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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

RIN 0575–AC88

Single Family Housing Direct Loan Program

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency) published a proposed rule on August 23, 2013, to amend its regulations for the section 502 direct single family housing loan program to create a certified loan application packaging process. Through this action, revisions are being made to the rule based on an evaluation of the public comments received as well as the results of the pilot program RHS began in 2010 to test changes to the loan application packaging process. This final rule will impose reasonable experience, training, structure, and performance requirements on eligible service providers; and it will regulate the packaging fee permitted under the process.

By establishing a vast network of competent, experienced, and committed Agency-certified packagers, this action is intended to benefit low- and very low-income people who wish to achieve homeownership in rural areas by increasing their awareness of the Agency's housing program, increasing specialized support available to them to complete the application for assistance, and improving the quality of loan application packages submitted on their behalf.

DATES: The effective date for the final rule is July 28, 2015.

FOR FURTHER INFORMATION CONTACT: Brooke Baumann, Branch Chief, Single Family Housing Direct Loan Division, USDA Rural Development, Stop 0783, 1400 Independence Avenue SW., Washington, DC 20250–0783, Telephone: 202–690–4250. Email: *brooke.baumann@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority

Title V, Section 1480(k) of the Housing Act authorizes the Secretary of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect packaged loan applications received prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule, while affecting small entities, will not have an adverse economic impact on small entities. The Agency made this determination based on the fact that this regulation only impacts those who choose to participate in the certified loan application packaging process. Small entities engaged in this process will not be affected to a greater extent than large entities engaged in this process.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7

CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. However, in an effort to raise Tribal and Tribal Housing Authority awareness and interest in the proposed rule published on August 23, 2013, RHS co-hosted a webinar and teleconference with the National American Indian Housing Council on November, 6, 2013, during the extension of the public comment period. Thirty-nine Indian Housing and Tribal staff from around the country registered for the webinar and teleconference to learn about the proposed certified loan application packaging process. Participants were encouraged to provide feedback during the webinar and teleconference as well.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that OMB approve all collections of information by a Federal agency before they can be implemented. Under the proposed rule, qualified employers were required to provide monthly reports to the Agency outlining the packaging activities of their Agency-certified packager(s). The estimated total annual burden on respondents was 6,300 hours.

After gauging the benefits and limitations of the reporting under the packaging pilot program and in light of public comments received, the monthly reporting requirement outlined in § 3550.75 (b)(2)(iv) was removed. This rule does not impose any new or modified information collection requirements.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act, 44 U.S.C. 3601 *et seq.*, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

I. Background

The section 502 direct single family housing loan program provides subsidized mortgage loans for modest homes in rural areas to primarily first-time homebuyers who are low- and very low-income. While loan approval and underwriting are functions of the Agency staff, the Agency's nonprofit and public partners often play a role in educating potential homebuyers in homeownership and in originating section 502 loans.

Loan application packaging, which is an optional service, is not new to the program; it has been permitted under the program for decades. Loan application packagers, who are separate and independent from the Agency, play an important role in increasing awareness of the section 502 program among potential homeowners and provide a valuable service to potential homeowners.

To address weaknesses in the existing loan application process and to integrate the lessons learned from the packaging pilot program, which began in Fiscal Year 2010 and introduced the use of intermediaries in the packaging process, RHS published a proposed rule on August 23, 2013, (78 FR 52460–52464) to amend its regulations for the section 502 direct single family housing loan program to create a certified loan application packaging process.

II. Discussion of Relevant Public Comments Received on August 23, 2013, Proposed Rule

The original 60-day comment period for the proposed rule, which ended on October 22, 2013, was extended to November 22, 2013, due to the lapse in Federal funding that caused a partial closing of Federal government operations from October 1 through October 16, 2013. Notice of the extension was published on November 1, 2013 (78 FR 65582). A total of 34 comments were received. Commenters included affordable housing nonprofit organizations, the National Council of State Housing Agencies, the National Rural Housing Coalition, and the general public.

Comments on the role of the intermediaries. The Agency received several comments on the role of the intermediaries in the process. As outlined in the proposed rule, intermediaries would perform quality assurance reviews and monitoring activities on individuals seeking or who have been designated as an Agency-certified loan application packager and their qualified employers. Some called for the complete removal of the intermediaries while some called for a tightening of the requirements to become one (*i.e.* require the organization to demonstrate financial viability, have at least one recommendation from a Rural Development State Office, etc.) and/or expanding their role (*i.e.* allow them to order critical items, require their involvement in all packaged loan applications, allow them to perform quality assurance reviews on self-help loans, etc.).

Agency Response: In light of the intermediaries' overall performance under the pilot, which included successes and shortcomings, the Agency will strengthen the requirements to be an intermediary while relaxing the requirements to be a qualified employer to allow startups to participate in the certified loan application packaging process. An intermediary will be involved in the process unless a qualified employer and their certified packaging staff obtains approval from the applicable Rural Development State Director to opt not to go through an intermediary based on the quality of the loan application packages submitted by the qualified employer and their certified packaging staff. The ''opt out'' request is optional. Qualified employers and their certified packaging staff that are performing at or above the required standards may choose to continue to funnel their packaged loan applications through an intermediary for their own reasons.

For qualified employers and their certified packaging staff that received approval to ''opt out,'' the State Director will determine if they must subsequently submit through an intermediary instead of directly to the Agency if performance issues should occur. Guidelines for State Directors will be included in the program's handbook to ensure uniformity.

The criteria to be an intermediary will be revised to clarify that intermediaries will be required to provide supplemental training, technical assistance, and support to those qualified employers and their Agency-certified packaging staff that are required to funnel their packages through them since one of the primary goals of an intermediary is to cultivate high performance. As further detailed in the program's handbook, supplemental training and technical assistance will address, among other things, any areas

for improvement discovered during the quality assurance reviews and explain any changes to program guidance.

The criteria will also be revised to require an intermediary to be, to the Agency's satisfaction, a Section 501 (c)(3) nonprofit organization or public agency in good standing in the State(s) of its operation with the capacity to promptly serve (as detailed in the program's handbook) multiple qualified employers and their Agency-certified loan application packagers throughout an entire State or preferably throughout entire States; be financially viable as evidenced by an audit paid for by the applicant seeking to be an intermediary; and demonstrate that their quality assurance staff has experience with packaging, originating, or underwriting affordable housing loans. After the initial application process, intermediaries may be required to periodically demonstrate that they still meet specified criteria.

An intermediary will continue to be prohibited from having a financial interest in the property for which the application package is submitted since this helps ensure an unbiased and objective quality assurance review. A qualified employer and/or Agency-certified packager, however, will be permitted to have a financial interest in the property since many offer acquisition and rehabilitation programs or other programs that promote affordable housing and improve a community's housing stock. However, a qualified employer and/or Agency-certified packager must notify the Agency and applicant of any financial interest in the property. In addition, the Agency may prohibit a qualified employer and/or Agency-certified packager from receiving part or all of the packaging fee if the financial interest is improper or the qualified employer and/or Agency-certified packager has a history of improperly using its position when a financial interest exists.

To complement the above, the proficiency requirement outlined in § 3550.75(b)(1)(iv) was removed, although an individual must still meet the requirements in 3550.75(b)(1)(i) through (iv); and the experience requirement outlined in § 3550.75(b)(2)(iii) was removed, although a qualified employer must still meet the requirements in 3550.75(b)(2)(i) through now (v).

Following the publication of this rule, a **Federal Register** notice of the Agency's intent to accept applications to be an intermediary under the regulation will be published. Intermediaries operating under the packaging pilot program are not guaranteed an intermediary role beyond their participation in the pilot program (which ends at the earlier of either the end date of the agreement between the pilot intermediary and the Agency, or the effective date of this final rule) and will be subject to this application process should they wish to serve as an intermediary under the regulation. Periodically, the Agency will issue such notices to give interested parties an opportunity to apply to be an intermediary, require existing intermediaries to demonstrate that they still meet the requirements under the regulation, and ensure there are a sufficient number of qualified intermediaries engaged in the certified loan application packaging process.

Comments on the loan application packaging fee and compensation. The Agency received several comments on the packaging fee. Some called for the packaging fee to be reduced or eliminated. Some called for the packaging fee to be increased or a percent of the loan amount. Within this subset, it was also stated that compensation should be allowed even if the packaged loan application does not result in a closed loan and that the Agency should pay for all or a portion of the fee and provide technical assistance funding to the Agency-certified packagers for marketing, prescreening, and other related items.

Agency Response: The language under § 3550.52 will state that, ''The fee may not exceed two percent of the national average area loan limit as determined by the Agency and may be limited further at the Agency's discretion.'' However, the program's handbook will initially specify that the fee may be up to, but not exceed, $1,500. If the qualified employer and their certified packaging staff are required to go through an intermediary, the fee will remain the same but they will have to share a portion of the fee with the intermediary. The parties will negotiate how the fee is shared exclusive of any Agency involvement.

Comments were made that mortgage lenders and brokers traditionally earn a minimum of 250 basis points in originating private sector mortgages. Although these services share some similarities, packaging a section 502 loan and originating a private mortgage are not the same. For example, originating a private mortgage generally includes processing an application, underwriting and funding a loan, and other administrative services. Packagers in the section 502 program do not underwrite, approve, or fund loans on behalf of the Agency.

Compensation will only be allowed for closed loans. This condition is currently in effect for the protection it affords parties who wish to seek a section 502 loan but who are clearly ineligible.

Other than using program funds to include the packaging fee in the borrower's loan when permissible and travel funds for a designated Agency staff member to attend classroom sessions offered by non-Agency trainers, the Agency will not use funds to operate the certified loan application packaging process.

Comments on the adverse impact the rule will have on small nonprofits that have been effectively providing abbreviated packaging services to Agency applicants for years. Some commenters expressed concerns that the requirements of the certified loan application packaging process, such as the training component, would force out small nonprofits currently engaged in packaging.

Agency Response: Language will be added to § 3550.52, ''Loan Purposes'', that states, ''Nominal packaging fees not resulting from the certified loan application process are an eligible cost provided the fee is no more than $350; the loan application packager is a nonprofit, tax exempt partner that received an exception to all or part of the requirements outlined in § 3550.75 from the applicable Rural Development State Director; and the packager gathers and submits the information needed for the Agency to determine if the applicant is preliminarily eligible along with a fully completed and signed uniform residential loan application.''

Comments on whether loan applications packaged under this process should be considered as a fourth funding priority item. The Agency received several comments on the funding priority classification. Some stated that fourth funding priority or higher was critical to the success of the certified loan application packaging process. Within this subset, it was also stated that processing priority was imperative. Some stated that giving fourth funding priority to applications received under this process would be unethical and discriminatory.

Agency Response: After weighing the comments for and against, it was decided that loans packaged under this process will not receive fourth funding priority unless the Administrator decides that such a temporary classification is necessary nor will they receive processing priority though the Agency will examine the program's guidance to ensure that both tracks (packaged or non-packaged) are treated

equitably. As noted by one commenter, ''As it stands today, the items that receive fourth priority ultimately allow the agency to assist more income-limited persons by reducing the agency loan amount for transactions involving sweat equity or supplemental financing from outside sources. Giving fourth priority to applications packaged under this process only benefits a particular borrower and actually places them in a position where this service is not exactly optional.'' However, § 3550.55 (c) will be revised to include the following guidance at the end of the paragraph: ''Applications received through the certified loan application packaging process do not, by themselves, warrant a higher priority; though the Administrator may temporarily reclassify them as fourth priority when determined appropriate.'' Any such reclassification will be published in a **Federal Register** notice.

Comments on the experience requirement placed on an individual who wishes to become an Agency-certified packager. One commenter suggested that the requirement be revised from ''have at least one year of real estate and/or mortgage experience'' to ''have at least one year of affordable housing loan origination and/or affordable housing counseling experience''. One commenter asked for the rationale behind this experience requirement. One commenter suggested this requirement be removed.

Agency Response: The minimum relevant experience requirement (along with the other requirements), helps ensure that Agency-certified packagers have the needed knowledge, skills, and abilities to provide this service. The Agency agrees that experience with affordable housing loan origination and/or affordable housing counseling is more relevant given the nature of the section 502 direct single family housing loan program and the income categories it is designed to serve, and has revised § 3550.75(b)(1)(i) accordingly.

Comments on the employment relationship between the Agency-certified packager and the qualified employer. Some commenters requested clarity on the nature of the relationship and one requested that contract arrangements be permitted.

Agency Response: It will be clarified that employed means as an employee or as an independent contractor.

Comment specific to the States' Housing Finance Agencies (HFAs). One commenter suggested that the States' HFAs be allowed to serve as qualified employers or as intermediaries regardless of their composition (public agency or quasi-government entity established by the State as an independent authority and public corporation) and their experience with the Agency's programs.

Agency Response: Given the States' HFAs purpose, vision, and structure, the Agency agrees with this comment and is revising § 3550.75(b)(2) and (3) accordingly. A similar allowance will also be extended to tribal housing authorities though this allowance will be limited to serving as qualified employers since tribal housing authorities focus on Indian housing needs and not necessarily statewide housing needs.

Comments on compliance with the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act). Several commenters expressed concern that compliance with the SAFE Act would be overwhelmingly burdensome and costly.

Agency Response: As noted in the Paperwork Reduction Act section, the monthly reporting requirement outlined in § 3550.75(b)(2)(iv) was removed and along with it the reference to the SAFE Act. The SAFE Act provides for the licensing and registration of mortgage loan originators, and includes provisions requiring all States to establish a licensing and registration scheme for mortgage loan originators who are not employed by federal agencies or Agency-regulated institutions. The Consumer Financial Protection Bureau published regulations regarding the State requirements at 12 CFR part 1008 (Regulation H).

The Agency does not have the authority under the SAFE Act to enforce or monitor SAFE Act compliance. However, the Agency believes that certified loan application packagers meeting the requirements of this rule are not ''mortgage loan originators'' subject to the SAFE Act or Regulation H because certified loan application packagers do not ''offer or negotiate terms'' of loan and therefore do not meet the criteria of ''mortgage loan originators''. *See* 12 CFR 1008.103(c)(2). Specifically, certified loan application packagers will not communicate with a borrower or prospective borrower ''for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms.'' Rather, it is the Agency that underwrites the loan, makes a final decision about the loan terms, and communicates those terms to the borrower. The mutual understanding regarding the loan terms is between the borrower and the Agency—the certified loan packager is not a party to the mutual understanding.

Even if the activities of a certified loan application packager were to be considered those of a mortgage loan originator, a State may exempt an individual from the State requirements if that individual is an employee of a bona fide nonprofit organization who acts as a loan originator only as part of work duties to the nonprofit organization and with respect to residential mortgage loans with terms favorable to the borrower. *See* 12 CFR 1008.103(e)(7)(i).

Commenters were misinterpreting the reference to mean that the Agency would require SAFE Act compliance even when the State does not.

Comments on the Agency-approved loan application packaging course and continuing training. Comments included: Ensure that the training is readily available and not cost prohibitive; consider offering an online version; underscore the Agency's oversight role in the management of the curriculum development and revisions as well as participation records; add a continuing education requirement; and do not require attendees of past three-day classroom training sessions (offered since August 2009) to retake the training.

Agency Response: Reference to a ''three-day classroom'' session will be removed from the final rule to allow for flexibility in the training's delivery method and guidance will be added to the program's handbook to underscore the Agency's oversight role. In addition, § 3550.75(c)(3) will be changed from ''Non-Agency trainers, who will be limited to housing nonprofit organizations . . .'' to ''Non-Agency trainers, who will generally be limited to housing nonprofit organizations but may in rare cases include public bodies such as public universities . . .'' and from ''. . . and course materials; and bear the cost of providing the training. The course schedule must be approved by RHS and each session will be attended by a designated Agency staff member. A list of eligible non-Agency trainers will be published on the Agency's Web site . . .'' to ''. . . and updated course materials; and bear the cost of providing the training though a reasonable tuition fee may be charged the course participants. The course content, schedule, and tuition must be approved by RHS and a designated Agency staff member will typically participate in each training session to ensure accuracy of the program information and to serve as a program resource. A list of eligible non-Agency trainers, which is subject to change based on the non-Agency trainers' performance, will be published by the Agency . . .'' These changes are being made to increase the availability of the

training and to clarify how the trainers will be compensated and the oversight that will be provided by the Agency.

In regards to continuing education, § 3550.75(e) states that the Agency will stipulate any training and performance requirements for retaining a designation. Additional guidance on this issue will be provided in the program's handbook.

The Agency will recognize the attendance of past training sessions provided the attendee fully attended a three-day classroom course jointly presented by the Agency and one of three sponsoring nonprofit organizations (NeighborWorks, the Housing Assistance Council, or the Rural Community Assistance Corporation), and passed the online exam. If the training was taken more than three years ago (from the effective date of this final rule), recognition will also be subject to the attendee having submitted at least one viable packaged loan application between passing the course and the effective date of this final rule.

Comment to require Agency-certified packagers to perform in a manner that does not adversely impact the Agency's ability to meet its statutory requirement to make 40 percent of the program funds available to very low-income persons nationwide and 30 percent on a state level.

Agency Response: The Agency agrees, and language was added under § 3550.75(f) to address this comment.

Comment to provide the acceptable rate of packaged loan applications in the regulation instead of referring to the program's handbook. A commenter believed the regulation should set forth the expectations.

Agency's Response: The Agency is not making changes to the final rule on this issue. The acceptable rate and the new rate added in response to the comment above will be published in the program's handbook so that the Agency may make appropriate and timely adjustments.

Comments pertaining to the rule as it relates to the section 523 self-help program. Comments included: Clarify if grantees are subject to the rule's requirements, allow intermediaries to perform quality assurance reviews on self-help loans, and allow grantees to charge a packaging fee on self-help transactions.

Agency Response: Self-help projects and loans are excluded from the certified loan application process and from charging a packaging fee since grantees receive grant funds to package (among other things) and are provided technical and management assistance. However, a grantee and its staff may participate in the process for non-self-help loans provided they meet all the rule's requirements (*i.e.*, grantees or technical and management assistance contractors and their staff do not automatically qualify as intermediaries, qualified employers, or Agency-certified packagers under the process).

