per data review ($/State)
Monitoring Feedback Results	Management Analyst	75	87.36	6,552.00
Oversee Feedback Effort	General and Operations Manager	5	112.70	563.50
Total Burden Per State		80		7,115.50

TABLE 10—BENEFICIARY FEEDBACK MECHANISM—ONGOING TOTAL BURDEN (ANNUAL)

Anticipated number of state reviews	Total hours	Cost of review per state ($)	Total cost estimate ($)
51	4,080	7,115.50	362,890.50

The requirements and burden will be submitted to OMB under control number 0938–1134 (CMS–10391).

4. ICRs Regarding Corrective Action Plan (§ 447.203(b)(8))

Section 447.203(b)(8) institutes a corrective action procedure that requires states to submit to CMS a corrective action plan should access issues be discovered through the access monitoring processes. The requirement is intended to ensure that states will oversee and address any future access concerns.

This is a new requirement and thus we have no past data to use to determine how many states will identify access issues as they conduct their data reviews and monitoring activities. We assume that many states currently have mechanisms in place to monitor access to care and identify issues. While we are careful not to under-estimate the burden associated with this provision, we believe that a maximum of 10 states may identify access issues per year. The on-time burden associated with the requirements under § 447.203(b)(7) is the time and effort it would take 10 state Medicaid programs to develop and implement corrective action plans.

We estimate that it will take an average of 200 hr to identify issues requiring corrective action, 400 hr to develop the corrective action plans, and 30 hr to review and approve the corrective action plans (630 total hours). We also estimate an average cost of $5,579.70 per state and a total of $55,797.00.

In deriving these figures we used the following hourly labor rates and time to complete each task: 20 hr at $87.36/hr for management analyst staff to identify issues requiring corrective action, 40 hr at $87.36/hr for management analyst staff to develop the corrective action plans, and 3 hr at $112.70/hr for managerial staff to review and approve the corrective action plans.

TABLE 11—CORRECTIVE ACTION PLAN—BURDEN PER STATE

Requirement	Occupation title	Burden hours	Adjusted hourly wage ($/hr)	Cost per data review ($/State)
Identifying Issues for Action	Management Analyst	20	87.36	1,747.20
Developing the Corrective Plan	Management Analyst	40	87.36	3,494.40
Approve Corrective Plan	General and Operations Manager	3	112.70	338.10
Total Burden Per State		63		5,579.70

TABLE 12—CORRECTIVE ACTION PLAN—TOTAL BURDEN

Anticipated number of state reviews	Total hours	Cost of review per state ($)	Total cost estimate ($)
10	630	5,579.70	55,797.00

The requirements and burden will be submitted to OMB under control number 0938–1134 (CMS–10391).

5. ICRs Regarding Public Process to Engage Stakeholders (§ 447.204)

Sections 447.204(a)(1) and (a)(2) require that states consider (when proposing to reduce or restructure Medicaid payment rates) the data collected through § 447.203 and undertake a public process that solicits input on the potential impact of the proposed reduction or restructuring of Medicaid service payment rates on beneficiary access to care. In § 447.204(b), we have also clarified that we may disapprove a proposed rate reduction or restructuring if the SPA does not include or consider the data review and a public process. As an alternative, or additionally, we may take a compliance action in accordance with § 430.35.

We are estimating, annually, that for each SPA revision approximately 22 states will develop and implement these rate changes that would require a public process based on the number of states that proposed such reductions in FY 2010. Again, we are using FY 2010 as the estimate due to the high number of rate reduction proposals submitted by states in that year.

We estimate that it will take an average of 440 hr to develop the public process and 66 hr for review and approval of the public process (506 total hours). We also estimate an average cost

of $2,085.30 per state and a total of $45,876.60.

In deriving these figures we used the following hourly labor rates and time to complete each task: 20 hr at $87.36/hr for management analyst staff to develop the public process and 3 hr at $112.70/hr for managerial staff to review and approve the public process.

TABLE 13—PUBLIC PROCESS—ONE-TIME BURDEN PER STATE PER SPA

Requirement	Occupation title	Burden hours	Adjusted hourly wage ($/hr)	Cost per SPA ($)
Develop the Public Process	Management Analyst	20	87.36	1,747.20
Approve Public Process	General and Operations Manager	3	112.70	338.10
Total Burden Per State		23		2,085.30

TABLE 14—PUBLIC PROCESS—ONE-TIME TOTAL BURDEN

Anticipated number of state reviews	Total hours	Cost of review per state ($)	Total cost estimate ($)
22	506	2,085.30	45,876.60

The ongoing burden associated with the requirements under § 447.204 is the time and effort it would take 22 state Medicaid programs to oversee a public process.