Comments on improving the lines of communication between the Agency-certified packagers and the Agency before and after loan closing. Some commenters called for improved communication to boost performance before and after closing. One commenter believed that if notification was sent to the intermediary or packager when a loan they packaged went into default, they could help the homeowner get back on track and avoid foreclosure.

Agency Response: The program's handbook currently instructs packagers to issue a prescribed disclosure letter to interested parties. The disclosure letter includes a waiver of provisions to the Privacy Act of 1974. If a party permits it, the Agency will release to and discuss with the packager any information they seek or request from the Agency's records concerning the person's application for Agency assistance. Under the packaging pilot program, this disclosure also includes the intermediary.

Clarification will be provided in the program's handbook that Agency staff should promptly contact the packager with specific information (*e.g.*, the closing date once scheduled) regardless of the response to the Privacy Act waiver.

While the current waiver notes that the authorization will terminate upon loan closing or Agency denial of the loan application, appropriate changes may be made to extend this authorization beyond closing if/when the program's loan servicing system can be configured to issue servicing (*i.e.*, delinquency) notifications to the packager as well.

Comments to allow packagers to obtain the residential mortgage credit report and the appraisal report that will be used in the Agency's decision. Several commenters thought this would streamline the process and expedite the Agency's decision making process.

Agency Response: While it is expected that the packager would do a preliminary check on a potential applicant's credit history (*e.g.*, by having a process in place to order single repository infile reports at their own expense; by requesting the potential applicant to obtain a free report via *www.annualcreditreport.com*; etc.), the Agency must order the residential mortgage credit report through the program's loan origination system so that the reported liabilities and score can be automatically populated into the system. Having the credit report file in the system will become even more critical when the program implements an automated underwriting system.

The Agency must manage the ordering of the appraisal to ensure that orders are only made when funds are available to process the loan request and to ensure the equitable ordering of services among appraisers who have blanket purchase agreements with the Agency. The Agency can only accept an appraisal obtained from a third-party when that third-party is a lender participating in the transaction and has a risk of loss at stake.

Comments on whether limiting qualified employers and intermediaries to nonprofit entities (and public agencies) would provide better protection to borrowers and the government or increase the packaging fees by limiting competition.

Agency Response: The commenters that addressed this item were almost unanimously agreed that limiting the process to nonprofits (and public agencies) provided better protection while not adversely impacting the fee. The Agency agrees, and the program's handbook will elaborate on what constitutes a public agency and provide examples.

III. Discussion of Non-Relevant Public Comments Received on August 23, 2013, Proposed Rule

Comments on considering alternatives to how the Agency currently conducts the applicant orientation, which is generally handled on an individual application basis in person or over the phone (using Form RD 3550–23, Applicant Orientation Guide).

Agency Response: This suggestion will be taken under consideration but separate from this rulemaking.

Comments to allow qualified third-parties to complete the final inspection on new constructions.

Agency Response: The Agency is in the process of issuing a rule that consolidates and updates certain regulations dealing with constructions; one of those regulations is Rural Development Instruction 1924–A that outlines the final inspection requirements.

In the interim, internal guidance was approved on April 29, 2013, and on July 15, 2013, addressing alternative measures that may be used to fulfill the program's inspection requirements.

Comments to update the program's loan origination system, give packagers

access to the system, and adopt industry-standard technologies.

Agency Response: The Agency launched a department wide initiative in 2009 to create an intuitive, integrated information technology platform to support its mission. Given the complexity of the initiative, implementation is multiphase and spans several years.

In the interim, projects are underway in the program to create an automated underwriting system for internal use and to modify an existing system to allow packagers to upload applications into program's loan origination system.

Comments to use tri-merged credit reports instead of residential mortgage credit reports in the program's decision making process.

Agency Response: The use of tri-merged credit reports will be considered when preparing the next solicitation for credit services, which will occur in Fiscal Year 2015, as part of the Agency's ongoing process improvements.

Comment to allow direct endorsement underwriting by Agency-approved third parties.

Agency Response: Currently, only agency staff may perform underwriting, loan approval and obligation of funds. Loan application packaging is permissible since packagers perform certain non-discretionary tasks in the origination process.

The agency is also removing the language concerning packaging fees for section 504 transactions from § 3550.52(d)(6), since this eligible cost is already covered under § 3550.102(d)(5).

List of Subjects in 7 CFR Part 3550

Administrative practice and procedure, Conflict of interests, Environmental impact statements, Equal credit opportunity, Fair housing, Accounting, Housing, Loan programs—Housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas, Subsidies.

For the reasons stated in the preamble, chapter XXXV, Title 7 of the Code of Federal Regulations, is amended as follows:

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A—General

■ 2. Section 3550.10 is amended to add new definitions of ''Agency-approved intermediary'', ''Agency-certified loan application packager'', ''National average area loan limit'', and ''Qualified employer'' to read as follows:

§ 3550.10 Definitions.

* * * * *

Agency-approved intermediary. An affordable housing nonprofit, public agency, or State Housing Finance Agency approved by RHS to perform quality assurance reviews on packages prepared by Agency-certified loan application packagers through their qualified employers. See § 3550.75 for further details.

Agency-certified loan application packager. An individual certified by RHS under this subpart to package section 502 loan applications while employed (either as an employee or as an independent contractor) by a qualified employer. See § 3550.75 for further details.

* * * * *

National average area loan limit. Across the nation, the average area loan limit as specified in § 3550.63(a). The national average is considered when determining the maximum packaging fee permitted under the certified loan application packaging process under the section 502 program.

* * * * *

Qualified employer. An affordable housing nonprofit organization, public agency, tribal housing authority, or State Housing Finance Agency that meets the requirements outlined in § 3550.75(b)(2) and is involved in the certified loan application packaging process under the section 502 program.

* * * * *

Subpart B—Section 502 Origination

■ 3. Section 3550.52 paragraph (d)(6) is revised to read as follows:

§ 3550.52 Loan purposes.

* * * * *

(d) * * *

(6) Packaging fees resulting from the certified loan application packaging process outlined in § 3550.75. The fee may not exceed two percent of the national average area loan limit as determined by the Agency and may be limited further at the Agency's discretion. Nominal packaging fees not resulting from the certified loan application process are an eligible cost provided the fee is no more than $350; the loan application packager is a nonprofit, tax exempt partner that received an exception to all or part of the requirements outlined in § 3550.75 from the applicable Rural Development State Director; and the packager gathers and submits the information needed for the Agency to determine if the applicant is preliminarily eligible along with a fully completed and signed uniform residential loan application.

* * * * *

■ 4. Section 3550.55 paragraph (c)(5) is revised to read as follows:

§ 3550.55 Applications.

* * * * *

(c) * * *

(5) Applications from applicants who do not qualify for priority consideration in paragraphs (c)(1), (2), (3), or (4) of this section will be selected for processing after all applications with priority status have been processed. The Administrator may temporarily reclassify applications received through the certified loan application packaging process as fourth priority when determined appropriate.

* * * * *

■ 5. Section 3550.75 is added to read as follows:

§ 3550.75 Certified loan application packaging process.

Persons interested in applying for a section 502 loan may, but are not required to, submit an application through the certified loan application packaging process.

(a) *General.* The certified loan application packaging process involves individuals who have been designated as an Agency-certified loan application packager, their qualified employers, and, if required by the State Director, Agency-approved intermediaries.

(b) *Process requirements.* To package section 502 loan applications under this process, each of the following conditions must be met:

(1) *Agency-certified loan application packager.* An individual who wishes to acquire RHS certification as a loan application packager must meet all of the following conditions:

(i) Have at least one year of affordable housing loan origination and/or affordable housing counseling experience;

(ii) Be employed (either as an employee or as an independent contractor) by a qualified employer as outlined in paragraph (b)(2) of this section;

(iii) Complete an Agency-approved loan application packaging course and successfully pass the corresponding test as specified in paragraph (c) of this section; and

(iv) Submit applications to the Agency via an intermediary if determined necessary by a State Director.

(2) *Qualified employer.* Individuals who have been designated as an

Agency-certified loan application packager must be employed (either as an employee or as an independent contractor) by a qualified employer. To be considered a qualified employer, the packager's employer must meet each of the conditions specified in paragraphs (b)(2)(i) through (v) of this section. Tribal housing authorities and the States' Housing Finance Agencies are eligible and are exempt from the conditions specified in paragraphs (b)(2)(i) through (ii) of this section.

(i) Be a nonprofit organization or public agency in good standing in the State(s) of its operation.

(ii) Be tax exempt under the Internal Revenue Code and be engaged in affordable housing per their regulations, articles of incorporation, or bylaws.

(iii) Notify the Agency and the applicant if they or their Agency-certified packager(s) are the developer, builder, seller of, or have any other such financial interest in the property for which the application package is submitted. The Agency may disallow a particular qualified employer and/or Agency-certified packager from receiving part or all of a packaging fee if the Agency determines that the financial interest is improper or the qualified employer or Agency-certified packager has a history of improperly using its position when there has been a financial interest in the property.

(iv) Prepare an affirmative fair housing marketing plan for Agency approval as outlined in RD Instruction 1901–E (or in any superseding guidance provided in the impending RD Instruction 1940–D).

(v) Submit applications to the Agency via an intermediary if determined necessary by a State Director.

(3) *Agency-approved intermediaries.* To become an Agency-approved intermediary, an interested party must apply and demonstrate to the Agency's satisfaction that they meet each of the conditions specified below. The States' Housing Finance Agencies, however, are exempt from the conditions specified in paragraphs (b)(3)(i) through (v). After the initial application process, the Agency may require intermediaries to periodically demonstrate that they still meet the following criteria.

(i) Be a section 501(c)(3) nonprofit organization or public agency in good standing in the State(s) of its operation with the capacity to serve multiple qualified employers and their Agency-certified loan application packagers throughout an entire State or preferably throughout entire States and with the capacity to perform quality assurance reviews on a large volume of packaged loan applications within an acceptable period of time as determined by the Agency;

(ii) Be engaged in affordable housing in accordance with their regulations, articles of incorporation, or bylaws;

(iii) Be financially viable and demonstrate positive operating performance as evidenced by an independent audit paid for by the applicant seeking to be an intermediary;

(iv) Have at least five years of verifiable experience with the Agency's direct single family housing loan programs;

(v) Demonstrate that their quality assurance staff has experience with packaging, originating, or underwriting affordable housing loans.

(vi) Develop and implement quality control procedures designed to prevent submission of incomplete or ineligible application packages to the Agency;

(vii) Ensure that their quality assurance staff complete an Agency-approved loan application packaging course and successfully pass the corresponding test;

(viii) Not be the developer, builder, seller of, or have any other such financial interest in the property for which the application package is submitted; and

(ix) Provide supplemental training, technical assistance, and support to certified loan application packagers and qualified employers to promote quality standards and accountability; and to address areas for improvement and any changes in program guidance.

(c) *Loan application packaging courses.* Prospective loan application packagers must successfully complete an Agency-approved course that covers the material identified in paragraph (c)(1) of this section. Prospective intermediaries must also successfully complete an Agency-approved course as specified in paragraph (c)(2) of this section.

(1) *Loan application packagers.* At a minimum, the certification course for individuals who wish to become Agency-certified loan application packagers will provide:

(i) An in-depth review of the section 502 direct single family housing loan program and the regulations and laws that govern the program (including civil rights lending laws such as the Equal Credit Opportunity Act, Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973);

(ii) A detailed discussion on the program's application process and borrower/property eligibility requirements;

(iii) An examination of the Agency's loan underwriting process which includes the use of payment subsidies; and

(iv) The roles and responsibilities of a loan application packager and the Agency staff.

(2) *Intermediaries.* The required course for an intermediary's quality assurance staff will cover the components described in paragraph (c)(1) of this section and other information relevant to undertaking quality assurance, technical assistance, and training functions in support of the qualified employers and their Agency-certified loan application packagers.

(3) *Non-Agency trainers.* Prior to offering the required course to packagers and intermediaries, non-Agency trainers must obtain approval from designated Agency staff. Non-Agency trainers, who will generally be limited to housing nonprofit organizations but may in rare cases include public bodies such as public universities, must provide proof of relevant experience and resources for delivery; present evidence that their individual trainers are competent and knowledgeable on all subject areas; submit course materials for Agency review; agree to maintain attendance records, test results, and updated course materials; and bear the cost of providing the training though a reasonable tuition fee may be charged the course participants. The course content, schedule, and tuition must be approved by RHS and a designated Agency staff member will typically participate in each training session to ensure accuracy of the program information and to serve as a program resource. A list of eligible non-Agency trainers, which is subject to change based on non-Agency trainers' performance, will be published by the Agency.

(d) *Confidentiality.* The Agency-certified loan application packager, qualified employer, Agency-approved intermediary and their agents must safeguard each applicant's personal and financial information.

(e) *Retaining designation.* The Agency will meet with the Agency-certified loan application packager, their qualified employer, and Agency-approved intermediary (if applicable) at least annually to maintain open lines of communication; discuss their packaging activities; identify and resolve deficiencies in the packaging process; and stipulate any training requirements for retaining designation (including but not limited to civil rights refresher training).

(f) *Revocation.* The designation as an Agency-certified loan application packager or Agency-approved intermediary is subject to revocation by

the Agency under any of the following conditions:

(1) The rate of submitted packaged loan applications that receive RHS approval is below the acceptable limit as determined by the Agency;

(2) The rate of submitted packaged loan applications from very low-income applicants is below the acceptable level as determined by the Agency;

(3) Violation of applicable regulations, statutes and other guidance; or

(4) No viable packaged loan applications are submitted to the Agency in any consecutive 12-month period.

Dated: March 31, 2015.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2015–09958 Filed 4–28–15; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[DHS Docket No. ICEB–2011–0005]

RIN 1653–AA63

Adjustments to Limitations on Designated School Official Assignment and Study by F–2 and M–2 Nonimmigrants

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is amending its regulations under the Student and Exchange Visitor Program (SEVP) to improve management of international student programs and increase opportunities for study by spouses and children of nonimmigrant students. This rule grants school officials more flexibility in determining the number of designated school officials to nominate for the oversight of campuses. The rule also provides greater incentive for international students to study in the United States by permitting accompanying spouses and children of academic and vocational nonimmigrant students with F–1 or M–1 nonimmigrant status to enroll in study at an SEVP-certified school so long as any study remains less than a full course of study. F–2 and M–2 spouses and children remain prohibited, however, from engaging in a full course of study unless they apply for, and DHS approves, a change of nonimmigrant status to a nonimmigrant status authorizing such study.

DATES: This rule is effective May 29, 2015.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket ICEB–2011–0005 and are available online by going to *http://www.regulations.gov,* inserting ICEB–2011–0005 in the ''Search'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or email Katherine Westerlund, Policy Chief (Acting), Student and Exchange Visitor Program, telephone 703–603–3400, email: *sevp@ice.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Regulatory History and Information

On November 21, 2013, the Department of Homeland Security (DHS) published a notice of proposed rulemaking (NPRM) entitled Adjustments to Limitations on Designated School Official Assignment and Study by F–2 and M–2 Nonimmigrants in the **Federal Register** (78 FR 69778). We received 37 comments on the proposed rule. No public meeting was requested, and none was held. DHS is adopting the rule as proposed, with minor technical corrections.

II. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
DOS Department of State
DSO Designated school official
FR Federal Register
HSPD–2 Homeland Security Presidential Directive No. 2
ICE U.S. Immigration and Customs Enforcement
INA Immigration and Nationality Act of 1952, as amended
INS Legacy Immigration and Naturalization Service
IIRIRA Illegal Immigration Reform and Immigrant Responsibility Act of 1996
OMB Office of Management and Budget
PDSO Principal designated school official
SEVIS Student and Exchange Visitor Information System
SEVP Student and Exchange Visitor Program
§ Section symbol
U.S.C. United States Code
USCIS U.S. Citizenship and Immigration Services
USA PATRIOT Act Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

III. Basis and Purpose

A. The Student and Exchange Visitor Program

DHS's Student and Exchange Visitor Program (SEVP) manages and oversees significant elements of the process by which educational institutions interact with F, J and M nonimmigrants to provide information about their immigration status to the U.S. Government. U.S. Immigration and Customs Enforcement (ICE) uses the Student and Exchange Visitor Information System (SEVIS) to track and monitor schools, participants and sponsors in exchange visitor programs, and F, J and M nonimmigrants, as well as their accompanying spouses and children, while they are in the United States and participating in the educational system.

ICE derives its authority to manage these programs from several sources, including:

- Section 101(a)(15)(F)(i), (M)(i) and (J) of the Immigration and Nationality Act of 1952, as amended (INA), 8 U.S.C. 1101(a)(15)(F)(i), (M)(i), and (J), under which a foreign national may be admitted to the United States in nonimmigrant status as a student to attend an academic school or language training program (F nonimmigrant), as a student to attend a vocational or other recognized nonacademic institution (M nonimmigrant), or as an exchange visitor (J nonimmigrant) in an exchange program designated by the Department of State (DOS), respectively. An F or M student may enroll in a particular school only if the Secretary of Homeland Security has certified the school for the attendance of F and/or M students. *See* 8 U.S.C. 1372; 8 CFR 214.3.
- Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, Div. C, 110 Stat. 3009–546 (codified at 8 U.S.C. 1372), which authorized the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F, J or M nonimmigrants during the course of their stays in the United States, using electronic reporting technology where practicable, and which further authorized the Secretary of Homeland Security to certify schools to participate in F or M student enrollment.
- Section 416(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (USA PATRIOT Act), as amended, which provides for the collection of alien date of entry and port of entry information for aliens whose information is collected under 8 U.S.C. 1372.
- Homeland Security Presidential Directive No. 2 (HSPD–2), which, following the USA PATRIOT Act,

requires the Secretary of Homeland Security to conduct periodic, ongoing reviews of schools certified to accept F, J and/or M nonimmigrants to include checks for compliance with recordkeeping and reporting requirements, and authorizing termination of institutions that fail to comply. *See* 37 Weekly Comp. Pres. Docs. 1570, 1571–72 (Oct. 29, 2001); and

• Section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173, 116 Stat. 543 (codified at 8 U.S.C. 1762), which directed the Secretary to review the compliance with recordkeeping and reporting requirements under 8 U.S.C. 1372 and INA section 101(a)(15)(F), (J) and (M), 8 U.S.C. 1101(a)(15)(F), (J) and (M), of all schools [1] approved for attendance by F, J and/or M students within two years of enactment, and every two years thereafter.