The overall effort associated with developing the public process will primarily be incurred by analysts who develop and initiate public process activities. We do not estimate that efforts associated with review and approval of the activities will increase for overseeing managers. We estimate it will take an average of 880 hr to oversee the public process and 66 hr for review and approval of the public process (946 total hours). We also estimate an average cost of $3,832.50 per state and a total of $84,315.00

In deriving these figures we used the following hourly labor rates and time to complete each task: 40 hr at $87.36/hr for management analyst staff to oversee the public process and 3 hr at $112.70/hr for managerial staff to review and approve the public process.

TABLE 15—PUBLIC PROCESS—ONGOING BURDEN PER STATE

Requirement	Occupation title	Burden hours	Adjusted hourly wage ($/hr)	Cost per SPA ($)
Oversee the Public Process	Management Analyst	40	87.36	3,494.40
Approve Public Process	General and Operations Manager	3	112.70	338.10
Total Burden Per State		43		3,832.50

TABLE 16—PUBLIC PROCESS—ONGOING TOTAL BURDEN (ANNUAL)

Anticipated number of state reviews	Total hours	Cost of review per state ($)	Total cost estimate ($)
22	946	3,832.50	84,315.00

The requirements and burden will be submitted to OMB under control number 0938–1134 (CMS–10391).

6. ICRs Regarding Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates (§ 447.205)

The provisions at § 447.205 clarify when states must issue public notice to providers and allow for the electronic publication of those notices. Section 447.205(d)(2)(iv)(A) through (D) allow those notices to be published on the single state Medicaid agency or other state-developed and maintained Web site that is accessible to the general public via the Internet. The burden associated with developing and issuing public notice at § 447.205 is not affected by this requirement since the revision would simply address an additional (in this case, electronic) means of notification. Consequently, we do not include the electronic notice activity in our burden analysis.

C. Comments Associated With the Collection of Information Requirements

Comment: Several commenters noted that it could take a state up to 6 months and consume many resources to conduct ongoing access reviews (in conjunction with a SPA) and have the documentation, including rate reduction SPA documents ready to submit to CMS. These commenters were concerned that the efforts would create a significant backlog of SPAs.

Response: As previously discussed, we have considered concerns related to the proposed burden and have modified the ongoing regulatory requirements to reduce the burden. We also note that the challenges presented by initial access reviews, including time constraints, were considered in the finalizing this rule. Though initial access reviews, either triggered by the routine, rotating review process, or by submission of a SPA, will require a significant time

investment, subsequent reviews are expected to be more manageable, due to pre-established metrics and review mechanisms. We have conducted a regulatory impact analysis as part of this final rule with comment period. We do not believe that there is potential for this regulation to surpass the threshold for economic significance.

D. Summary of Annual Burden Estimates

TABLE 17—ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

Regulation section(s)	OMB Control No.	Number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($/hr)	Total labor cost of reporting ($)	Total capital/ mainte-nance costs ($)	Total cost ($)
447.203(b)(1)–(4) (one-time requirement)	0938–1134	51	17	80	1,360	41.42	56,331.20	0	56,331.20
				80	1,360	84.50	114,920.00	0	114,920.00
				100	1,700	87.36	148,512.00	0	148,512.00
				40	680	67.38	45,818.40	0	45,818.40
				10	170	112.70	19,159.00	0	19,159.00
Subtotal		*51*	*17*	*310*	*5,270*		*384,740.60*	*0*	*384,740.60*
447.203(b)(1)–(4) (on-going requirement)	0938–1134	51	51	80	4,080	41.42	168,993.60	0	168,993.60
				80	4,080	84.50	344,760.00	0	344,760.00
				100	5,100	87.36	445,536.00	0	445,536.00
				40	2,040	67.38	137,455.20	0	137,455.20
				10	510	112.70	54,477.00	0	54,477.00
Subtotal		*51*	*51*	*310*	*15,810*		*1,154,221.80*	*0*	1,154,221.80
447.203(b)(6)(ii)	0938–1134	22	22	64	1,408	87.36	123,002.88	0	123,002.88
				3	66	112.70	7,438.20	0	7,438.20
Subtotal		*22*	*22*	*67*	*1,474*		*130,441.08*	*0*	*130,441.08*
447.203(b)(7) (one-time requirement)	0938–1134	51	17	100	1,700	87.36	*148,512.00*	0	
				5	85	112.70	*9,579.50*	0	
Subtotal		*51*	*17*	*105*	*1,785*		*158,091.50*	*0*	*158,091.50*
447.203(b)(7) (on-going requirement)	0938–1134	51	51	75	3,825	87.36	334,152.00	0	334,152.00
				5	255	112.70	28,738.50	0	28,738.50
Subtotal		*51*	*51*	*80*	*4,080*		*362,890.50*	*0*	*362,890.50*
447.203(b)(8) (one-time requirement)	0938–1134	10	3.3	60	198	87.36	17,297.28	0	17,297.28
				3	9.9	112.70	1,115.73	0	1,115.73
Subtotal		*10*	*3.3*	*63*	*207.9*		*18,413.01*	*0*	*18,413.01*
447.204(a)(1) and (2) (one-time requirement)	0938–1134	22	7.3	20	146	87.36	12,754.56	0	12,754.56
				3	21.9	112.70	2,468.13	0	2,468.13
Subtotal		*22*	*7.3*	*23*	*167.9*		*15,222.69*		*15,222.69*
447.204(a)(1) and (2) (on-going requirement)	0938–1134	22	22	40	880	87.36	76,876.80	0	76,876.80
				3	66	112.70	7,438.20	0	7,438.20
Subtotal		*22*	*22*	*43*	*946*		*84,315.00*	*0*	*84,315.00*
SUB-TOTAL (One Time Requirements)			44.6	568	8,905		706,908.88	0	706,908.88
SUB-TOTAL (On-Going Requirements)			146	433	20,836		1,601,427.30	0	1,601,427.30
TOTAL			381.2	896	27,956		2,150,244.68	0	2,150,244.68

E. Submission of PRA-Related Comments

We submitted a copy of this final rule to OMB for its review of the rule's information collection and recordkeeping requirements. The requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit CMS' Web site at *www.cms.hhs.gov/Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please identify the rule (CMS–2328–FC) and submit your comments to the OMB desk officer via one of the following transmissions:

Mail: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer.

Fax Number: 202–395–5806, OR

Email: OIRA_submission@omb.eop.gov.

ICR-related comments are due December 2, 2015.

VI. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of

this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Regulatory Impact Statement

A. Statement of Need

This final rule with comment period revises regulatory provisions in § 447.203 and § 447.204 to create a standardized, transparent process for states to follow as part of their broader efforts to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available to the general population in the geographic area, as required by section 1902(a)(30)(A) of the Act. This rule also clarifies and amends § 447.205, which require states to issue public notice to their providers when changing Medicaid payment methods and standards. The changes to the public notice requirement will alleviate confusion on when states must issue notice to providers and recognize electronic media as a means to issue the notices.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA)) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We do not believe that there is potential for this provision to surpass the threshold for economic significance because the proposed data analysis effort is generally consistent with current state oversight and review activities and states have flexibility within the reviews to use their existing data or build upon that data when reviewing access to care.

In fact, the guidance provided under this rule intends to focus disparate state efforts in monitoring and overseeing data and beneficiary concerns, which offers a clear framework to comply with section 1902(a)(30)(A) of the Act. In the absence of federal guidance, states have likely misspent resources in efforts to interpret and comply with section 1902(a)(30)(A) of the Act. We will also make every effort, in collaboration with state and federal partners, to identify resources and tools that states may use to review and monitor access to care within their state Medicaid programs. In this final rule with comment period, we are soliciting public comments to begin identifying data sources and will continue to provide assistance as states develop their reviews and monitoring procedures.

Based on our analysis above, we estimate that even if these data collection efforts were totally new to a state and each state were to either bid a contract to gather and publish the data collection effort and public process required under this rule or conduct the collection and public process with state agency resources, the economic effects would not surpass $100 million or more in any 1 year.

Further, we are not requiring states to directly adjust payment rates as a result of the provisions of this final rule with comment period, nor to take any steps that would not be consistent with efficiency, economy, and quality of care. Rather, these rules propose to clarify that beneficiary access must be considered in setting and adjusting payment methodology for Medicaid services. If a problem is identified, any number of steps might be appropriate, such as redesigning service delivery strategies, or improving provider enrollment and retention efforts. It has historically been within our regulatory authority to make SPA approval decisions based on sufficiency of beneficiary service access and this rule merely provides a more consistent and transparent way to gather and analyze the necessary information to support such reviews.