Accordingly, and as directed by the Secretary, ICE carries out the Department's ongoing obligation to collect data from, certify, review, and recertify schools enrolling these students. The specific data collection requirements associated with these obligations are specified in part in legislation, *see* 8 U.S.C. 1372(c), and more comprehensively in regulations governing SEVP found at 8 CFR 214.3.

B. Student and Exchange Visitor Information System

SEVP carries out its programmatic responsibilities through SEVIS, a Web-based data entry, collection and reporting system. SEVIS provides authorized users, such as DHS, DOS, other government agencies, SEVP-certified schools, and DOS-designated exchange visitor programs, access to reliable information to monitor F, J and M nonimmigrants for the duration of their authorized period of stay in the United States. As discussed in the NPRM, schools must regularly update information on their approved F, J and M nonimmigrants to enable government agencies to fulfill their oversight and investigation responsibilities, such as enabling accurate port of entry screening, assisting in the adjudication of immigration benefit applications, ensuring and verifying eligibility for the appropriate nonimmigrant status, monitoring nonimmigrant status maintenance, and, as needed, facilitating timely removal.

C. Importance of International Students to the United States

On September 16, 2011, DHS announced a ''Study in the States'' initiative to encourage the best and the brightest international students to study in the United States. As described in the NPRM, the initiative took various steps to enhance and improve the Nation's nonimmigrant student programs.[2] This rulemaking was initiated in support of the ''Study in the States'' initiative and to reflect DHS's commitment to those goals. The rule improves the capability of schools enrolling F and M students to assist their students in maintaining nonimmigrant status and to provide necessary oversight on behalf of the U.S. Government. The rule also increases the attractiveness of studying in the United States for foreign students by broadening study opportunities for their spouses and improving quality of life for visiting families.

D. Removing the Limit on DSO Nominations

Designated school officials (DSOs) are essential to making nonimmigrant study in the United States attractive to international students and a successful experience overall. DHS charges DSOs with the responsibility of acting as liaisons between nonimmigrant students, the schools that employ the DSOs and the U.S. Government. Significantly, DSOs are responsible for making information and documents, including academic transcripts, relating to F–1 and M–1 nonimmigrant students, available to DHS for the Department to fulfill its statutory responsibilities. 8 CFR 214.3(g).

When the Immigration and Naturalization Service (INS) in 2002 established a limit of ten DSOs in order to control access to SEVIS, the INS noted that once SEVIS was fully operational, it might reconsider the numerical limits on the number of DSOs. *See* 67 FR 76256, 76260. Since SEVIS is now fully operational and appropriate access controls are in place, DHS has reconsidered the DSO limitation, and, with this rule, eliminates the maximum limit of DSOs in favor of a more flexible approach. The rule sets no maximum limit on the number of DSOs per campus, and instead allows school officials to nominate an appropriate number of DSOs for SEVP approval based upon the specific needs of the school.

DHS believes that concerns raised within the U.S. educational community that the current DSO limit of ten per campus is too constraining are of strong merit. While the average SEVP-certified school has fewer than three DSOs, SEVP recognizes that F and M students often cluster at schools within States that attract a large percentage of nonimmigrant student attendance. As such, schools in the three States with the greatest F and M student enrollment represent 35 percent of the overall F and M nonimmigrant enrollment in the United States.[3] In schools where F and M students are heavily concentrated or where campuses are in dispersed geographic locations, the limit of ten DSOs has been problematic. The Homeland Security Academic Advisory Council (HSAAC)—an advisory committee composed of prominent university and academic association presidents, which advises the Secretary and senior DHS leadership on academic and international student issues—included in its September 20, 2012 recommendations to DHS a recommendation to increase the number of DSOs allowed per school or eliminate the current limit of ten DSOs per school. Upon review, DHS concluded that, in many circumstances, the elimination of a DSO limit may improve the capability of DSOs to meet their liaison, reporting and oversight responsibilities, as required by 8 CFR 214.3(g). Therefore, removing the limit on the number of DSOs that a school official is able to nominate for SEVP approval provides the appropriate flexibility to enhance the attractiveness of nonimmigrant study in the United States for international students and increase the program's success.

This rule does not alter SEVP's authority to approve or reject a DSO or principal designated school official (PDSO) nomination. *See* 8 CFR 214.3(l)(2). SEVP reviews each DSO nomination as part of the school certification process, and requires proof of the nominee's U.S. citizenship or lawful permanent resident status. SEVP further considers whether the nominee has served previously as a DSO at another SEVP-approved school and whether the individual nominee should be referred to other ICE programs for further investigation. Until the school and the nominee have been approved by SEVP, access to SEVIS is limited solely to the school official submitting the certification petition, and is restricted to

[1] DHS oversees compliance of schools approved for attendance by J nonimmigrants; however, section 502(b) of this the Enhanced Border Security and Visa Entry Reform Act of 2002 assigns oversight of exchange visitor sponsors to the Secretary of State.

[2] *See* 78 FR 69780; *see also* ''Study in the States,'' U.S. Department of Homeland Security, *http://studyinthestates.dhs.gov* (last visited April 28, 2014).

[3] *See* Student and Exchange Visitor Program, SEVIS by the Numbers (July 2014), page 15, available at *https://www.ice.gov/doclib/sevis/pdf/by-the-numbers1.pdf.*

entry of information about the school and the DSO nominees necessary to permit the school to initiate the Form I–17 petition process for approval. The nominee, if he or she is not the submitting school official, has no access to SEVIS while the application is pending. Any greater access to SEVIS, prior to approval, would undermine the nomination process and open the SEVIS program to possible misuse. The rule codifies this limitation. *See* new 8 CFR 214.3(l)(1)(iii). The rule also maintains SEVP's authority to withdraw a previous DSO or PDSO designation by a school of an individual. *See* 8 CFR 214.3(l)(2). Reasons for withdrawal include change in or loss of employment, as well as noncompliance with SEVP regulations. In order to withdraw for noncompliance, SEVP would make a determination of noncompliance following suspension of a DSO's SEVIS access, individually or institutionally. DHS is of the opinion that the increased flexibility afforded by this rulemaking to nominate more than ten DSOs will permit schools to better meet students' needs as well as the Department's reporting and other school certification requirements.

E. Study by F–2 and M–2 Spouses and Children

This rulemaking also amends the benefits allowable for the accompanying spouse and children (hereafter referred to as F–2 or M–2 nonimmigrants) of an F–1 or M–1 student. On May 16, 2002, the former INS proposed to prohibit full-time study by F–2 and M–2 spouses and to restrict such study by F–2 and M–2 children to prevent an alien who should be properly classified as an F–1 or M–1 nonimmigrant from coming to the United States as an F–2 or M–2 nonimmigrant and, without adhering to other legal requirements, attending school full-time. 67 FR 34862, 34871. The INS proposed to permit avocational and recreational study for F–2 and M–2 spouses and children and, recognizing that education is one of the chief tasks of childhood, to permit F–2 and M–2 children to be enrolled full-time in elementary through secondary school (kindergarten through twelfth grade). *Id.* The INS believed it unreasonable to assume that Congress would intend that a bona fide nonimmigrant student could bring his or her children to the United States but not be able to provide for their primary and secondary education. *Id.; see also* 67 FR 76256, 76266. The INS further proposed that if an F–2 or M–2 spouse wanted to enroll full-time in a full course of study, the F–2 or M–2 spouse should apply for and obtain a change of his or her nonimmigrant classification to that of an F–1, J–1, or M–1 nonimmigrant. 67 FR 34862, 34871.

The INS finalized these rules on December 11, 2002. 67 FR 76256 (codified at 8 CFR 214.2(f)(15)(ii) and 8 CFR 214.2(m)(17)(ii)). In the final rule, the INS noted that commenters suggested the INS remove the language ''avocational or recreational'' from the types of study that may be permitted by F–2 and M–2 dependents, as DSOs may have difficulty determining what study is avocational or recreational and what is not. In response to the comments, the INS clarified that if a student engages in study to pursue a hobby or if the study is that of an occasional, casual, or recreational nature, such study may be considered as avocational or recreational. 67 FR 76266.

DHS maintains the long-standing view that an F–2 or M–2 nonimmigrant who wishes to engage in a full course of study in the United States, other than elementary or secondary school study (kindergarten through twelfth grade), should apply for and obtain approval to change his or her nonimmigrant classification to F–1, J–1, or M–1. *See* 8 CFR 214.2(f)(15)(ii) and 8 CFR 214.2(m)(17)(ii). However, as described in the NPRM, because DHS recognizes that the United States is engaged in a global competition to attract the best and brightest international students to study in our schools, permitting access of F–2 or M–2 nonimmigrants to education while in the United States would help enhance the quality of life for many of these visiting families. The existing limitations on study to F–2 or M–2 nonimmigrant education potentially deter high quality F–1 and M–1 students from studying in the United States.[4]

Accordingly, DHS is relaxing its prohibition on F–2 and M–2 nonimmigrant study by permitting F–2 and M–2 nonimmigrant spouses and children to engage in study in the United States at SEVP-certified schools that does not amount to a full course of study. Under this rule, F–2 and M–2 nonimmigrants are permitted to enroll in less than a ''full course of study,'' as defined at 8 CFR 214.2(f)(6)(i)(A) through (D) and 8 CFR 214.2(m)(9)(i)–(iv), at an SEVP-certified school and in study described in 8 CFR 214.2(f)(6)(i)(A) through (D) and 8 CFR 214.2(m)(9)(i)–(iv).[5] Regulations at 8 CFR 214.2(f)(6)(i)(B) and 8 CFR 214.2(m)(9)(i) currently define full course of study at an undergraduate college or university (F nonimmigrants) or at a community college or junior college (M nonimmigrants) to include lesser course loads if the student needs fewer than 12 hours to complete a degree or specific educational objective. This limited exception, which defines a course load of less than 12 hours as a full course of study, only applies to F–1 and M–1 nonimmigrants and will not apply to F–2 or M–2 dependents. Accordingly, an F–2 or M–2 dependent taking less than 12 hours cannot be deemed to be engaging in a full course of study. As stated in the NPRM, over time such enrollment in less than a full course of study could lead to attainment of a degree, certificate or other credential. To maintain valid F–2 or M–2 status, however, the F–2 or M–2 nonimmigrant would not be permitted at any time to enroll in a total number of credit hours that would amount to a ''full course of study,'' as defined by regulation.

In addition, the change limits F–2 and M–2 study, other than avocational or recreational study, to SEVP-certified schools, in order to make it more likely that the educational program pursued by the F–2 or M–2 nonimmigrant is a bona fide program and that studies at the school are unlikely to raise national security concerns. The F–2 or M–2 nonimmigrants can still participate full-time in avocational or recreational study (*i.e.,* hobbies and recreational studies). If an F–2 or M–2 nonimmigrant wants to enroll in a full course of academic study, however, he or she needs to apply for and obtain approval to change his or her nonimmigrant classification to F–1, J–1 or M–1. Similarly, as noted, the rule does not change existing regulations allowing full-time study by children in elementary or secondary school (kindergarten through twelfth grade).

This rule does not change the recordkeeping and reporting responsibilities of DSOs with regard to F–2 or M–2 nonimmigrants to DHS. DSOs at the school the F–1 or M–1

[4] *See* Letter of April 13, 2011 from NAFSA: Association of International Educators to DHS General Counsel Ivan Fong, available in the federal rulemaking docket for this rulemaking at *www.regulations.gov,* requesting that DHS eliminate the limitation on study by F–2 spouses to only ''avocational or recreational'' study because the limitation ''severely restricts the opportunities for F–2 dependents, such as spouses of F–1 students, to make productive use of their time in the United States.''

[5] As a general matter, a full course of study for an F–1 academic student in an undergraduate program is 12 credit hours per academic term. Similarly, a full course of study for an M–1 vocational student consists of 12 credit hours per academic term at a community college or junior college. For other types of academic or vocational study, the term ''full course of study'' is defined in terms of ''clock hours'' per week depending on the specific program. *See* 8 CFR 214.2(f)(6)(i)(A)–(D) and 8 CFR 214.2(m)(9)(i)–(iv).

student attends retain reporting responsibility for maintaining F–2 or M–2 nonimmigrant personal information in SEVIS. *See* 8 CFR 214.3(g)(1). In addition, to facilitate maintenance of F or M nonimmigrant status and processing of future applications for U.S. immigration benefits, F and M nonimmigrants are encouraged to retain personal copies of the information supplied for admission, visas, passports, entry, and benefit-related documents indefinitely.[6] Similarly, under this rule, DHS recommends, as it did in the NPRM, that an F–2 or M–2 nonimmigrant should separately maintain (*i.e.,* obtain and retain) his or her academic records. As F and M nonimmigrants already are encouraged to keep a number of immigration-related records, the suggested additional maintenance of academic records in an already existing file of immigration records will impose minimal marginal cost. This rule does not extend F–2 or M–2 nonimmigrants' access to any other nonimmigrant benefits beyond those specifically identified in regulations applicable to F–2 or M–2 nonimmigrants. *See* 8 CFR 214.2(f)(15) and 8 CFR 214.2(m)(17).

IV. Discussion of Comments, Changes, and the Final Rule

DHS received a total of 37 comments on the proposed rule. After reviewing all the comments, DHS is adopting the rule as proposed, with minor technical corrections. Of the 37 comments received, 27 commenters supported the proposal to remove the limit on the number of DSO nominations per campus. These commenters noted that removing this limitation would permit schools to plan their staffing requirements more efficiently across campuses. In addition, the commenters suggested that permitting an increased number of DSOs would permit schools to better serve their students and would enhance their ability to meet SEVIS reporting and oversight requirements. Two commenters, however, recommended against the proposed change because of national security concerns. Because the commenters did not elaborate on the potential concerns they believed might result, and DHS does not consider removing the limitation on the number of DSOs per campus to negatively affect national security, DHS is adopting this provision as proposed.

The majority of comments DHS received in response to the proposed rule supported the proposal to permit F–2 and M–2 nonimmigrants to study at SEVP-approved schools on a less than full-time basis. Many of these commenters argued that the change would enhance the quality of life of F–2 and M–2 nonimmigrants and would assist the United States in attracting the ''best and brightest'' students to U.S. institutions. Of these commenters, four asserted that the rule change would have a positive effect on the U.S. economy, particularly with more students paying tuition and buying books and supplies. Two of the commenters also noted that the proposed change would have the benefit of enabling F–2 and M–2 nonimmigrants to learn English at SEVP-approved schools, thereby facilitating their adjustment to life in the United States. One commenter specifically noted appreciation that DHS clarified that an F–2 nonimmigrant could complete a degree, so long as all study at SEVP-approved schools was completed on a less than full-time basis. DHS further notes that this same clarification also applies to an M–2 nonimmigrant, again, so long as all study at SEVP-approved schools occurs on a less than full-time basis.

Four commenters suggested that the regulation change would be improved if it permitted F–2 and M–2 nonimmigrants to study full-time, in addition to permitting them to engage in less than a full course of study. The commenters noted that dependents of other nonimmigrant categories are permitted to study full-time, for example, the J–2 spouses of J–1 exchange visitors. DHS appreciates these comments and has considered them carefully. However, DHS is of the opinion that permitting F–2 and M–2 nonimmigrants to engage in a full course of study would blur fundamental distinctions between the F–1 and F–2, and M–1 and M–2 classifications, respectively. Moreover, it would be illogical to provide greater flexibility for study by F–2 or M–2 dependants than is afforded to F–1 or M–1 principals, respectively. The INA requires F–1 and M–1 principals to pursue a full course of study. INA sections 101(a)(15)(F)(i) and (M)(i); 8 U.S.C. 1101(a)(15)(F)(i) and (M)(i). Congress intended F–1 and M–1 principals to have greater educational opportunities, not fewer, than their F–2 and M–2 dependents. In establishing the F–1 and M–1 classifications for principal nonimmigrant students separate from the F–2 and M–2 classifications for spouses and children, respectively, Congress clearly did not intend the classifications to be synonymous. Accordingly, it would not be appropriate to permit F–2 and M–2 dependents to engage in either full-time or less than full-time study, at the discretion of the individual F–2 or M–2 dependent, when such discretion is not afforded to the F–1 or M–1 principal. DHS thus has maintained the prohibition on full-time study by F–2 and M–2 nonimmigrants.

With respect to the commenters' observation about J–2 dependent spouses, the purpose of the J nonimmigrant classification is fundamentally different from that of the F and M classifications. Admission in J nonimmigrant status permits engagement in multiple activities other than full-time study (*e.g.,* to serve as researchers or professors, or performing other professional duties in the United States). The purpose of the Exchange Visitor Program (J visa) ''is to further the foreign policy interest of the United States by increasing the mutual understanding between the people of the United States and the people of other countries by means of mutual educational and cultural exchanges.'' 9 Foreign Affairs Manual 41.62 N2. Specific Exchange Visitor programs are designated by DOS, not by DHS, and their parameters are set by DOS to advance U.S. foreign policy interests. The same foreign policy interests that apply to J–1 nonimmigrants and their dependents are not implicated in the F and M nonimmigrant context. The primary purpose of the F–1 and M–1 nonimmigrant classifications, in contrast with the J classification, is to permit foreign nationals to enter the United States solely to engage in full-time study. DHS believes that the best means to preserve the integrity of the F–1 and M–1 classifications, and to ensure these classifications remain the primary vehicles for full-time study, is to require a dependent in F or M status who wishes to engage in a full course of study to make such intent evident by applying for and receiving a change of status to F–1 or M–1.