The RFA requires agencies to analyze options for regulatory relief for small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. For details, see the Small Business Administration's Web site at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Individuals and states are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we and the Secretary have determined that this final rule with comment period will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we and the Secretary have determined that this final rule with comment period will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2015, that threshold is approximately $144 million. This final rule with comment period will not impose a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $144 million in any one year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. Since the estimated total cost associated with the provisions in this final rule with comment period is around $2.3 million annually, it will not impose significant costs on state or local governments, the requirements of E.O. 13132 are not applicable. We also note that the costs associated with this final rule with comment are allocated across 51 state governments. To the extent that costs are for the proper and efficient administration of the Medicaid state plan, many of the activities required under this final rule are likely available at the Medicaid matching rate for administrative expenditures.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

C. Regulatory Alternatives Considered

This section provides an overview of regulatory alternatives that CMS considered for this final rule with comment period. In determining the appropriate approach to guide states in their efforts to meet the requirements of section 1902(a)(30)(A) of the Act and demonstrate sufficient access to Medicaid services, we consulted with SMDs, federal agency policy officials and the MACPAC. Based, in part, on these discussions we arrived at the provisions discussed in this rule, which seek to balance state obligations to meet the statutory requirement of section 1902(a)(30)(A) of the Act and potential new burden associated with the proposal. To achieve this balance, we have set forth a process that provides a framework for states to demonstrate access to Medicaid services using available data resources and in consideration of unique and evolving health care delivery systems. We have also emphasized the importance of considering beneficiary input in determining and monitoring access to Medicaid services throughout the process as discussed in this final rule with comment period.

1. Access Monitoring Review Plan

The process for documenting access to care and service payment rates described at § 447.203 will require states to develop and make publically available access monitoring review plans that address the extent to which beneficiary needs are met, the availability of care and providers, and changes in beneficiary utilization of covered services and other factors. The access monitoring review plan would also include percentage comparisons of Medicaid payment rates to other public or private health coverage rates within geographic areas of the state. The access monitoring review plans are to be developed for a subset of Medicaid service categories and updated at least every 3 years or, in the context of a SPA proposal to reduce provider rates or restructure provider rates in circumstance that may negatively impact access to care, within 12 months of implementing the SPA.

As an alternative to the proposed framework for reviewing access to care, we considered requiring states to report standard data measures to demonstrate sufficient access to care and section 1902(a)(30)(A) of the Act. We also considered setting national access thresholds or requiring states to establish and demonstrate access thresholds. As we have highlighted throughout this final rule with comment period, there are no standardized, transparent methodologies for demonstrating access to care that would be appropriate to adopt at this time.

Rather than prescribe data measures that may not align with all services or set threshold standards, we have adopted a general framework, which sets forth a three-part review that applies across services and delivery systems and will allow states the flexibility to determine, through current or new data sources, appropriate measures of access to care. As states analyze their existing data sources and those that we identify through work with MACPAC and our federal partners, we believe that states may arrive at best practices for determining sufficient Medicaid access to care which could be replicated across state delivery systems and will evolve with new approaches to delivering health care to Medicaid beneficiaries. In addition, we are issuing an RFI to solicit feedback from stakeholders on whether data exists to develop core access measures and thresholds would provide additional information or approaches that would be useful to us and states in ensuring access to care to Medicaid beneficiaries.

2. Access Review Timeframe and Monitoring Procedures

States will be required to develop access monitoring review plans for the following service categories: Primary care; physician specialist services; behavioral health; pre- and post-natal obstetric services, including labor and delivery; home health services and other service categories as determined necessary based on beneficiary, provider or stakeholder complaints; the access monitoring review plans must be reviewed and updated at least every 3 years. States must also submit an access review, completed within the 12 months prior, with any SPA that proposes to reduce or restructure provider payments for each of the impacted services. We have arrived at this subset of service categories because they are frequently used services in Medicaid and they are considered gateway services, meaning if a beneficiary has access to these services, it is likely that the majority of the beneficiary's needs are being met.

We considered requiring the review for all services on an annual basis or a review period that is more frequent than 5 years. After careful consideration of the burden associated with annual reviews, which were a foremost concern for some commenters, we determined 3 year ongoing reviews as an appropriate frequency period. The final rule with comment period provides for more frequent reviews for fewer high demand services and requires additional review and monitoring over three years for services subject to rate reductions or restructuring of payments or when the Medicaid agency receives a significantly higher than usual level of complaints about access to care from beneficiaries, providers, or other stakeholders. In this way, the final rule with comment period ensures that access to care reviews for most services will be conducted as potential issues arise or circumstances change. We believe that, absent rate reductions or restructuring of payments, the 3-year review and monitoring periods combined with ongoing solicitation of information about access from beneficiaries are sufficient to identify access issues that may occur over time.

This final rule with comment period will require states to develop monitoring procedures after implementing provider rate reductions or restructuring rates in ways that may negatively impact access to care. We require these monitoring procedures because the impact of rate changes on access to care may not be apparent at the time the changes are adopted. We considered not requiring states to monitor access after implementing the changes and to continue to rely on the 5-year reviews to ensure that access is maintained. However, we believe that it is important for states to identify and address access issues that arise from specific SPA actions, such as reimbursement rate reductions or restructuring.