One commenter advocating for full-time F–2 and M–2 study stated that the limit to less than full-time study is unnecessary, as dependent students do not pose any additional security risk because SEVIS tracks them. DHS disagrees with this commenter. The recordkeeping requirements for F–1 and M–1 nonimmigrants in SEVIS are more comprehensive than they are for F–2

[6] ICE encourages retention of these records in the Supporting Statement for SEVIS, OMB No. 1653–0038, Question 7(d). Additionally, recordkeeping by F and M nonimmigrants is encouraged in existing regulation, in particular for the Form I–20, Certificate of Eligibility for Nonimmigrant Student (F–1 or M–1) Status. *See* 8 CFR 214.2(f)(2) and 214.2(m)(2). Moreover, nonimmigrant students may wish to retain a copy of the Form I–901, Fee Remittance for Certain F, J, and M Nonimmigrants, as proof of payment. *See generally* 8 CFR 214.13(g)(3).

and M–2 dependents, which is a derivative status. Recognizing this, any full-time study in the F and M nonimmigrant classifications should occur only after receiving F–1 or M–1 status through the already existing and available process of changing status. Allowing F–2 and M–2 dependents to take a full course of study would permit their participation in full-time study without the fuller vetting and oversight required for F–1 and M–1 nonimmigrants in SEVIS. DHS therefore disagrees with the commenter that dependents would pose no additional security risk if permitted to take a full course of study In addition, allowing F–2 and M–2 dependents to take a full course of study could lead to manipulation of F–1 and M–1 visas by allowing one family member who is accepted as an F–1 student to facilitate the full-time enrollment of all other dependents in their own courses of study.

Three commenters suggested that F–2 and M–2 nonimmigrants be permitted to commence their full-time study as soon as they apply for a change of status to F–1 or M–1. One of these commenters also requested that DHS revise the regulations governing change of status to specify that a nonimmigrant who is granted a change of status to F–1 or M–1 must begin the full course of study no later than the next available session or term after the change of status has been approved. The commenter suggested that individuals granted a change of status to F–1 or M–1 often are concerned that they might lose their new status if they do not enroll in classes immediately, but that this may be impossible if the approval is received midway during the school term or session.

DHS continues to maintain that a foreign national who wishes to engage in a full course of study must apply for and receive a change of status to F–1 or M–1 prior to commencing a full course of study. *See* 8 CFR 214.2(f)(15)(ii)(B), 214.2(m)(17)(ii)(B) (2013); *see also* 8 CFR 214.2(f)(15)(ii)(A)(2), 214.2(m)(17)(ii)(A)(2), as finalized herein. Approval of the change of status application before engaging in a full course of study is necessary to maintain the integrity of data in SEVIS, as well as to ensure that appropriate distinctions exist between the F–1 and M–1 classifications and their dependent classifications. DHS declines to elaborate in this rulemaking on the issue of when a nonimmigrant granted a change of status to F–1 or M–1 must commence the full course of study. That issue is beyond the scope of the proposed rulemaking, which focused on permissible study by F–2 and M–2 nonimmigrants, rather than how F–1 and M–1 nonimmigrants should comply with the terms and conditions of their status.

In addition to the comments discussed above, DHS received a number of individual comments on discrete issues. These include one comment requesting that DHS consider extending the option to apply for employment authorization for F–2 and M–2 nonimmigrants with U.S. Citizenship and Immigration Services (USCIS). DHS appreciates the commenter's interest but has determined not to extend employment authorization to F–2 and M–2 nonimmigrants as part of this rulemaking. The rule's changes to F–2 and M–2 opportunities are intended to increase access of F–2 or M–2 nonimmigrants to education while in the United States and not to increase employment opportunities.

DHS received two comments about the number of training hours and the wage rate for DSOs used in the economic analysis of the rulemaking. The commenters asserted that the number of training hours required for DSOs is closer to a minimum of 90 hours of training in the first year, not seven hours as DHS estimated. The commenters further suggested that DSOs be categorized as professional staff, not administrative, for the purpose of calculating their wage rate.

SEVP does not currently require any specific training for DSOs; however, SEVP does require that DSOs sign a certification that they are familiar with the appropriate regulations and intend to comply with them. In addition, SEVP provides an Internet-based voluntary SEVIS training, which DSOs are strongly encouraged to complete. SEVP recognizes that many schools go above and beyond this, and commends these schools. However, other DSOs will not complete any training. Moreover, schools that increase the number of employed DSOs beyond ten as a result of this rule likely already have large offices of international student advisors that may require little to no additional training to perform DSO duties. Because the duties and initial training of DSOs varies widely among schools, with some being above the minimum suggested training by SEVP and others below, DHS believes the seven-hour training estimate is appropriate for the flexibility this rulemaking intends to provide schools.

DHS agrees with the commenters that a different wage rate is appropriate for DSOs and has amended the wage rate estimation in this final rule. DHS is supportive of DSOs and the importance of their role in serving as a link between nonimmigrant students, schools and SEVP. DHS agrees that DSOs are professionals and perform important duties. The occupation code chosen to estimate the DSO wage rate for the analysis is not meant to undermine the importance of the role of the DSO. Rather, it serves as a proxy for the basic job duties required by SEVP of DSOs. DSOs provide advice to students regarding maintenance of their nonimmigrant status and maintaining enrollment, provide information on participation in programs of study in SEVIS, authorize optional practical training, and report to SEVP if a student has violated the conditions of his or her status. Individuals approved as DSOs may also perform other job duties as an element of their employment with schools, which are outside of those required by SEVP, to enhance nonimmigrants' stays in the United States. As noted by one commenter, these duties may include responsibilities ranging from ''airport pick-ups, to facilitating intercultural communications workshops.'' Because schools rely on DSOs to counsel nonimmigrant students of their responsibilities and maintain their nonimmigrant status, and DHS relies on DSOs to ensure the integrity of the program, DHS has amended the category used to estimate the DSO wage rate. In this final rule, DHS revises the wage rate from BLS category 43–9199 Office and Administrative Support Workers, All Other, to BLS category 21–1012 Educational, Guidance, School, and Vocational Counselors. See the Executive Orders 12866 and 13563: Regulatory Planning and Review section below for this revision.

Another commenter addressed the procedures used by SEVP to adjudicate changes to DSOs. The commenter expressed concern at the pace of adjudicating requests to add or remove DSOs, and also requested that SEVP publish the criteria it uses in adjudicating changes to DSOs, as well as establish an appeals process for denials of such requests. DHS appreciates these comments, but notes that they are outside the scope of the proposed rulemaking, which focused on the more discrete issue of the regulatory limitation on the number of DSOs permitted at each campus. SEVP, however, is working to make its adjudications process more efficient in the future.

Several commenters identified areas where the rulemaking could benefit from additional clarification or the correction of possible errors. One

commenter suggested that DHS clarify whether study of English as a second language (ESL) or intensive English is considered a vocational/recreational or academic study. DHS declines to define whether ESL is properly categorized as a vocational/recreational or academic study because this is outside the scope of the proposed rulemaking. Another commenter questioned whether F–2 and M–2 dependents would be permitted to take only those courses listed as part of the school's academic/certificate programs on the school's Form I–17, or whether F–2 and M–2 dependents would be able to enroll in any program. The regulation should not be interpreted to permit an F–2 or M–2 to enroll in courses in any program offered at an SEVP-certified school, but only a course of study that is SEVP-certified. The same commenter also inquired whether the proposed rule intended to permit full-time ''recreational'' study only at SEVP-certified schools and only in non-academic, non-accredited courses, or whether the rule would permit F–2 and M–2 dependents to enroll full-time at SEVP-certified schools in non-credit courses. The regulation does not expand opportunity for full-time study of any type for F–2 and M–2 dependents. The regulations continue to provide that F–2 and M–2 dependents may engage in study that is avocational or recreational in nature, up to and including on a full-time basis.

Additionally, one commenter pointed out that the language in the preamble of the proposed rulemaking at 78 FR 69781, explaining the definition of full course of study, implied incorrectly that F nonimmigrants only may enroll at colleges or universities, and not at community colleges or junior colleges. DHS appreciates this comment and agrees that a community college or junior college may appropriately enroll an F nonimmigrant.

Finally, DHS is making four technical corrections to the proposed regulatory text. One commenter noted that the proposed regulatory text at 8 CFR 214.2(f)(15)(ii)(C) referenced paragraph (f)(15)(ii)(A)(2), whereas it should include both paragraphs (A)(1) and (A)(2). DHS agrees with the commenter that this was an error and accordingly has revised the final rule to refer to (f)(15)(ii)(A), so as to apply to both paragraphs. In the course of preparing this final rule, DHS also recognized additional areas of the proposed regulatory text where further revision was necessary for purposes of accuracy and clarity. The proposed text located at 8 CFR 214.2(m)(17)(ii)(A)(1) had omitted a reference to the courses described in 8 CFR 214.2(f)(6)(i)(A)–(D) as a type of course at an SEVP-certified school that an M–2 spouse or M–2 child may enroll in as less than a full course of study. With this rule, courses of study approved under both F and M study are available to both F–2 and M–2 nonimmigrants. Lastly, DHS added a reference to 8 CFR 214.2(m)(14) in the new provision authorizing limited F–2 study at SEVP-certified schools to clarify that F–2 spouses and children are not eligible to engage in any type of employment or practical training during their studies; correspondingly, DHS added a reference to 8 CFR 214.2(f)(9)–(10) in the new provision authorizing limited M–2 study at SEVP-certified schools for the same reason.

V. Statutory and Regulatory Requirements

DHS developed this rule after considering numerous statutes and executive orders related to rulemaking. The below sections summarize our analyses based on a number of these statutes or executive orders.

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Orders 13563 and 12866 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) has not designated this final rule as a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this final rule.

1. Summary

The rule eliminates the limit on the number of DSOs a school may have and establishes eligibility for F–2 and M–2 nonimmigrants to engage in less than a full course of study at SEVP-certified schools. If a particular school does not wish to add additional DSOs, this rule imposes no additional costs on that school. Based on feedback from the SEVP-certified schools, however, DHS believes up to 88 schools may choose to take advantage of this flexibility and designate additional DSOs. These SEVP-certified schools would incur costs related to current DHS DSO documentation requirements and any training DSOs may undertake. DHS estimates the total 10-year discounted cost of allowing additional DSOs to be approximately $223,000 at a seven percent discount rate and approximately $264,000 at a three percent discount rate. Regarding the provision of the rule that establishes eligibility for less than a full course of study by F–2 and M–2 nonimmigrants, DHS is once again providing additional flexibilities. As this rule does not require the F–2 or M–2 nonimmigrant to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements, DHS does not believe there are any costs associated with establishing eligibility for F–2 and M–2 nonimmigrants to engage in less than full courses of study at SEVP-certified schools.

2. Designated School Officials

The only anticipated costs for SEVP-certified schools to increase the number of DSOs above the current limit of ten per school or campus derive from the existing requirement for reporting additional DSOs to DHS, and any training that new DSOs would undertake. DHS anticipates the number of schools that will avail themselves of this added flexibility will be relatively small. As of April 2012, there are 9,888 SEVP-certified schools (18,733 campuses), with approximately 30,500 total DSOs, and an average of 3.08 DSOs per school. However, there are only 88 SEVP-certified schools that currently employ the maximum number of DSOs.

DHS is unable to estimate with precision the number of additional DSOs schools may choose to add. While some of the 88 SEVP-certified schools that currently employ the maximum number of DSOs may not add any additional DSOs, others may add several additional DSOs. DHS's best estimate is that these 88 SEVP-certified schools will on average designate three additional DSOs, for a total of 264 additional DSOs.

DHS estimates that current documentation requirements, as well as training a DSO might undertake to begin his or her position, equate to approximately seven hours total in the first year. DHS does not track wages paid to DSOs; however, in response to a comment received on the NPRM, DHS is revising the wage rate used to estimate DSO wages. For this final rule, we are using the U.S. Department of Labor, Bureau of Labor Statistics occupation Educational, Guidance, School, and Vocational Counselors

occupational code as a proxy for DSOs.[7] The average wage rate for this occupation is estimated to be $27.00 per hour.[8] When the costs for employee benefits such as paid leave and health insurance are included, the full cost to the employer for an hour of DSO time is estimated at $37.80.[9] Therefore, the estimated burden hour cost as a result of designating 264 additional DSOs is estimated at $69,854 in the first year (7 hours × 264 DSOs × $37.80). On a per-school basis, DHS expects these SEVP-certified schools to incur an average of $794 dollars in costs in the initial year (7 hours × 3 new DSOs per school × $37.80). DHS notes that there are no recurrent annual training requirements mandated by DHS for DSOs once they have been approved as a DSO.

After the initial year, DHS expects the SEVP-certified schools that designate additional DSOs to incur costs for replacements, as these 264 new DSOs experience normal turnover. Based on information from the Bureau of Labor Statistics, we estimate an average annual turnover rate of approximately 37 percent.[10] Based on our estimate of 264 additional DSOs as a result of this rulemaking, we expect these schools will designate 98 replacement DSOs annually (264 DSOs × 37 percent annual turnover) in order to maintain these 264 additional DSOs. As current training and documentation requirements are estimated at seven hours per DSO, these SEVP-certified schools would incur total additional costs of $25,931 annually (7 hours × 98 replacement DSOs × $37.80) after the initial year. On a per school basis, DHS expects these schools to incur an average of $294 dollars of recurring costs related to turnover after the initial year (7 hours × 3 new DSOs per school × 37 percent annual turnover × $37.80).

This rule addresses concerns within the U.S. education community that the current DSO limit of ten is too constraining. For example, allowing schools to request additional staff able to handle DSO responsibilities will increase flexibility in school offices and enable them to better manage their programs. This flexibility is particularly important in schools where F and M nonimmigrants are heavily concentrated or where instructional sites are in dispersed geographic locations. It will also assist schools in coping with seasonal surges in data entry requirements (*e.g.,* start of school year reporting).

3. F–2 and M–2 Nonimmigrants

As of June 2012, SEVIS records indicate that there are 83,354 F–2 nonimmigrants in the United States, consisting of approximately 54 percent spouses and 46 percent children. Though both spouses and children may participate in study that is less than a full course of study at SEVP-certified schools under this rule, DHS assumes that spouses are more likely to avail themselves of this opportunity because most children are likely to be enrolled full-time in elementary or secondary education (kindergarten through twelfth grade). Though there may be exceptions to this assumption, for example, a child in high school taking a college course, the majority of F–2 nonimmigrants benefitting from this provision are likely to be spouses. DHS only uses this assumption to assist in estimating the number of F–2 nonimmigrants likely to benefit from this rule, which could be as high as 45,011 (83,354 × 54 percent), if 100 percent of F–2 spouses participate, but is likely to be lower as DHS does not expect that all F–2 spouses would take advantage of the opportunity. DHS does not believe there are any direct costs associated with establishing eligibility for F–2 nonimmigrants to engage in less than full courses of study at SEVP-certified schools. The rule would not require the F–2 nonimmigrant to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements. In the NPRM, DHS requested comment on these assumptions and estimates. No comments were received in response to this request.

As of June 2012, SEVIS records indicate that there are 578 M–2 nonimmigrants in the United States. Pursuant to this rulemaking, these M–2 spouses and children will be eligible to take advantage of the option to participate in study that is less than a full course of study at SEVP-certified schools. Approximately 39 percent of M–2 nonimmigrants are spouses and 61 percent are children. Again, DHS assumes that spouses would comprise the majority of M–2 nonimmigrants to benefit from this provision. This number could be as high as 225 M–2 nonimmigrants (578 × 39 percent), but is likely to be lower as DHS does not expect that all M–2 spouses would take advantage of the opportunity. Under the same procedures governing F–2 nonimmigrants, the M–2 nonimmigrants would not be required to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements. In the NPRM, DHS requested comment on these assumptions and estimates. No comments were received in response to this request.

The rule provides greater incentive for international students to study in the United States by permitting accompanying spouses and children of academic and vocational nonimmigrant students in F–1 or M–1 status to enroll in study at a SEVP-certified school if not a full course of study. DHS recognizes that the United States is engaged in a global competition to attract the best and brightest international students to study in our schools. The ability of F–2 or M–2 nonimmigrants to have access to education while in the United States is in many instances central to maintaining a satisfactory quality of life for these visiting families.

4. Conclusion

The rule eliminates the limit on the number of DSOs a school may have and establishes eligibility for F–2 and M–2 nonimmigrants to engage in less than a full course of study at SEVP-certified schools. If a particular school does not wish to add additional DSOs, this rule imposes no additional costs on that school. DHS believes up to 88 schools may choose to take advantage of this flexibility and designate additional DSOs. These SEVP-certified schools would incur costs related to current DHS DSO training and documentation requirements; DHS estimates the total 10-year discounted cost to be approximately $223,000 at a seven percent discount rate and approximately $264,000 at a three percent discount rate. DHS does not believe there are any costs associated with establishing eligibility for F–2 and M–2 nonimmigrants to engage in less than full courses of study at SEVP-certified schools as this rule does not require the

[7] The existing Paperwork Reduction Act control number OMB No. 1653–0038 for SEVIS uses the occupation ''Office and Administrative Support Workers, All Other'' as a proxy for DSO employment. However, DHS received comment on the NPRM that this is not the best category for the job duties or wages of a DSO, and suggesting that Counselor is more appropriate. Therefore, for this Final Rule, DHS has revised the BLS occupational code to Educational, Guidance, School, and Vocational Counselors.

[8] May 2012 Occupational Employment and Wage Estimates, National Cross-Industry Estimates, ''21–1012 Educational, Guidance, School, and Vocational Counselors,'' Hourly Mean ''H-mean,'' *http://www.bls.gov/oes/2012/may/oes211012.htm* (last modified Mar. 29, 2013).

[9] Employer Costs for Employee Compensation, June 2012, *http://www.bls.gov/news.release/archives/ecec_09112012.htm* (last modified Sept. 11, 2012). Calculated by dividing total private employer compensation costs of $28.80 per hour by average private sector wage and salary costs of $20.27 per hour (yields a benefits multiplier of approximately 1.4 × wages).

[10] Job Openings and Labor Turnover—Jan. 2013 (Mar. 12, 2013), *http://www.bls.gov/news.release/archives/jolts_03122013.pdf* reported that for 2012, annual total separations were 37.1 percent of employment.

F–2 or M–2 nonimmigrant to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements.

The table below summarizes the total costs and benefits of the rule to allow additional DSOs at schools and permit accompanying spouses and children of nonimmigrant students of F–1 or M–1 status to enroll in study at a SEVP-certified school if not a full course of study. In the NPRM, DHS welcomed public comments that specifically addressed the nature and extent of any potential economic impacts of the proposed amendments that we may not have identified. DHS specifically requested comments in the NPRM on whether there were any additional burdens imposed on F–2 and M–2 nonimmigrants related to additional record storage costs. No comments were received in response to this request.

	DSOs	F–2 and M–2 nonimmigrants	Total rulemaking
10-Year Cost, Discounted at 7 Percent.	$223,000	$0	$223,000
Total Monetized Benefits	N/A	N/A	N/A
Non-monetized Benefits	Increased flexibility in school offices to enable them to better manage their programs.	Greater incentive for international students to study in the U.S. by permitting accompanying spouses and children of nonimmigrant students with F–1 or M–1 status to enroll in study at a SEVP-certified school if not a full course of study.	
Net Benefits	N/A	N/A	N/A

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. This rule eliminates the limit on the number of DSOs a school may nominate and permits F–2 and M–2 nonimmigrants to engage in less than a full course of study at SEVP-certified schools. Although some of the schools impacted by these changes may be considered as small entities as that term is defined in 5 U.S.C. 601(6), the effect of this rule is to benefit those schools by expanding their ability to nominate DSOs and to enroll F–2 and M–2 nonimmigrants for less than a full course of study.

In the subsection above, DHS has discussed the costs and benefits of this rule. The purpose of this rule is to provide additional regulatory flexibilities, not impose costly mandates on small entities. DHS again notes that the decision by schools to avail themselves of additional DSOs or F–2 or M–2 nonimmigrants who wish to pursue less than a full course of study is an entirely voluntary one and schools will do so only if the benefits to them outweigh the potential costs. In particular, removing the limit on the number of DSOs a school may designate allows schools the flexibility to better cope with seasonal surges in data entry requirements due to start of school year reporting. Accordingly, DHS certifies this rule will not have a significant economic impact on a substantial number of small entities. DHS received no comments challenging this certification.

C. Small Business Regulatory Enforcement Fairness Act of 1996

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**, above.

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 DHS, call 1–888–REG–FAIR (1–888–734–3247). DHS will not retaliate against small entities that question or complain about this rule or any policy or action of DHS.

D. Collection of Information

All Departments are required to submit to OMB for review and approval, any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995), 44 U.S.C. 3501–3520. This information collection is covered under the existing Paperwork Reduction Act control number OMB No. 1653–0038 for the Student and Exchange Visitor Information System (SEVIS). This rule calls for no new collection of information under the Paperwork Reduction Act.

E. Federalism

A rule has implications for federalism under Executive Order 13132, *Federalism,* if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under the Order and have determined that it does not have implications for federalism.

F. 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 Unfunded Mandates Reform 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.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive

Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not a significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This final rule is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

The U.S. Department of Homeland Security Management Directive (MD) 023–01 establishes procedures that DHS and its Components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500–1508. CEQ regulations allow federal agencies to establish categories of actions which do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The MD 023–01 lists the Categorical Exclusions that DHS has found to have no such effect. MD 023–01 app. A tbl.1.

For an action to be categorically excluded, MD 023–01 requires the action to satisfy each of the following three conditions:

(1) The entire action clearly fits within one or more of the Categorical Exclusions;

(2) The action is not a piece of a larger action; and

(3) No extraordinary circumstances exist that create the potential for a significant environmental effect. MD 023–01 app. A § 3.B(1)–(3).

Where it may be unclear whether the action meets these conditions, MD 023–01 requires the administrative record to reflect consideration of these conditions. MD 023–01 app. A § 3.B.

Here, the rule amends 8 CFR 214.2 and 214.3 relating to the U.S. Immigration and Customs Enforcement Student and Exchange Visitor Program. This rule removes the regulatory cap of ten designated school officials per campus participating in the SEVP and permits certain dependents to enroll in less than a full course of study at SEVP-certified schools.

ICE has analyzed this rule under MD 023–01. ICE has made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule clearly fits within the Categorical Exclusion found in MD 023–01, Appendix A, Table 1, number A3(d): ''Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.'' This rule is not part of a larger action. This rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded from further NEPA review.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

The Amendments

For the reasons discussed in the preamble, DHS amends Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 2. In § 214.2 revise paragraphs (f)(15)(ii) and (m)(17)(ii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(15) * * *

(i) * * *

(ii) *Study*—(A) *F–2 post-secondary/vocational study*—(*1*) *Authorized study at SEVP-certified schools.* An F–2 spouse or F–2 child may enroll in less than a full course of study, as defined in paragraphs (f)(6)(i)(A) through (D) and (m)(9)(i) through (iv), in any course of study described in paragraphs (f)(6)(i)(A) through (D) or (m)(9)(i) through (iv) of this section at an SEVP-certified school. Notwithstanding paragraphs (f)(6)(i)(B) and (m)(9)(i) of this section, study at an undergraduate college or university or at a community college or junior college is not a full course of study solely because the F–2 nonimmigrant is engaging in a lesser course load to complete a course of study during the current term. An F–2 spouse or F–2 child enrolled in less than a full course of study is not eligible to engage in employment pursuant to paragraphs (f)(9) and (10) of this section or pursuant to paragraph (m)(14) of this section.

(*2*) *Full course of study.* Subject to paragraphs (f)(15)(ii)(B) and (f)(18) of this section, an F–2 spouse and child may engage in a full course of study only by applying for and obtaining a

change of status to F–1, M–1 or J–1 nonimmigrant status, as appropriate, before beginning a full course of study. An F–2 spouse and child may engage in study that is avocational or recreational in nature, up to and including on a full-time basis.

(B) *F–2 elementary or secondary study.* An F–2 child may engage in full-time study, including any full course of study, in any elementary or secondary school (kindergarten through twelfth grade).

(C) An F–2 spouse and child violates his or her nonimmigrant status by enrolling in any study except as provided in paragraph (f)(15)(ii)(A) or (B) of this section.

* * * * *

(m) * * *

(17) * * *

(i) * * *

(ii) *Study*—(A) *M–2 post-secondary/vocational study*—(*1*) *Authorized study at SEVP-certified schools.* An M–2 spouse or M–2 child may enroll in less than a full course of study, as defined in paragraphs (f)(6)(i)(A) through (D) or (m)(9)(i) through (v), in any course of study described in paragraphs (f)(6)(i)(A) through (D) or (m)(9)(i) through (v) of this section at an SEVP-certified school. Notwithstanding paragraphs (f)(6)(i)(B) and (m)(9)(i) of this section, study at an undergraduate college or university or at a community college or junior college is not a full course of study solely because the M–2 nonimmigrant is engaging in a lesser course load to complete a course of study during the current term. An M–2 spouse or M–2 child enrolled in less than a full course of study is not eligible to engage in employment pursuant to paragraph (m)(14) of this section or pursuant to paragraphs (f)(9) through (10) of this section.

(*2*) *Full course of study.* Subject to paragraph (m)(17)(ii)(B) of this section, an M–2 spouse and child may engage in a full course of study only by applying for and obtaining a change of status to F–1, M–1, or J–1 status, as appropriate, before beginning a full course of study. An M–2 spouse and M–2 child may engage in study that is avocational or recreational in nature, up to and including on a full-time basis.

(B) *M–2 elementary or secondary study.* An M–2 child may engage in full-time study, including any full course of study, in any elementary or secondary school (kindergarten through twelfth grade).

(C) An M–2 spouse or child violates his or her nonimmigrant status by enrolling in any study except as provided in paragraph (m)(17)(ii)(A) or (B) of this section.

* * * * *

■ 3. Revise § 214.3(l)(1)(iii) to read as follows:

§ 214.3 Approval of schools for enrollment of F and M nonimmigrants.

* * * * *

(l) * * *

(1) * * *

(iii) School officials may nominate as many DSOs in addition to PDSOs as they determine necessary to adequately provide recommendations to F and/or M students enrolled at the school regarding maintenance of nonimmigrant status and to support timely and complete recordkeeping and reporting to DHS, as required by this section. School officials must not permit a DSO or PDSO nominee access to SEVIS until DHS approves the nomination.

* * * * *

Jeh Charles Johnson,

Secretary.

[FR Doc. 2015–09959 Filed 4–28–15; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF ENERGY

10 CFR Part 1047

RIN 1994–AA03

Authority of DOE Protective Force Officers That Are Federal Employees To Make Arrests Without a Warrant for Certain Crimes

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: Section 161 k. of the Atomic Energy Act, as amended, empowers the Secretary of Energy (''the Secretary'') to authorize designated U.S. Department of Energy (DOE) employees and contractors to make an arrest without a warrant for certain crimes. Specifically, the Secretary may authorize the arrest of any individual who has committed a federal crime in the presence of a DOE protective force officer regarding the property of the United States in the custody of DOE or DOE contractors. The Secretary may also authorize the arrest of any individual who is reasonably believed to have committed or to be committing a felony regarding the property of the United States in the custody of DOE or DOE contractors. Pursuant to this authority, DOE adds misdemeanor and felony violations of Assaulting a Federal Officer to the enumerated criminal violations for which DOE protective force officers that are federal employees may execute an arrest without a warrant, as set forth in DOE regulations.

DATES: The rule is effective on April 29, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Diamond, U.S. Department of Energy, National Nuclear Security Administration, Mail Stop NNSA, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–3700.

Email: *Bruce.Diamond@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Authority

Section 161 k. of the Atomic Energy Act of 1954 (AEA), as amended by Pub. L. 105–394 (codified at 42 U.S.C. 2201(k)), empowers the Secretary of Energy (''the Secretary'') to authorize designated members, officer, employees, contractors, and subcontractors of the Department of Energy (DOE) to carry firearms while discharging their official duties. Section 161 k. further provides that the Secretary may authorize these designated officials to make an arrest without a warrant for any federal crime regarding the property of the United States in the custody of DOE or a DOE contractor and for any federal felony regarding the property of the United States in the custody of DOE or a DOE contractor that a designated official reasonably believes is being or has been committed. Lastly, section 161 k. authorizes the Secretary to issue guidelines, with the approval of the Attorney General, to implement this authority.

The Secretary has previously exercised this authority to sanction arrests without warrants for certain federal crimes through the regulation at

10 CFR 1047.4. This section enumerates the federal crimes for which a DOE protective force officer may execute a warrantless arrest. These crimes are incorporated by reference to the appropriate section of the United States Code. Consistent with section 161 k. of the AEA, however, 10 CFR 1047.4 makes clear that such authority is limited to the included crimes and may only be exercised ''if the property of the United States which is in the custody of the DOE or its contractors is involved.'' Additionally, 10 CFR 1047.4(b) and 10 CFR 1047.4(c) set forth the necessary facts to effectuate a valid warrantless arrest for a felony and a misdemeanor, respectively. 10 CFR 1047.4(b) states that an arrest may be executed on the basis of an enumerated felony either if it is committed in the presence of a DOE protective force officer or if a DOE protective force officer reasonably believes that a felony has been or is being committed. In contrast, 10 CFR 1047.4(c) states that an arrest may only be executed on the basis of an enumerated misdemeanor if it occurs in the presence of a DOE protective force officer.

II. Synopsis of the Rule

With this rule, DOE is establishing a new subsection within 10 CFR 1047.4(a)(1) to add 18 U.S.C. 111 (''Assaulting, resisting, or impeding certain officers or employees'') to the list of enumerated federal crimes for which DOE protective force officers that are federal employees [1] may execute a warrantless arrest. In relevant part, this statute criminalizes the activity of anyone who ''forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties.'' 18 U.S.C. 111. As defined in 18 U.S.C. 1114, section 111 applies to actions taken against ''any officer or employee of the United States or of any agency in any branch in the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance.'' Specifically, DOE is adding reference to felony and misdemeanor violations of 18 U.S.C. 111 at 10 CFR 1047(a)(1)(iii). To retain consistency, DOE is also amending 10 CFR 1047.4(b) and 10 CFR 1047.4(c) to incorporate the newly added 10 CFR 1047(a)(1)(iii).

DOE believes that this change is necessary to ensure that DOE protective force officers that are federal employees may effectively protect United States property in the custody of DOE and DOE contractors. Authorizing DOE protective force officers that are federal employees to arrest individuals who impede the official duties of DOE protective force personnel allows them to immediately neutralize any individual who poses an existing and ongoing threat to both the integrity of the property of the United States and the ability of DOE to retain custody of such property.

The 18 U.S.C. 111 statute is similar in nature to many of the crimes for which the Secretary has previously delegated arrest authority by reference in 10 CFR 1047.4(a), including civil disorder, 18 U.S.C. 231, conspiracy, 18 U.S.C. 371, damage to or destruction of government property, 18 U.S.C. 2112, destruction of motor vehicles, 18 U.S.C. 33, unlawful use of explosives, 18 U.S.C. 844(f), and sabotage, 18 U.S.C. 2151, 2153–2156. *See* 50 FR 30926 (July 31, 1985).

III. Regulatory Procedures, Justification for Final Rule.

Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(b)(B), DOE finds good cause to waive the requirement to provide prior notice and an opportunity for public comment for this rulemaking as such procedures would be impracticable and contrary to the public interest. DOE believes that this change is necessary to ensure that Federal Agents may effectively protect ongoing shipments of nuclear weapons, nuclear components and special nuclear materials in the custody of DOE. Authorizing DOE protective force officers to detain or arrest individuals who impede the official duties of DOE protective force personnel allows them to act quickly to disrupt situations that pose an existing and ongoing threat to both the integrity of the property of the United States and the ability of DOE to retain custody of such property. The extraordinary sensitivity of the cargo in the custody of DOE warrants immediate action to reduce the risks to DOE Federal Agents' ability to carry out their protective function.

For the same reason, DOE finds good cause pursuant to authority at 5 U.S.C. 553(d)(3), to waive the requirement that this rule be delayed in effective date 30 days after the date of publication. As such, this rule will be effective April 29, 2015.

Review Under Executive Order 12866

This rulemaking is not a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563 because it will not have an economic impact of $100 million, it does not create a serious inconsistency with other agency actions, will not materially impact any budget, and does not raise novel legal or policy issues. Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*).

Because this rule is not subject to the requirement that the agency provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable to this rulemaking. DOE notes that this final rule would empower DOE protective force officers that are federal employees to arrest individuals who violate 18 U.S.C. 111 when such a violation involves the property of the United States in the custody of DOE or a DOE contractor. This rule is a matter of law enforcement procedure and does not impose any requirement on any small entities.

Review Under the Paperwork Reduction Act

This rulemaking imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is

[1] All of the crimes currently listed in 10 CFR 1047.4(a) (1) may serve as the basis for an arrest by any DOE protective force officer, including those who are non-federal, contract employees.

not required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969, DOE has determined that this rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to rulemakings ''amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amending.'' The arrest authority of DOE protective force officers has no significant impact on the environment. Therefore, DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule.

Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have a process of accountability to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. This publication is intended to put both States and the general public on notice of this final rule.

Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law; this final rule meets the relevant standards of Executive Order 12988.

Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (Mar. 18, 1997). DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel.* This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so the UMRA does not apply.

Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, an agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the final rule.

Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Office of the Secretary of Energy has approved the issuance of this final rule.

List of Subjects in 10 CFR Part 1047

Government contracts, Law enforcement, Nuclear energy.

Issued in Washington, DC, on March 23, 2015.

Ernest J. Moniz,

Secretary.

For the reasons set forth in the preamble, DOE is amending part 1047 of chapter X of title 10 of the Code of Federal Regulations, to read as set forth below:

PART 1047—LIMITED ARREST AUTHORITY AND USE OF FORCE BY PROTECTIVE FORCE OFFICERS

■ 1. The authority citation for part 1047 continues to read as follows:

Authority: Sec. 2201, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2011 *et seq.*); Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*).

■ 2. Section 1047.4 is amended by:
■ a. Adding paragraph (a)(1)(iii); and
■ b. Revising paragraphs (b) and (c).

The addition and revisions read as follows:

§ 1047.4 Arrest authority.

(a) * * *

(1) * * *

(iii) *Assaulting, resisting, or impeding certain officers or employees—18 U.S.C. 111.* Both the felony and misdemeanor level offenses may only be enforced by protective force officers that are federal employees.

* * * * *

(b) *Felony Arrests.* A protective force officer is authorized to make an arrest for any felony listed in paragraph (a)(1)(i) or (a)(2)(i) of this section if the offense is committed in the presence of the protective force officer or if he or she has reasonable grounds to believe that the individual to be arrested has committed or is committing the felony.

(c) *Misdemeanor Arrest.* A protective force officer is authorized to make an arrest for any misdemeanor listed in paragraph (a)(1)(ii) or (a)(2)(ii) of this section if the offense is committed in the presence of the protective force officer.

* * * * *

[FR Doc. 2015–10042 Filed 4–28–15; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

RIN 3064–AE09

Transferred OTS Regulations and Regulations Regarding Disclosure and Reporting of CRA-Related Agreements

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correcting amendment.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') published a final rule in the **Federal Register** on July 21, 2014 (79 FR 42183), regarding Transferred OTS Regulations Regarding Disclosure and Reporting of CRA-Related Agreements. This publication corrects a typographical error which caused the unintended deletion of §§ 346.2 through 346.10.

DATES: The correction is effective April 29, 2015.

FOR FURTHER INFORMATION CONTACT: Patience Singleton, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–6859; Jennifer Maree, Counsel, Legal Division, (202) 898–6543; Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424.

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation (''FDIC'') is correcting a typographical error in the final rule that published in the **Federal Register** on July 21, 2014 (79 FR 42183), which caused the unintended deletion of §§ 346.2 through 346.10.

List of Subjects in 12 CFR Part 346

Banks and banking, Disclosure and reporting of CRA-related agreements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation corrects 12 CFR chapter III by revising part 346 as set forth below:

PART 346—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

Sec.

Authority: 12 U.S.C. 1831y.

PART 346—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

§ 346.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to—

(1) State nonmember insured banks;

(2) Subsidiaries of state nonmember insured banks;

(3) Nongovernmental entities or persons that enter into covered agreements with any company listed in paragraphs (b)(1), (2), (4) and (5) of this section.

(4) State savings associations; and

(5) Subsidiaries of State savings associations.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) or the FDIC's Community Reinvestment regulation found at 12 CFR part 345, or the FDIC's interpretations or administration of that Act or regulation.

(d) *Examples.* (1) The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(2) Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issues that may arise in this part.

§ 346.2 Definition of covered agreement.