3. Beneficiary Input on Access to Care

The requirements of § 447.203 and § 447.204 emphasize the importance of involving beneficiaries in determining access issues and the impact that state rate changes will have on access to care. Specifically, we require that states implement an ongoing mechanism for beneficiary input on access to care (through hotlines, surveys, ombudsman, or another equivalent mechanism) and receive input from beneficiaries (and affected stakeholders) on the impact that proposed rates changes will have through a public process. We believe that beneficiaries' experiences in accessing Medicaid services is the most important indicator of whether access is sufficient and beneficiary input will be particularly informative in identifying access issues.

We also considered a requirement that states consult with beneficiaries when developing their corrective action plans in instances when the access data reviews or monitoring procedures identify access issues. While we encourage states to solicit beneficiary

input on corrective action plans, we did not make this a specific regulatory requirement and we leave it to the states' discretion to develop the corrective action plans as part of their current policy development methods.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, and Rural areas.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 447.203 is amended by revising the section heading and paragraph (b) to read as follows:

§ 447.203 Documentation of access to care and service payment rates.

* * * * *

(b) In consultation with the medical care advisory committee under § 431.12 of this chapter, the agency must develop a medical assistance access monitoring review plan and update it, in accordance with the timeline established in paragraph (b)(5) of this section. The plan must be published and made available to the public for review and comment for a period of no less than 30 days, prior to being finalized and submitted to CMS for review.

(1) *Access monitoring review plan data requirements.* The access monitoring review plan must include an access monitoring analysis that includes: Data sources, methodologies, baselines, assumptions, trends and factors, and thresholds that analyze and inform determinations of the sufficiency of access to care which may vary by geographic location within the state and will be used to inform state policies affecting access to Medicaid services such as provider payment rates, as well as the items specified in this section. The access monitoring review plan must specify data elements that will support the state's analysis of whether beneficiaries have sufficient access to care. The plan and monitoring analysis will consider:

(i) The extent to which beneficiary needs are fully met;

(ii) The availability of care through enrolled providers to beneficiaries in each geographic area, by provider type and site of service;

(iii) Changes in beneficiary utilization of covered services in each geographic area.

(iv) The characteristics of the beneficiary population (including considerations for care, service and payment variations for pediatric and adult populations and for individuals with disabilities); and

(v) Actual or estimated levels of provider payment available from other payers, including other public and private payers, by provider type and site of service.

(2) *Access monitoring review plan beneficiary and provider input.* The access monitoring review plan must include an analysis of data and the state's conclusion of the sufficiency of access to care that will consider relevant provider and beneficiary information, including information obtained through public rate-setting processes, the medical care advisory committees established under § 431.12 of this chapter, the processes described in paragraph (b)(7) of this section, and other mechanisms (such as letters from providers and beneficiaries to State or Federal officials), which describe access to care concerns or suggestions for improvement in access to care.

(3) *Access monitoring review plan comparative payment rate review.* For each of the services reviewed, by the provider types and sites of service (*e.g.* primary care physicians in office settings) described within the access monitoring analysis, the access monitoring review plan must include an analysis of the percentage comparison of Medicaid payment rates to other public (including, as practical, Medicaid managed care rates) and private health insurer payment rates within geographic areas of the state.

(4) *Access monitoring review plan standards and methodologies.* The access monitoring review plan and analysis must, at a minimum, include: The specific measures that the state uses to analyze access to care (such as, but not limited to: Time and distance standards, providers participating in the Medicaid program, providers with open panels, providers accepting new Medicaid beneficiaries, service utilization patterns, identified beneficiary needs, data on beneficiary and provider feedback and suggestions for improvement, the availability of telemedicine and telehealth, and other similar measures), how the measures relate to the access monitoring review plan described in paragraph (b)(1) of this section, baseline and updated data associated with the measures, any issues with access that are discovered as a result of the review, and the state agency's recommendations on the sufficiency of access to care based on the review. In addition, the access monitoring review plan must include procedures to periodically monitor access for at least 3 years after the implementation of a provider rate reduction or restructuring, as discussed in paragraph (b)(6)(ii) of this section.

(5) *Access monitoring review plan timeframe.* Beginning July 1, 2016 the State agency must:

(i) Develop its access monitoring review plan by July 1 of the first review year, and update this plan by July 1 of each subsequent review period;

(ii) For all of the following, complete an analysis of the data collected using the methodology specified in the access monitoring review plan in paragraphs (b)(1) through (4) of this section, with a separate analysis for each provider type and site of service furnishing the type of service at least once every 3 years:

(A) Primary care services (including those provided by a physician, FQHC, clinic, or dental care).