(a) *General definition of covered agreement.* A covered agreement is any contract, arrangement, or understanding that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) One or more insured depository institutions or affiliates of an insured depository institution; and

(ii) One or more nongovernmental entities or persons (referred to hereafter as NGEPs).

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in§ 346.4.

(5) The agreement is with a NGEP that has had a CRA communication as described in § 346.3 prior to entering into the agreement.

(b) *Examples concerning written arrangements or understandings—*

(1) Example 1. A NGEP meets with an insured depository institution and states that the institution needs to make more community development investments in the NGEP's community. The NGEP and insured depository institution do not reach an agreement concerning the community development investments the institution should make in the community, and the parties do not reach any mutual arrangement or understanding. Two weeks later, the institution unilaterally issues a press release announcing that it has established a general goal of making $100 million of community development grants in low- and moderate-income neighborhoods served by the insured depository institution over the next 5 years. The NGEP is not identified in the press release. The press release is not a written arrangement or understanding.

(2) Example 2. A NGEP meets with an insured depository institution and states that the institution needs to offer new loan programs in the NGEP's community. The NGEP and the insured depository institution reach a mutual arrangement or understanding that the institution will provide additional loans in the NGEP's community. The institution tells the NGEP that it will issue a press release announcing the program. Later, the insured depository institution issues a press release announcing the loan program. The press release incorporates the key terms of the understanding reached between the NGEP and the insured depository institution. The written press release reflects the mutual arrangement or understanding of the NGEP and the insured depository institution and is, therefore, a written arrangement or understanding.

(3) Example 3. An NGEP sends a letter to an insured depository institution requesting that the institution provide a $15,000 grant to the NGEP. The insured depository institution responds in writing and agrees to provide the grant in connection with its annual grant program. The exchange of letters constitutes a written arrangement or understanding.

(c) *Loan agreements that are not covered agreements.* A covered agreement does not include—

(1) Any individual loan that is secured by real estate; or

(2) Any specific contract or commitment for a loan or extension of credit to an individual, business, farm, or other entity, or group of such individuals or entities if—

(i) The funds are loaned at rates that are not substantially below market rates; and

(ii) The loan application or other loan documentation does not indicate that the borrower intends or is authorized to use the borrowed funds to make a loan or extension of credit to one or more third parties.

(d) *Examples concerning loan agreements—*

(1) Example 1. An insured depository institution provides an organization with a $1 million loan that is documented in writing and is secured by real estate owned or to-be-acquired by the organization. The agreement is an individual mortgage loan and is exempt from coverage under paragraph (c)(1) of this section, regardless of the interest rate on the loan or whether the organization intends or is authorized to re-loan the funds to a third party.

(2) Example 2. An insured depository institution commits to provide a $500,000 line of credit to a small business that is documented by a written agreement. The loan is made at rates that are within the range of rates offered by the institution to similarly situated small businesses in the market and the loan documentation does not indicate that the small business intends or is authorized to re-lend the borrowed funds. The agreement is exempt from coverage under paragraph (c)(2) of this section.

(3) Example 3. An insured depository institution offers small business loans that are guaranteed by the Small Business Administration (SBA). A small business obtains a $75,000 loan, documented in writing, from the institution under the institution's SBA loan program. The loan documentation does not indicate that the borrower intends or is authorized to re-lend the funds. Although the rate charged on the loan is well below that charged by the institution on commercial loans, the rate is within the range of rates that the institution would charge a similarly situated small business for a similar loan under the SBA loan program. Accordingly, the loan is not made at substantially below market rates and is exempt from coverage under paragraph (c)(2) of this section.

(4) Example 4. A bank holding company enters into a written agreement with a community development organization that provides that insured depository institutions owned by the bank holding company will make $250 million in small business loans in the community over the next 5 years. The written agreement is not a specific contract or commitment for a loan or an extension of credit and, thus, is not exempt from coverage under paragraph (c)(2) of this section: Each small business loan made by the insured depository institution pursuant to this general commitment would, however, be exempt from coverage if the loan is made at rates that are not substantially below market rates and the loan documentation does not indicate that the borrower intended or was authorized to re-lend the funds.

(e) *Agreements that include exempt loan agreements.* If an agreement includes a loan, extension of credit or loan commitment that, if documented separately, would be exempt under paragraph (c) of this section, the exempt loan, extension of credit or loan commitment may be excluded for purposes of determining whether the agreement is a covered agreement.

(f) *Determining annual value of agreements that lack schedule of disbursements.* For purposes of paragraph (a)(3) of this section, a multi-year agreement that does not include a schedule for the disbursement of payments, grants, loans or other consideration by the insured depository institution or affiliate, is considered to have a value in the first year of the agreement equal to all payments, grants, loans and other consideration to be provided at any time under the agreement.

§ 346.3 CRA communications.

(a) *Definition of CRA communication.* A CRA communication is any of the following—

(1) Any written or oral comment or testimony provided to a Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(2) Any written comment submitted to the insured depository institution that discusses the adequacy of the performance under the CRA of the institution and must be included in the institution's CRA public file.

(3) Any discussion or other contact with the insured depository institution or any affiliate about—

(i) Providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate;

(ii) Providing (or refraining from providing) written comments to the insured depository institution that concern the adequacy of the institution's performance under the CRA and must be included in the institution's CRA public file; or

(iii) The adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(b) *Discussions or contacts that are not CRA communications*—(1) *Timing of contacts with a Federal banking agency.* An oral or written communication with a Federal banking agency is not a CRA communication if it occurred more than 3 years before the parties entered into the agreement.

(2) *Timing of contacts with insured depository institutions and affiliates.* A communication with an insured depository institution or affiliate is not a CRA communication if the communication occurred—

(i) More than 3 years before the parties entered into the agreement, in the case of any written communication;

(ii) More than 3 years before the parties entered into the agreement, in the case of any oral communication in which the NGEP discusses providing (or refraining from providing) comments or testimony to a Federal banking agency or written comments that must be included in the institution's CRA public file in connection with a request to, or agreement by, the institution or affiliate to take (or refrain from taking) any action that is in fulfillment of the CRA; or

(iii) More than 1 year before the parties entered into the agreement, in the case of any other oral communication not described in paragraph (b)(2)(ii) of this section.

(3) *Knowledge of communication by insured depository institution or affiliate*—(i) A communication is only a CRA communication under paragraph (a) of this section if the insured depository institution or its affiliate has knowledge of the communication under this paragraph (b)(3)(ii) or (iii) of this section.

(ii) *Communication with insured depository institution or affiliate.* An insured depository institution or affiliate has knowledge of a communication by the NGEP to the institution or its affiliate under this paragraph only if one of the following representatives of the insured depository institution or any affiliate has knowledge of the communication—

(A) An employee who approves, directs, authorizes, or negotiates the agreement with the NGEP; or

(B) An employee designated with responsibility for compliance with the CRA or executive officer if the employee or executive officer knows that the institution or affiliate is negotiating, intends to negotiate, or has been informed by the NGEP that it expects to request that the institution or affiliate negotiate an agreement with the NGEP.

(iii) *Other communications.* An insured depository institution or affiliate is deemed to have knowledge of—

(A) Any testimony provided to a Federal banking agency at a public meeting or hearing;

(B) Any comment submitted to a Federal banking agency that is conveyed in writing by the agency to the insured depository institution or affiliate; and

(C) Any written comment submitted to the insured depository institution that must be and is included in the institution's CRA public file.

(4) *Communication where NGEP has knowledge.* A NGEP has a CRA communication with an insured depository institution or affiliate only if any of the following individuals has knowledge of the communication—

(i) A director, employee, or member of the NGEP who approves, directs, authorizes, or negotiates the agreement with the insured depository institution or affiliate;

(ii) A person who functions as an executive officer of the NGEP and who knows that the NGEP is negotiating or intends to negotiate an agreement with the insured depository institution or affiliate; or

(iii) Where the NGEP is an individual, the NGEP.

(c) *Examples of CRA communications*—(1) *Examples of actions that are CRA communications.* The following are examples of CRA communications. These examples are not exclusive and assume that the communication occurs within the relevant time period as described in paragraph (b)(1) or (2) of this section and the appropriate representatives have knowledge of the communication as specified in paragraphs (b)(3) and (4) of this section.

(i) Example 1. A NGEP files a written comment with a Federal banking agency that states than an insured depository institution successfully addresses the credit needs of its community. The written comment is in response to a general request from the agency for comments on an application of the insured depository institution to open a new branch and a copy of the comment is provided to the institution.

(ii) Examples 2. A NGEP meets with an executive officer of an insured depository institution and states that the institution must improve its CRA performance.

(iii) Example 3. A NGEP meets with an executive officer of an insured depository institution and states that the institution needs to make more mortgage loans in low- and moderate-income neighborhoods in its community.

(iv) Example 4. A bank holding company files an application with a Federal banking agency to acquire an insured depository institution. Two weeks later, the NGEP meets with an executive officer of the bank holding company to discuss the adequacy of the performance under the CRA of the target insured depository institution. The insured depository institution was an affiliate of the bank holding company at the time the NGEP met with the target institution. (See § 346.11(a).) Accordingly, the NGEP had a CRA communication with an affiliate of the bank holding company.

(2) *Examples of actions that are not CRA communications.* The following are examples of actions that are not by themselves CRA communications. These examples are not exclusive.

(i) Example 1. A NGEP provides to a Federal banking agency comments or testimony concerning an insured depository institution or affiliate in response to a direct request by the agency for comments or testimony from that NGEP. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902(3)) by, an insured depository institution or an application by a company to acquire an insured depository institution.

(ii) Example 2. A NGEP makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions, affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(iii) Example 3. A NGEP, such as a civil rights group, community group providing housing and other services in low- and moderate-income neighborhoods, veterans organization, community theater group, or youth organization, sends a fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work by supporting the fundraising efforts of the NGEP.

(iv) Example 4. A NGEP discusses with an insured depository institution or affiliate whether particular loans, services, investments, community development activities, or other activities are generally eligible for consideration by a Federal banking agency under the CRA. The NGEP and insured depository institution or affiliate do not discuss the adequacy of the CRA performance of the insured depository institution or affiliate.

(v) Example 5. A NGEP engaged in the sale or purchase of loans in the secondary market sends a general offering circular to financial institutions offering to sell or purchase a portfolio of loans. An insured depository institution that receives the offering circular discusses with the NGEP the types of loans included in the loan pool, whether such loans are generally eligible for consideration under the CRA, and which loans are made to borrowers in the institution's local community. The NGEP and insured depository institution do not discuss the adequacy of the institution's CRA performance.

(d) *Multiparty covered agreements.* (1) A NGEP that is a party to a covered agreement that involves multiple NGEPs is not required to comply with the requirements of this part if—

(i) The NGEP has not had a CRA communication; and

(ii) No representative of the NGEP identified in paragraph (b)(4) of this section has knowledge at the time of the agreement that another NGEP that is a party to the agreement has had a CRA communication.

(2) An insured depository institution or affiliate that is a party to a covered agreement that involves multiple insured depository institutions or affiliates is not required to comply with the disclosure and annual reporting requirements in §§ 346.6 and 346.7 if—

(i) No NGEP that is a party to the agreement has had a CRA communication concerning the insured depository institution or any affiliate; and

(ii) No representative of the insured depository institution or any affiliate identified in paragraph (b)(3) of this section has knowledge at the time of the agreement that an NGEP that is a party to the agreement has had a CRA communication concerning any other insured depository institution or affiliate that is a party to the agreement.

§ 346.4 Fulfillment of the CRA.

(a) *List of factors that are in fulfillment of the CRA.* Fulfillment of the CRA, for purposes of this part, means the following list of factors—

(1) *Comments to a Federal banking agency or included in CRA public file.* Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution; or

(2) *Activities given favorable CRA consideration.* Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement—

(i) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in 12 CFR 345.22, including loan purchases, loan commitments, and letters of credit;

(ii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in 12 CFR 345.23;

(iii) Delivering retail banking services as described in 12 CFR 345.24(d);

(iv) Providing community development services, as described in 12 CFR 345.24(e);

(v) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in 12 CFR 345.25(c);

(vi) In the case of a small insured depository institution, any lending or other activity described in 12 CFR 345.26(a); or

(vii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in 12 CFR 345.27(f).

(b) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns any activity described in paragraph (a) of this section of a CRA affiliate must, prior to the time the agreement is entered into, notify each NGEP that is a party to the agreement that the agreement concerns a CRA affiliate.

§ 346.5 Related agreements considered a single agreement.

The following rules must be applied in determining whether an agreement is a covered agreement under § 346.2.

(a) *Agreements entered into by same parties.* All written agreements to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the agreements—

(1) Are entered into with the same NGEP;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a NGEP is a party to each contract.

§ 346.6 Disclosure of covered agreements.

(a) *Applicability date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public*—(1) *Disclosure required.* Each NGEP and each insured depository institution or affiliate that enters into a covered agreement must promptly make a copy of the covered agreement available to any individual or entity upon request.

(2) *Nondisclosure of confidential and proprietary information permitted.* In responding to a request for a covered agreement from any individual or entity under paragraph (b)(1) of this section, a NGEP, insured depository institution, or affiliate may withhold from public disclosure confidential or proprietary information that the party believes the relevant supervisory agency could withhold from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) (FOIA).

(3) *Information that must be disclosed.* Notwithstanding paragraph (b)(2) of this section, a party must disclose any of the following information that is contained in a covered agreement—

(i) The names and addresses of the parties to the agreement;

(ii) The amount of any payments, fees, loans, or other consideration to be made or provided by any party to the agreement;

(iii) Any description of how the funds or other resources provided under the agreement are to be used;

(iv) The term of the agreement (if the agreement establishes a term); and

(v) Any other information that the relevant supervisory agency determines

is not properly exempt from public disclosure.

(4) *Request for review of withheld information.* Any individual or entity may request that the relevant supervisory agency review whether any information in a covered agreement withheld by a party must be disclosed. Any requests for agency review of withheld information must be filed, and will be processed in accordance with, the relevant supervisory agency's rules concerning the availability of information (*see* the FDIC's rules regarding Disclosure of Information (12 CFR part 309)).

(5) *Duration of obligation.* The obligation to disclose a covered agreement to the public terminates 12 months after the end of the term of the agreement.

(6) *Reasonable copy and mailing fees.* Each NGEP and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(7) *Use of CRA public file by insured depository institution or affiliate.* An insured depository institution and any affiliate of an insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file if the institution makes the agreement available in accordance with the procedures set forth in 12 CFR 345.43.

(c) *Disclosure by NGEPs of covered agreements to the relevant supervisory agency.* (1) Each NGEP that is a party to a covered agreement must provide the following within 30 days of receiving a request from the relevant supervisory agency—

(i) A complete copy of the agreement; and

(ii) In the event the NGEP proposes the withholding of any information contained in the agreement in accordance with paragraph (b)(2) of this section, a public version of the agreement that excludes such information and an explanation justifying the exclusions. Any public version must include the information described in paragraph (b)(3) of this section.

(2) The obligation of a NGEP to provide a covered agreement to the relevant supervisory agency terminates 12 months after the end of the term of the covered agreement.

(d) *Disclosure by insured depository institution or affiliate of covered agreements to the relevant supervisory agency*—(1) *In general.* Within 60 days of the end of each calendar quarter, each insured depository institution and affiliate must provide each relevant supervisory agency with—

(i)(A) A complete copy of each covered agreement entered into by the insured depository institution or affiliate during the calendar quarter; and

(B) In the event the institution or affiliate proposes the withholding of any information contained in the agreement in accordance with paragraph (b)(2) of this section, a public version of the agreement that excludes such information (other than any information described in paragraph (b)(3) of this section) and an explanation justifying the exclusions; or

(ii) A list of all covered agreements entered into by the insured depository institution or affiliate during the calendar quarter that contains—

(A) The name and address of each insured depository institution or affiliate that is a party to the agreement;

(B) The name and address of each NGEP that is a party to the agreement;

(C) The date the agreement was entered into;

(D) The estimated total value of all payments, fees, loans, and other consideration to be provided by the institution or any affiliate of the institution under the agreement; and

(E) The date the agreement terminates.

(2) *Prompt filing of covered agreements contained in list required.* (i) If an insured depository institution or affiliate files a list of the covered agreements entered into by the institution or affiliate pursuant to paragraph (d)(1)(ii) of this section, the institution or affiliate must provide any relevant supervisory agency a complete copy and public version of any covered agreement referenced in the list within 7 calendar days of receiving a request from the agency for a copy of the agreement.

(ii) The obligation of an insured depository institution or affiliate to provide a covered agreement to the relevant supervisory agency under this paragraph (d)(2) terminates 36 months after the end of the term of the agreement.

(3) *Joint filings.* In the event that 2 or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file the documents required by this paragraph (d). Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the filings are being made.

§ 346.7 Annual reports.

(a) *Applicability date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each NGEP and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement*—(1) *NGEPs.* A NGEP must file an annual report for a covered agreement for any fiscal year in which the NGEP receives or uses funds or other resources under the agreement.

(2) *Insured depository institutions and affiliates.* An insured depository institution or affiliate must file an annual report for a covered agreement for any fiscal year in which the institution or affiliate—

(i) Provides or receives any payments, fees, or loans under the covered agreement that must be reported under paragraphs (e)(1)(iii) and (iv) of this section; or

(ii) Has data to report on loans, investments, and services provided by a party to the covered agreement under the covered agreement under paragraph (e)(1)(vi) of this section.

(d) *Annual reports filed by NGEP*—(1) *Contents of report.* The annual report filed by a NGEP under this section must include the following—

(i) The name and mailing address of the NGEP filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) A detailed, itemized list of how any funds or resources received by the NGEP under the covered agreement were used during the fiscal year, including the total amount used for—

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses and uses (specify expense or use).

(2) *More detailed reporting of uses of funds or resources permitted*—(i) *In general.* If a NGEP allocated and used funds received under a covered agreement for a specific purpose, the

NGEP may fulfill the requirements of paragraph (d)(1)(iv) of this section with respect to such funds by providing—

(A) A brief description of each specific purpose for which the funds or other resources were used; and

(B) The amount of funds or resources used during the fiscal year for each specific purpose.

(ii) *Specific purpose defined.* A NGEP allocates and uses funds for a specific purpose if the NGEP receives and uses the funds for a purpose that is more specific and limited than the categories listed in paragraph (d)(1)(iv) of this section.

(3) *Use of other reports.* The annual report filed by a NGEP may consist of or incorporate a report prepared for any other purpose, such as the Internal Revenue Service Return of Organization Exempt From Income Tax on Form 990, or any other Internal Revenue Service form, state tax form, report to members or shareholders, audited or unaudited financial statements, audit report, or other report, so long as the annual report filed by the NGEP contains all of the information required by this paragraph (d).

(4) *Consolidated reports permitted.* A NGEP that is a party to 2 or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information reported under paragraphs (d)(1)(iv) and (d)(2) of this section may be reported on an aggregate basis for all covered agreements.

(5) *Examples of annual report requirements for NGEPs—*

(i) Example 1. A NGEP receives an unrestricted grant of $15,000 under a covered agreement, includes the funds in its general operating budget, and uses the funds during its fiscal year. The NGEP's annual report for the fiscal year must provide the name and mailing address of the NGEP, information sufficient to identify the covered agreement, and state that the NGEP received $15,000 during the fiscal year. The report must also indicate the total expenditures made by the NGEP during the fiscal year for compensation, administrative expenses, travel expenses, entertainment expenses, consulting and professional fees, and other expenses and uses. The NGEP's annual report may provide this information by submitting an Internal Revenue Service Form 990 that includes the required information. If the Internal Revenue Service Form does not include information for all of the required categories listed in this part, the NGEP must report the total expenditures in the remaining categories either by providing that information directly or by providing another form or report that includes the required information.

(ii) Examples 2. An organization receives $15,000 from an insured depository institution under a covered agreement and allocates and uses the $15,000 during the fiscal year to purchase computer equipment to support its functions. The organization's annual report must include the name and address of the organization, information sufficient to identify the agreement, and a statement that the organization received $15,000 during the year. In addition, since the organization allocated and used the funds for a specific purpose that is more narrow and limited than the categories of expenses included in the detailed, itemized list of expenses, the organization would have the option of providing either the total amount it used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section, or a statement that it used the $15,000 to purchase computer equipment and a brief description of the equipment purchased.

(iii) Examples 3. A community group receives $50,000 from an insured depository institution under a covered agreement. During its fiscal year, the community group specifically allocates and uses $5,000 of the funds to pay for a particular business trip and uses the remaining $45,000 for general operating expenses. The group's annual report for the fiscal year must include the name and address of the group, information sufficient to identify the agreement, and a statement that the group received $50,000. Because the group did not allocate and use all of the funds for a specific purpose, the group's annual report must provide the total amount of funds it used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section. The group's annual report also could state that it used $5,000 for a particular business trip and include a brief description of the trip.

(iv) Example 4. A community development organization is a party to two separate covered agreements with two unaffiliated insured depository institutions. Under each agreement, the organization receives $15,000 during its fiscal year and uses the funds to support its activities during that year. If the organization elects to file a consolidated annual report, the consolidated report must identify the organization and the two covered agreements, state that the organization received $15,000 during the fiscal year under each agreement, and provide the total amount that the organization used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section.

(e) *Annual report filed by insured depository institution or affiliate*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following—

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (iv) of this section, or, in the event such terms and conditions are set forth—

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement (or a list identifying the agreement) was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement—

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by another party under this section.

(2) *Consolidated reports permitted—*

(i) *Party to multiple agreements.* An insured depository institution or affiliate that is a party to 2 or more covered agreements may file a single consolidated annual report with each relevant supervisory agency concerning all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iv) and (vi) of this

section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing*—(1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a NGEP.* (i) A NGEP may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than six months following the end of the NGEP's fiscal year—

(A) A copy of the NGEP's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the NGEP.

(ii) An insured depository institution or affiliate that receives an annual report from a NGEP pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the NGEP within 30 days.

§ 346.8 Release of information under FOIA.

The FDIC will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the FDIC's rules regarding Disclosure of Information (12 CFR part 309). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

§ 346.9 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If the FDIC determines that a NGEP has willfully failed to comply in a material way with §§ 346.6 or 346.7, the FDIC will notify the NGEP in writing of that determination and provide the NGEP a period of 90 days (or such longer period as the FDIC finds to be reasonable under the circumstances) to comply.

(2) If the NGEP does not comply within the time period established by the FDIC, the agreement shall thereafter be unenforceable by that NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The FDIC may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEP's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the FDIC may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement.

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the FDIC will provide written notice and an opportunity to present information to the FDIC concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the FDIC under §§ 346.6 or 346.7 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the FDIC to enforce the provisions of any covered agreement.

§ 346.10 Transition provisions.

(a) *Disclosure of covered agreements entered into before the effective date of this part*—(1) *Disclosure to the public.* Each NGEP and each insured depository institution or affiliate that was a party to the agreement must make the agreement available to the public under § 346.6 until at least April 1, 2002.

(2) *Disclosure to the relevant supervisory agency.* (i) Each NGEP that was a party to the agreement must make the agreement available to the relevant supervisory agency under § 346.6 until at least April 1, 2002.

(ii) Each insured depository institution or affiliate that was a party to the agreement must, by June 30, 2001, provide each relevant supervisory agency either—

(A) A copy of the agreement under § 346.6(d)(1)(i); or

(B) The information described in § 346.6(d)(1)(ii) for each agreement.

(b) *Filing of annual reports that relate to fiscal years ending on or before December 31, 2000.* In the event that a NGEP, insured depository institution or affiliate has any information to report under § 346.7 for a fiscal year that ends on or before December 31, 2000, and that concerns a covered agreement entered into between May 12, 2000, and December 31, 2000, the annual report for that fiscal year must be provided no later than June 30, 2001, to—

(1) Each relevant supervisory agency; or

(2) In the case of a NGEP, to an insured depository institution or affiliate that is a party to the agreement in accordance with § 346.7(f)(2).

§ 346.11 Other definitions and rules of construction used in this part.

(a) *Affiliate.* ''Affiliate'' means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 346.2, an ''affiliate'' includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEP that is a party to the agreement makes a CRA communication, as described in § 346.3.

(b) *Control.* ''Control'' is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A ''CRA affiliate'' of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEP that is a party to the agreement of such designation.

(d) *CRA public file.* ''CRA public file'' means the public file maintained by an insured depository institution and described in 12 CFR 345.43.

(e) *Executive officer.* The term ''executive officer'' has the same meaning as in § 215.2(e)(1) of the Board of Governors of the Federal Reserve System's Regulation O (12 CFR 215.2(e)(1)).

(f) *Federal banking agency; appropriate Federal banking agency.* The terms ''Federal banking agency'' and ''appropriate Federal banking

agency'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(g) *Fiscal year.* (1) The fiscal year for a NGEP that does not have a fiscal year shall be the calendar year.

(2) Any NGEP, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(h) *Insured depository institution.* ''Insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(i) *NGEP.* ''NGEP'' means a nongovernmental entity or person.

(j) *Nongovernmental entity or person*—(1) *General.* A ''nongovernmental entity or person'' is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives Federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (j)(2)(i) through (iii) of this section.

(k) *Party.* The term ''party''. The authority citation for part 405 continues to read as follows: with respect to a covered agreement means each NGEP and each insured depository institution or affiliate that entered into the agreement.

(l) *Relevant supervisory agency.* The ''relevant supervisory agency'' for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

(m) *State savings association.* ''State savings association'' has the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)).

(n) *Term of agreement.* An agreement that does not have a fixed termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement otherwise notifies each party in writing.

Dated at Washington, DC, this 23rd day of April 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–09894 Filed 4–28–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–1083; Directorate Identifier 2014–CE–036–AD; Amendment 39–18140; AD 2015–08–04]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With Wing Lift Struts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 99–01–05 R1, which applied to certain aircraft equipped with wing lift struts. AD 99–01–05 R1 required repetitively inspecting the wing lift struts for corrosion; repetitively inspecting the wing lift strut forks for cracks; replacing any corroded wing lift strut; replacing any cracked wing lift strut fork; and repetitively replacing the wing lift strut forks at a specified time for certain airplanes. This new AD retains all requirements of AD 99–01–05R1 and adds additional airplane models to the Applicability section. This AD was prompted by a report that additional Piper Aircraft, Inc. model airplanes should be added to the Applicability section. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective June 3, 2015.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of February 8, 1999 (63 FR 72132, December 31, 1998).

ADDRESSES: For service information identified in this AD, contact Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: *www.piper.com.* Copies of the instructions to the F. Atlee Dodge supplemental type certificate (STC) and information about the Jensen Aircraft STCs may be obtained from F. Atlee Dodge, Aircraft Services, LLC., 6672 Wes Way, Anchorage, Alaska 99518–0409, Internet: *www.fadodge.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1083.

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–2014–1083; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For Piper Aircraft, Inc. airplanes, contact: Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov.*

For FS 2000 Corp, FS 2001 Corp, FS 2002 Corporation, and FS 2003 Corporation airplanes, contact: Jeff Morfitt, Aerospace Engineer, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057; phone: (425) 917–6405; fax: (245) 917–6590; email: *jeff.morfitt@faa.gov.*

For LAVIA ARGENTINA S.A. (LAVIASA) airplanes, contact: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; email: *sarjapur.nagarajan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 99–01–05 R1, Amendment 39–17688 (78 FR 73997, December 10, 2013; corrected 78 FR 79599, December 31, 2013), (''AD 99–01–05 R1''). AD 99–01–05 R1 applied to certain aircraft equipped with wing lift struts. The NPRM published in the **Federal Register** on December 31, 2014 (79 FR 78729). The NPRM was prompted by a report that Piper Aircraft, Inc. (Piper) Models J–3, J3C–65 (Army L–4A), J3P, J4B, and J4F airplanes should be added to the Applicability section. We were also informed of a serial number overlap between Piper Model PA–18s listed in AD 99–01–05 R1 and Piper Model PA–19 (Army L–18C). Certain serial numbers listed for Model PA–18s should also be listed under Model PA–19 (Army L–18C). The NPRM proposed to retain all requirements of AD 99–01–05 R1 and add airplanes to the Applicability section. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 78729, December 31, 2014) and the FAA's response to each comment.

Request To Remove the ''NO STEP'' Placard Requirement for Models PA–25, PA–24–235, and PA–25–260 Airplanes

Joe Barr stated that LAVIA ARGENTINA S.A. (LAVIASA) Models PA–25, PA–24–235, and PA–25–260 airplanes should be exempt from the requirement in paragraph (m) of the proposed AD to install a ''NO STEP'' placard on each wing lift strut.

Joe Barr stated that the LAVIASA PA–25 series airplanes are the only low wing monoplane aircraft of all the affected airplane models listed in the proposed AD. The LAVIASA PA–25 series airplanes have a wing support strut that is located on top of, rather than below, the wing. The upper end of the wing lift strut attaches to the top of the fuselage and the bottom end of the strut attaches to the top of the wing at the midpoint region. There is no safe wing walk surface area on the top of the wing that extends more than a few inches from the wing root to walk or stand at this mid-wing station. No one could possibly step on or stand on the strut at or near this wing location without significant damage to the adjacent fabric covered wing structure itself. Therefore, it is illogical and irrelevant to have a ''NO STEP'' placard of any kind at the mentioned location on the wing lift struts of the LAVIASA PA–25 series airplanes. This requirement was clearly meant for high wing aircraft only.

We agree with the commenter. The intent of the placard is to prevent damage from stepping on the lower end of the strut. This would not occur on LAVIASA Models PA–25, PA–24–235, and PA–25–260 airplanes due to the configuration discussed above.

We have changed paragraph (m) in this AD to exclude LAVIASA Models PA–25, PA–24–235, and PA–25–260 airplanes from this requirement.

Request To Allow a Different Rework Method of an Unsealed Wing Lift Strut for Model J–3 Airplanes

Mike Teets stated that he wants the option of using a different method for reworking a non-sealed wing lift strut to a sealed condition for Piper Aircraft Inc. Model J–3 airplanes.

Mike Teets stated that he has been inspecting the wing life struts on his Piper Aircraft, Inc. Model J–3 airplane for years and has developed a method for ''reoperating'' an unsealed wing life strut to a sealed condition, which would remove the need for the repetitive inspections and thereby reduce costs associated with the requirements of the proposed AD.

We do not agree with the commenter. The commenter's request pertains to only one model airplane affected by this AD and addresses only a portion of the requirements of the proposed AD. The commenter's proposal would be more appropriately addressed by requesting an alternative method of compliance following the procedures specified in paragraph (n) of this AD.

We have not changed this AD based on this comment.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 78729, December 31, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 78729, December 31, 2014).

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

Related Service Information Under 1 CFR Part 51

We reviewed Piper Aircraft Corporation Mandatory Service Bulletin No. 528D, dated October 19, 1990, Piper Aircraft Corporation Mandatory Service Bulletin No. 910A, dated October 10, 1989; F. Atlee Dodge Aircraft Services, Inc. Installation Instructions No. 3233–I for Modified Piper Wing Lift Struts Supplemental Type Certificate (STC) SA4635NM, dated February 1, 1991; and Jensen Aircraft Installation Instructions for Modified Lift Strut Fittings, which incorporates pages 1 and 5, Original Issue, dated July 15, 1983; pages 2, 4, and 6, Revision No. 1, dated March 30, 1984; and pages a and 3, Revision No. 2, dated April 20, 1984. The service information describes procedures for wing lift strut assembly inspection and replacement. This information is reasonably available at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1083, or you may see **ADDRESSES** for other ways to access this service information.

Costs of Compliance

We estimate that this AD affects 22,200 airplanes of U.S. registry.

We estimate the following costs to comply with this AD. However, the only difference in the costs presented below and the costs associated with AD 99–01–05 R1 is addition of 200 airplanes to the applicability:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the wing lift struts and wing lift strut forks.	8 work-hours × $85 per hour = $680 per inspection cycle.	Not applicable	$680 per inspection cycle.	$15,096,000 per inspection cycle.
Installation placard	1 work-hour × $85 = $85	$30	$115	$2,553,000.

We estimate the following costs to do any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost per wing lift strut	Parts cost per wing lift strut	Cost per product per wing lift strut
Replacement of the wing lift strut and/or wing lift strut forks	4 work-hours × $85 per hour = $340	$440	$780

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 99–01–05 R1, Amendment 39–17688 (78 FR 73997, December 10, 2013; corrected 78 FR 79599, December 31, 2013), and adding the following new AD:

2015–08–04 Various Aircraft: Amendment 39–18140; Docket No. FAA–2014–1083; Directorate Identifier 2014–CE–036–AD.

(a) Effective Date

This AD is effective June 3, 2015.

(b) Affected ADs

This AD supersedes AD 99–01–05 R1, Amendment 39–17688 (78 FR 73997, December 10, 2013; corrected 78 FR 79599, December 31, 2013) ''AD 99–01–05 R1''. AD 99–26–19 R1, Amendment 39–17681 (78 FR 76040, December 16, 2013), also relates to the subject of this AD.

(c) Applicability

This AD applies to the following airplanes identified in Table 1 and Table 2 to paragraph (c) of this AD, that are equipped with wing lift struts, including airplanes commonly known as a ''Clipped Wing Cub,'' which modify the airplane primarily by removing approximately 40 inches of the inboard portion of each wing; and are certificated in any category.

(1) Based on optional engine installations some airplanes may have been re-identified or registered with another model that is not listed in the type certificate data sheet (TCDS). For instance, Piper Model J3C–65 airplanes are type certificated on Type Certificate Data Sheet (TCDS) A–691 but may also have been re-identified or registered as a Model J3C–115, J3F–50, J3C–75, J3C–75D, J3C–75S, J3L–75, J3C–85, J3C–85S, J3C–90, J3F–90, J3F–90S, J3C–100, or J3–L4J airplane.

(2) The airplane model number on the affected airplane or its registry may or may not contain the dash (-), *e.g.* J3 and J–3. This AD applies to both variations.

Note 1 to paragraph (c) of this AD: There is a serial number overlap between the Piper PA–18 series airplanes and the Piper Model PA–19 (Army L–18C) airplanes listed in AD 99–01–05 R1. Serial numbers 18–1 through 18–7632 listed for the PA–18 series airplanes are also now listed under Model PA–19 (Army L–18C) and Model PA–19S.

TABLE 1 TO PARAGRAPH (C) OF THIS AD—AIRPLANES PREVIOUSLY AFFECTED BY AD 99–01–05 R1

Type certificate holder	Aircraft model	Serial Nos.
FS 2000 Corp	L–14	All.

TABLE 1 TO PARAGRAPH (C) OF THIS AD—AIRPLANES PREVIOUSLY AFFECTED BY AD 99–01–05 R1—Continued

Type certificate holder	Aircraft model	Serial Nos.
FS 2001 Corp	J5A (Army L–4F), J5A–80, J5B (Army L–4G), J5C, AE–1, and HE–1.	All.
FS 2002 Corporation	PA–14	14–1 through 14–523.
FS 2003 Corporation	PA–12 and PA–12S	12–1 through 12–4036.
LAVIA ARGENTINA S.A. (LAVIASA).	PA–25, PA–25–235, and PA–25–260	25–1 through 25–8156024.
Piper Aircraft, Inc	TG–8 (Army TG–8, Navy XLNP–1)	All.
Piper Aircraft, Inc	E–2 and F–2	All.
Piper Aircraft, Inc	J3C–40, J3C–50, J3C–50S, J3C–65 (Army L–4, L–4B, L–4H, L–4J, Navy NE–1 and NE–2), J3C–65S, J3F–50, J3F–50S, J3F–60, J3F–60S, J3F–65 (Army L–4D), J3F–65S, J3L, J3L–S, J3L–65 (Army L–4C), and J3L–65S.	All.
Piper Aircraft, Inc	J4, J4A, J4A–S, and J4E (Army L–4E)	4–401 through 4–1649.
Piper Aircraft, Inc	PA–11 and PA–11S	11–1 through 11–1678.
Piper Aircraft, Inc	PA–15	15–1 through 15–388.
Piper Aircraft, Inc	PA–16 and PA–16S	16–1 through 16–736.
Piper Aircraft, Inc	PA–17	17–1 through 17–215.
Piper Aircraft, Inc	PA–18, PA–18S, PA–18 ''105'' (Special), PA–18S ''105'' (Special), PA–18A, PA–18 ''125'' (Army L–21A), PA–18S ''125'', PA–18AS ''125'', PA–18 ''135'' (Army L–21B), PA–18A ''135'', PA–18S ''135'', PA–18AS ''135'', PA–18 ''150'', PA–18A ''150'', PA–18S ''150'', PA–18AS ''150'', PA–18A (Restricted), PA–18A ''135'' (Restricted), and PA–18A ''150'' (Restricted).	18–1 through 18–8309025, 18900 through 1809032, and 1809034 through 1809040.
Piper Aircraft, Inc	PA–19 (Army L–18C), and PA–19S	18–1 through 18–7632 and 19–1, 19–2, and 19–3.
Piper Aircraft, Inc	PA–20, PA–20S, PA–20 ''115'', PA–20S ''115'', PA–20 ''135'', and PA–20S ''135''.	20–1 through 20–1121.
Piper Aircraft, Inc	PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, and PA–22S–160.	22–1 through 22–9848.