(B) Physician specialist services (for example, cardiology, urology, radiology).

(C) Behavioral health services (including mental health and substance use disorder).

(D) Pre- and post-natal obstetric services including labor and delivery.

(E) Home health services.

(F) Any additional types of services for which a review is required under paragraph (b)(6) of this section;

(G) Additional types of services for which the state or CMS has received a significantly higher than usual volume of beneficiary, provider or other stakeholder access complaints for a geographic area, including complaints received through the mechanisms for beneficiary input consistent with paragraph (b)(7) of this section; and

(H) Additional types of services selected by the state.

(6) *Special provisions for proposed provider rate reductions or restructuring*—(i) *Compliance with access requirements.* The State shall submit with any State plan amendment that proposes to reduce provider payment rates or restructure provider payments in circumstances when the changes could result in diminished access, an access review, in accordance with the access monitoring review plan, for each service affected by the State plan amendments as described under paragraph (b)(1) of this section completed within the prior 12 months.

That access review must demonstrate sufficient access for any service for which the state agency proposes to reduce payment rates or restructure provider payments to demonstrate compliance with the access requirements at section 1902(a)(30)(A) of the Act.

(ii) *Monitoring procedures.* In addition to the analysis conducted through paragraphs (b)(1) through (4) of this section that demonstrates access to care is sufficient as of the effective date of the State plan amendment, a state must establish procedures in its access monitoring review plan to monitor continued access to care after implementation of state plan service rate reduction or payment restructuring. The frequency of monitoring should be informed by the public review described in paragraph (b) of this section and should be conducted no less frequently than annually.

(A) The procedures must provide for a periodic review of state determined and clearly defined measures, baseline data, and thresholds that will serve to demonstrate continued sustained service access, consistent with efficiency, economy, and quality of care.

(B) The monitoring procedures must be in place for a period of at least 3 years after the effective date of the state plan amendment that authorizes the payment reductions or restructuring.

(7) *Mechanisms for ongoing beneficiary and provider input.* (i) States must have ongoing mechanisms for beneficiary and provider input on access to care (through hotlines, surveys, ombudsman, review of grievance and appeals data, or another equivalent mechanisms), consistent with the access requirements and public process described in § 447.204.

(ii) States should promptly respond to public input through these mechanisms citing specific access problems, with an appropriate investigation, analysis, and response.

(iii) States must maintain a record of data on public input and how the state responded to this input. This record will be made available to CMS upon request.

(8) *Addressing access questions and remediation of inadequate access to care.* When access deficiencies are identified, the state must, within 90 days after discovery, submit a corrective action plan with specific steps and timelines to address those issues. While the corrective action plan may include longer-term objectives, remediation of the access deficiency should take place within 12 months.

(i) The state's corrective actions may address the access deficiencies through a variety of approaches, including, but not limited to: Increasing payment rates, improving outreach to providers, reducing barriers to provider enrollment, proving additional transportation to services, providing for telemedicine delivery and telehealth, or improving care coordination.

(ii) The resulting improvements in access must be measured and sustainable.

■ 3. Section 447.204 is revised to read as follows:

§ 447.204 Medicaid provider participation and public process to inform access to care.

(a) The agency's payments must be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that services under the plan are available to beneficiaries at least to the extent that those services are available to the general population. In reviewing payment sufficiency, states are required to consider, prior to the submission of any state plan amendment that proposes to reduce or restructure Medicaid service payment rates:

(1) The data collected, and the analysis performed, under § 447.203.

(2) Input from beneficiaries, providers and other affected stakeholders on beneficiary access to the affected services and the impact that the proposed rate change will have, if any, on continued service access. The state should maintain a record of the public input and how it responded to such input.

(b) The state must submit to CMS with any such proposed state plan amendment affecting payment rates:

(1) Its most recent access monitoring review plan performed under § 447.203(b)(6) for the services at issue;

(2) An analysis of the effect of the change in payment rates on access; and

(3) A specific analysis of the information and concerns expressed in input from affected stakeholders.

(c) CMS may disapprove a proposed state plan amendment affecting payment rates if the state does not include in its submission the supporting documentation described in paragraph (b) of this section, for failure to document compliance with statutory access requirements. Any such disapproval would follow the procedures described at part 430 Subpart B of this title.

(d) To remedy an access deficiency, CMS may take a compliance action using the procedures described at § 430.35 of this chapter.

■ 4. Section 447.205 is amended by adding paragraph (d)(2)(iv) to read as follows:

§ 447.205 Public notice of changes in Statewide methods and standards for setting payment rates.

* * * * *

(d) * * *

(2) * * *

(iv) A Web site developed and maintained by the single State agency or other responsible State agency that is accessible to the general public, provided that the Web site:

(A) Is clearly titled and can be easily reached from a hyperlink included on Web sites that provide general information to beneficiaries and providers, and included on the State-specific page on the Federal Medicaid Web site.

(B) Is updated for bulletins on a regular and known basis (for example, the first day of each month), and the public notice is issued as part of the regular update;

(C) Includes the actual date it was released to the public on the Web site; or

(D) Complies with national standards to ensure access to individuals with disabilities; and

(E) Includes protections to ensure that the content of the issued notice is not modified after the initial publication and is maintained on the Web site for no less than a 3-year period.

Dated: September 17, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: October 22. 2015.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2015–27697 Filed 10–29–15; 11:15 am]

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Part IV

The President

Proclamation 9354—National Adoption Month, 2015
Proclamation 9355—National Alzheimer's Disease Awareness Month, 2015
Proclamation 9356—National College Application Month, 2015

Federal Register
Vol. 80, No. 211
Monday, November 2, 2015

Presidential Documents

Title 3—

The President

Proclamation 9354 of October 28, 2015

National Adoption Month, 2015

By the President of the United States of America

A Proclamation

All young people deserve a safe place to live, and with each passing year, more children know the warmth and comfort of a loving family thanks to adoptive parents. People who adopt do so for a variety of reasons, but they are united in the kindness and devotion they show toward children—the people who need it most. During National Adoption Month, we recognize the selflessness of adoptive families, and we thank them for opening their hearts and their doors to young people in need of a safe, stable place to call home.

More than 400,000 children are in foster care across America today, and over 100,000 of these children are waiting for an adoptive home. Last year, over 23,000 youth aged out of the foster care system without having found their forever families. When people adopt, they open up a world of promise and possibility by providing a steady, supportive environment for youth to live in. November 21 marks National Adoption Day, when we unite as families, advocates, and communities—and as a country—to raise awareness of the barriers to adoption and recommit ourselves to moving more of our young people into permanent homes.

My Administration is dedicated to supporting adoptive parents and making it easier for families to adopt. Earlier this year, I implemented new Federal Government leave policies aimed at expanding workplace flexibility and helping employees who are balancing the needs of their family, including the birth or adoption of a child, with the demands of their job. I was proud to permanently extend the Adoption Tax Credit, which helps provide necessary financial support to adoptive families to ease the economic burden of the adoption process. And last summer, the Intercountry Adoption Universal Accreditation Act went into effect—a law I signed to enforce our high legal standards for adoption service providers and to protect parents and children of adoptive families around the world.

Families across our country won a victory earlier this year when the Supreme Court ruled that the Constitution guarantees marriage equality—affirming the notion that LGBT couples deserve to be treated equally. This ruling was a victory for same-sex couples who have fought for equality and for children whose parents' marriages will now be recognized as legitimate throughout America. And because of the ruling, more kids in foster care will now have the chance to be welcomed into a loving and supportive family to call their own.

As we come together to give thanks and show our appreciation for the professionals who work tirelessly to ensure the adoption process runs smoothly and efficiently, we celebrate the stories of those who have been permanently and positively affected by adoption. During National Adoption Month, let us embrace the unique place adoptive families have in America, and let us extend our fullest gratitude to all those who have welcomed home a child in need.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2015

as National Adoption Month. I encourage all Americans to observe this month by answering the call to find a permanent and caring family for every child in need and by supporting the families who care for them.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2015–28035
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Presidential Documents

Proclamation 9355 of October 28, 2015

National Alzheimer's Disease Awareness Month, 2015

By the President of the United States of America

A Proclamation

Each year, people with Alzheimer's disease experience devastating physical and emotional challenges, as the abilities to remember, learn, and think worsen over time—and their loved ones face challenges right alongside them. Although Alzheimer's is the most common form of dementia, it is often misunderstood, and misperceptions about the disease can isolate and stigmatize people with dementia and their families. This month, and every month, we stand with the more than 5 million people in the United States who live with Alzheimer's and with the caregivers who help them age with dignity.

The Federal Government is the leading funder of Alzheimer's research, and together with the scientific community, patient advocates, and advocacy groups, we are supporting a broad portfolio of research as part of the National Plan to Address Alzheimer's Disease—which maps concrete goals toward the prevention and effective treatment of Alzheimer's by 2025. With the expansion and innovation of research initiatives, we are gaining new insight on how to delay, treat, and prevent this disease. We are also continuing to make investments in the Brain Research through Advancing Innovative Neurotechnologies (BRAIN) Initiative, which will advance our understanding of the most intricate aspects of the human mind to address diseases that affect the brain. And earlier this year, I announced a new Precision Medicine Initiative, an effort aimed at bringing us closer to a cure for diseases like Alzheimer's by accelerating biomedical discoveries and providing clinicians with new tools, knowledge, and therapies to select treatments that will work best for individual patients.

As some of the brightest minds in our Nation and across the world work toward finding a cure for Alzheimer's, we must also focus time and resources on finding better ways to support the family caregivers who selflessly give of themselves each day. Caregivers around America show incredible devotion to those they look after, and caring for a person with Alzheimer's can have profound effects on one's emotional, financial, and physical well-being. As they work to promote the health of others, their dedication and compassion remind us that we are all our brothers' and sisters' keepers, and we must show the same level of support for caregivers as they show their loved ones with dementia. To learn more about what the Federal Government is doing to support research and programs for families and caregivers, visit www.Alzheimers.gov.

This November, let us focus our Nation's attention on the challenges posed by Alzheimer's disease, which families across America courageously face every day. As we continue our work to eliminate Alzheimer's disease and forge a future free from it, let us lift up the lives of those living with it, and let us do all we can to honor those it has taken from us too soon.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2015 as National Alzheimer's Disease Awareness Month. I call upon the people

of the United States to learn more about Alzheimer's disease and support the individuals living with this disease and their caregivers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2015–28036
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Presidential Documents

Proclamation 9356 of October 28, 2015

National College Application Month, 2015

By the President of the United States of America

A Proclamation

Our Nation was built on the idea that no matter where you come from or what you look like, you can make it if you try. Expanding access to affordable higher education is key to safeguarding this ideal. A college degree is the surest ticket to the middle class, and broadening paths to education so more people have the chance to earn post-secondary degrees and credentials is the best way to make sure all our people can contribute to writing our country's next great chapters. During National College Application Month, we pledge our support for those across America who are taking steps toward earning a degree, and we continue our work to ensure all Americans can access the tools and resources necessary to make informed decisions about college.

My Administration has made it a priority to equip aspiring college students and their families with data on college costs, value, and admissions so they can make choices that are right for their futures and their budgets. Earlier this year, we redesigned the Department of Education's College Scorecard, which can be found at CollegeScorecard.ed.gov, with input from those who use it most—students, families, and advisers. It can now be used to compare schools' affordability, graduation rates, post-college salaries, and employment outcomes for former students. We also launched the *Better Make Room* campaign, which supports First Lady Michelle Obama's Reach Higher initiative and gives students a platform to share their goals, progress, and stories to lift each other up and inspire one another to continue pursuing an education. And across our country, organizations are partnering with government to ensure first-generation college students and students in low-income communities have the resources and support to go to school and tap into their incredible potential.

Our effort to expand access to higher education includes making community college more affordable. Community colleges are essential pathways to the middle class for millions of people: They work for veterans transitioning back into civilian life, families who need flexible schedules due to work or childcare, and people who are seeking to hone new skills and are not able to go back to school for 4 years. That is why I announced a plan earlier this year to make 2 years of community college free for anyone willing to work for it—because in the United States of America, a quality education should not be a privilege that is reserved for a few, but a right for everybody who strives for it.

Getting a higher education has never been more important, but it has also never been more expensive, and my Administration has been working to streamline the process for obtaining Federal financial aid. Next year, students and families will be able to apply for aid earlier, beginning on October 1, and use tax data from their most recent return rather than waiting to finalize applications until the following year's tax season. Additionally, we have made it easier to complete the FAFSA—the standard form used when applying for aid from the Federal Government—and we have created a new tax credit of up to $2,500 for working families to pay for things like textbooks and tuition. To make loans more manageable for students

and families, we increased Pell Grant funding, capped loan repayments at 10 percent of a borrower's income, and enacted a commonsense plan to keep interest rates on student loans at reasonable levels. All together, these actions could help hundreds of thousands of students pay for college. For resources and more information about the steps we are taking to expand access to the opportunities a higher education provides, visit www.WhiteHouse.gov/ReachHigher.

At such a critical time in people's lives, we owe it to them to make sure they have the necessary resources and information to confidently make the important decisions that come with applying to college. This month, let us strive to expand access to quality higher education for all people and to make real our Nation's promise of opportunity. Together, we can once again secure our status as the country with the highest proportion of college graduates in the world, and we can forge a future where dreams know no bounds.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2015 as National College Application Month. I call upon public officials, educators, parents, students, and all Americans to observe this month with appropriate ceremonies, activities, and programs designed to encourage students to make plans for and apply to college.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

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CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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H.R. 3819/P.L. 114–73
Surface Transportation Extension Act of 2015 (Oct. 29, 2015; 129 Stat. 568)
Last List October 26, 2015

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 2015

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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