TABLE 2 TO PARAGRAPH (C) OF THIS AD—AIRPLANES NEW TO THIS AD

Type certificate holder	Aircraft model	Serial Nos.
Piper Aircraft, Inc	J–3	1100 through 1200 and 1999 and up that were manufactured before October 15, 1939.
Piper Aircraft, Inc	J3C–65 (Army L–4A)	All.
Piper Aircraft, Inc	J3P	2325, 2327, 2339, 2340, 2342, 2344, 2345, 2347, 2349, 2351, 2355 and up that were manufactured before January 10, 1942.
Piper Aircraft, Inc	J4B	4–400 and up that were manufactured before December 11, 1942.
Piper Aircraft, Inc	J4F	4–828 and up.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

(1) The subject of this AD was originally prompted by reports of corrosion damage found on the wing lift struts. AD 99–01–05 R1 is being superseded to include certain Piper Aircraft, Inc. Models J–3, J3C–65 (Army L4A), J3P, J4B, and J4F airplanes that were inadvertently omitted from the applicability, paragraph (c), of AD 99–01–05 (64 FR 72524, December 28, 1999) ''99–01–05'' and subsequently AD 99–01–05 R1.

Note 2 to paragraph (e) of this AD: There is a serial number overlap between the Piper PA–18 series airplanes and the Piper Model PA–19 (Army L–18C) airplanes listed in AD 99–01–05 R1. Serial numbers 18–1 through 18–7632 listed for the PA–18 series airplanes are also now listed under Model PA–19 (Army L–18C) and Model PA–19S.

(2) AD 99–01–05 R1 was issued to clarify the FAA's intention that if a sealed wing lift strut assembly is installed as a replacement part, the repetitive inspection requirement is terminated only if the seal is never improperly broken. If the seal is improperly broken, then that wing lift strut becomes subject to continued repetitive inspections. We did not intend to promote drilling holes into or otherwise unsealing a sealed strut. This AD retains all the actions required in AD 99–01–05 R1. There are no new requirements in this AD except for the addition of certain model airplanes to the applicability, paragraph (c) of this AD.

(3) We are issuing this AD to detect and correct corrosion and cracking on the front and rear wing lift struts and forks, which could cause the wing lift strut to fail. This failure could result in the wing separating from the airplane.

(f) Compliance

Unless already done (compliance with AD 99–01–05 R1 and AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993) ''AD 93–010–06''), do the following actions within the compliance times specified in paragraphs (g) through (m) of this AD, including all subparagraphs. Properly unsealing and resealing a sealed wing lift strut is still considered a terminating action for the repetitive inspection requirements of this AD as long as all appropriate regulations and issues are considered, such as static strength, fatigue, material effects, immediate and long-term (internal and external) corrosion protection, resealing methods, etc. Current FAA regulations in 14 CFR 43.13(b) specify that maintenance performed will result in the part's condition to be at least equal to its original or properly altered condition. Any maintenance actions that unseal a sealed wing lift strut should be coordinated with the Atlanta Aircraft Certification Office (ACO) through the local airworthiness authority (*e.g.,* Flight Standards District Office). There are provisions in paragraph (n) of this AD for approving such actions as an alternative method of compliance (AMOC).

(g) Remove Wing Lift Struts

(1) *For all airplanes previously affected by AD 99–01–05 R1:* Within 1 calendar month after February 8, 1999 (the effective date retained from AD 99–01–05), or within 24 calendar months after the last inspection done in accordance with AD 93–10–06 (which was superseded by AD 99–01–05), whichever occurs later, remove the wing lift struts following Piper Aircraft Corporation Mandatory Service Bulletin (Piper MSB) No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989, as applicable. Before further flight after the removal, do the actions in one of the following paragraphs (h)(1), (h)(2), (i)(1), (i)(2), or (i)(3) of this AD, including all subparagraphs.

(2) *For all airplanes new to this AD (not previously affected by AD 99–01–05 R1):* Within 1 calendar month after the effective date of this AD or within 24 calendar months after the last inspection done in accordance with AD 93–10–06 (which was superseded by AD 99–01–05), whichever occurs later, remove the wing lift struts following Piper Aircraft Corporation Mandatory Service Bulletin (Piper MSB) No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989, as applicable. Before further flight after the removal, do the actions in one of the following paragraphs (h)(1), (h)(2), (i)(1), (i)(2), or (i)(3) of this AD, including all subparagraphs.

(h) Inspect Wing Lift Struts

For all airplanes listed in this AD: Before further flight after the removal required in paragraph (g) of this AD, inspect each wing lift strut following paragraph (h)(1) or (h)(2) of this AD, including all subparagraphs, or do the wing lift strut replacement following one of the options in paragraph (i)(1), (i)(2), or (i)(3) of this AD.

(1) Inspect each wing lift strut for corrosion and perceptible dents following Piper MSB No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989, as applicable.

(i) *If no corrosion is visible and no perceptible dents are found on any wing lift strut during the inspection required in paragraph (h)(1) of this AD,* before further flight, apply corrosion inhibitor to each wing lift strut following Piper MSB No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989, as applicable. Repetitively thereafter inspect each wing lift strut at intervals not to exceed 24 calendar months following the procedures in paragraph (h)(1) or (h)(2) of this AD, including all subparagraphs.

(ii) *If corrosion or perceptible dents are found on any wing lift strut during the inspection required in paragraph (h)(1) of this AD or during any repetitive inspection required in paragraph (h)(1)(i) of this AD,* before further flight, replace the affected wing lift strut with one of the replacement options specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD. Do the replacement following the procedures specified in those paragraphs, as applicable.

(2) Inspect each wing lift strut for corrosion following the procedures in the Appendix to this AD. This inspection must be done by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Non-destructive Testing or the ''Military Standard for Nondestructive Testing Personnel Qualification and Certification'' (MIL–STD–410E).

(i) *If no corrosion is found on any wing lift strut during the inspection required in paragraph (h)(2) of this AD and all requirements in the Appendix to this AD are met,* before further flight, apply corrosion inhibitor to each wing lift strut following Piper MSB No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989, as applicable. Repetitively thereafter inspect each wing lift strut at intervals not to exceed 24 calendar months following the procedures in paragraph (h)(1) or (h)(2) of this AD, including all subparagraphs.

(ii) *If corrosion is found on any wing lift strut during the inspection required in paragraph (h)(2) of this AD or during any repetitive inspection required in paragraph (h)(2)(i) of this AD, or if any requirement in the Appendix of this AD is not met,* before further flight after any inspection in which corrosion is found or the Appendix requirements are not met, replace the affected wing lift strut with one of the replacement options specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD. Do the replacement following the procedures specified in those paragraphs, as applicable.

(i) Wing Lift Strut Replacement Options

Before further flight after the removal required in paragraph (g) of this AD, replace the wing lift struts following one of the options in paragraph (i)(1), (i)(2), or (i)(3) of this AD, including all subparagraphs, or inspect each wing lift strut following paragraph (h)(1) or (h)(2) of this AD.

(1) Install original equipment manufacturer (OEM) part number wing lift struts (or FAA-approved equivalent part numbers) that have been inspected following the procedures in either paragraph (h)(1) or (h)(2) of this AD, including all subparagraphs, and are found to be airworthy. Do the installations following Piper MSB No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989, as applicable. Repetitively thereafter inspect the newly installed wing lift struts at intervals not to exceed 24 calendar months following the procedures in either paragraph (h)(1) or (h)(2) of this AD, including all subparagraphs.

(2) Install new sealed wing lift strut assemblies (or FAA-approved equivalent part numbers) (these sealed wing lift strut assemblies also include the wing lift strut forks) following Piper MSB No. 528D, dated October 19, 1990, and Piper MSB No. 910A, dated October 10, 1989, as applicable. Installing one of these new sealed wing lift strut assemblies terminates the repetitive inspection requirements in paragraphs (h)(1) and (h)(2) of this AD, and the wing lift strut fork removal, inspection, and replacement requirement in paragraphs (j) and (k) of this AD, including all subparagraphs, for that wing lift strut assembly.

(3) Install F. Atlee Dodge wing lift strut assemblies following F. Atlee Dodge Aircraft Services, Inc. Installation Instructions No. 3233–I for Modified Piper Wing Lift Struts Supplemental Type Certificate (STC) SA4635NM, dated February 1, 1991. Repetitively thereafter inspect the newly installed wing lift struts at intervals not to exceed 60 calendar months following the procedures in paragraph (h)(1) or (h)(2) of this AD, including all subparagraphs.

(j) Remove Wing Lift Strut Forks

(1) *For all airplanes previously affected by AD 99–01–05 R1, except for Model PA–25, PA–25–235, and PA–25–260 airplanes:* Within the next 100 hours time-in-service (TIS) after February 8, 1999 (the effective date retained from AD 99–01–05) or within 500 hours TIS after the last inspection done in accordance with AD 93–10–06 (which was superseded by AD 99–01–05), whichever occurs later, remove the wing lift strut forks (unless already replaced in accordance with paragraph (i)(2) of this AD). Do the removal following Piper MSB No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989, as applicable. Before further flight after the removal, do the actions in one of the following paragraphs (k) or (l) of this AD, including all subparagraphs.

(2) *For all airplanes new to this AD (not previously affected by AD 99–01–05 R1):* Within the next 100 hours TIS after the effective date of this AD or within 500 hours TIS after the last inspection done in accordance with AD 93–10–06 (which was superseded by AD 99–01–05), whichever occurs later, remove the wing lift strut forks (unless already replaced in accordance with paragraph (i)(2) of this AD). Do the removal following Piper MSB No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989, as applicable. Before further flight after the removal, do the actions in one of the following paragraphs (k) or (l) of this AD, including all subparagraphs.

(k) Inspect and Replace Wing Lift Strut Forks

For all airplanes affected by this AD: Before further flight after the removal required in paragraph (j) of this AD, inspect the wing lift strut forks following paragraph (k) of this AD, including all subparagraphs, or do the wing lift strut fork replacement following one of the options in paragraph (l)(1), (l)(2), (l)(3), or (l)(4) of this AD, including all subparagraphs. Inspect the wing lift strut forks for cracks using magnetic particle procedures, such as those contained in FAA Advisory Circular (AC) 43.13–1B, Chapter 5, which can be found on the Internet *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/99c827db9baac81b86256b4500596c4e/$FILE/Chapter%2005.pdf.* Repetitively thereafter inspect at intervals not to exceed 500 hours TIS until the replacement time requirement specified in paragraph (k)(2) or (k)(3) of this AD is reached provided no cracks are found.

(1) *If cracks are found during any inspection required in paragraph (k) of this AD or during any repetitive inspection required in paragraph (k)(2) or (k)(3) of this AD,* before further flight, replace the affected wing lift strut fork with one of the replacement options specified in paragraph (l)(1), (l)(2), (l)(3), or (l)(4) of this AD,

including all subparagraphs. Do the replacement following the procedures specified in those paragraphs, as applicable.

(2) *If no cracks are found during the initial inspection required in paragraph (k) of this AD and the airplane is currently equipped with floats or has been equipped with floats at any time during the previous 2,000 hours TIS since the wing lift strut forks were installed*, at or before accumulating 1,000 hours TIS on the wing lift strut forks, replace the wing lift strut forks with one of the replacement options specified in paragraph (l)(1), (l)(2), (l)(3), or (l)(4) of this AD, including all subparagraphs. Do the replacement following the procedures specified in those paragraphs, as applicable. Repetitively thereafter inspect the newly installed wing lift strut forks at intervals not to exceed 500 hours TIS following the procedures specified in paragraph (k) of this AD, including all subparagraphs.

(3) *If no cracks are found during the initial inspection required in paragraph (k) of this AD and the airplane has never been equipped with floats during the previous 2,000 hours TIS since the wing lift strut forks were installed*, at or before accumulating 2,000 hours TIS on the wing lift strut forks, replace the wing lift strut forks with one of the replacement options specified in paragraph (l)(1), (l)(2), (l)(3), or (l)(4) of this AD, including all subparagraphs. Do the replacement following the procedures specified in those paragraphs, as applicable. Repetitively thereafter inspect the newly installed wing lift strut forks at intervals not to exceed 500 hours TIS following the procedures specified in paragraph (k) of this AD, including all subparagraphs.

(l) Wing Lift Strut Fork Replacement Options

Before further flight after the removal required in paragraph (j) of this AD, replace the wing lift strut forks following one of the options in paragraph (l)(1), (l)(2), (l)(3), or (l)(4) of this AD, including all subparagraphs, or inspect the wing lift strut forks following paragraph (k) of this AD, including all subparagraphs.

(1) Install new OEM part number wing lift strut forks of the same part numbers of the existing part (or FAA-approved equivalent part numbers) that were manufactured with rolled threads. Wing lift strut forks manufactured with machine (cut) threads are not to be used. Do the installations following Piper MSB No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989, as applicable. Repetitively thereafter inspect and replace the newly installed wing lift strut forks at intervals not to exceed 500 hours TIS following the procedures specified in paragraph (k) of this AD, including all subparagraphs.

(2) Install new sealed wing lift strut assemblies (or FAA-approved equivalent part numbers) (these sealed wing lift strut assemblies also include the wing lift strut forks) following Piper MSB No. 528D, dated October 19, 1990, and Piper MSB No. 910A, dated October 10, 1989, as applicable. This installation may have already been done through the option specified in paragraph (i)(2) of this AD. Installing one of these new sealed wing lift strut assemblies terminates the repetitive inspection requirements in paragraphs (h)(1) and (h)(2) of this AD, and the wing lift strut fork removal, inspection, and replacement requirements in paragraphs (j) and (k) of this AD, including all subparagraphs, for that wing lift strut assembly.

(3) *For the airplanes specified below*, install Jensen Aircraft wing lift strut fork assemblies specified below in the applicable STC following Jensen Aircraft Installation Instructions for Modified Lift Strut Fitting. Installing one of these wing lift strut fork assemblies terminates the repetitive inspection requirement of this AD only for that wing lift strut fork. Repetitively inspect each wing lift strut as specified in paragraph (h)(1) or (h)(2) of this AD, including all subparagraphs.

(i) For Models PA–12 and PA–12S airplanes: STC SA1583NM, which can be found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2E708575849845B285256CC1008213CA?OpenDocument&Highlight=sa1583nm;*

(ii) For Model PA–14 airplanes: STC SA1584NM, which can be found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/39872B8144471737685256CC1008213D0?OpenDocument&Highlight=sa1584nm;*

(iii) For Models PA–16 and PA–16S airplanes: STC SA1590NM, which can be found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/B28C4162E30D941F85256CC1008213F6?OpenDocument&Highlight=sa1590nm;*

(iv) For Models PA–18, PA–18S, PA–18 ''105'' (Special), PA–18S ''105'' (Special), PA–18A, PA–18 ''125'' (Army L–21A), PA–18S ''125'', PA–18AS ''125'', PA–18 ''135'' (Army L–21B), PA–18A ''135'', PA–18S ''135'', PA–18AS ''135'', PA–18 ''150'', PA–18A ''150'', PA–18S ''150'', PA–18AS ''150'', PA–18A (Restricted), PA–18A ''135'' (Restricted), and PA–18A ''150'' (Restricted) airplanes: STC SA1585NM, which can be found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/A2BE010FB1CA61A285256CC1008213D6?OpenDocument&Highlight=sa1585nm;*

(v) For Models PA–20, PA–20S, PA–20 ''115'', PA–20S ''115'', PA–20 ''135'', and PA–20S ''135'' airplanes: STC SA1586NM, which can be found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/873CC69D42C87CF585256CC1008213DC?OpenDocument&Highlight=sa1586nm;* and

(vi) For Model PA–22 airplanes: STC SA1587NM, which can be found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/B051D04CCC0BED7E85256CC1008213E0?OpenDocument&Highlight=sa1587nm.*

(4) Install F. Atlee Dodge wing lift strut assemblies following F. Atlee Dodge Installation Instructions No. 3233–I for Modified Piper Wing Lift Struts (STC SA4635NM), dated February 1, 1991. This installation may have already been done in accordance paragraph (i)(3) of this AD. Installing these wing lift strut assemblies terminates the repetitive inspection requirements of this AD for the wing lift strut fork only. Repetitively inspect the wing lift struts as specified in paragraph (h)(1) or (h)(2) of this AD, including all subparagraphs.

(m) Install Placard

(1) *For all airplanes previously affected by AD 99–01–05 R1, except for Models PA–25, PA–25–235, and PA–25–260 airplanes:* Within 1 calendar month after February 8, 1999 (the effective date retained from AD 99–01–05), or within 24 calendar months after the last inspection required by AD 93–10–06 (which was superseded by AD 99–01–05), whichever occurs later, and before further flight after any replacement of a wing lift strut assembly required by this AD, do one of the following actions in paragraph (m)(1)(i) or (m)(1)(ii) of this AD. The ''NO STEP'' markings required by paragraph (m)(1)(i) or (m)(1)(ii) of this AD must remain in place for the life of the airplane.

(i) Install ''NO STEP'' decal, Piper (P/N) 80944–02, on each wing lift strut approximately 6 inches from the bottom of the wing lift strut in a way that the letters can be read when entering and exiting the airplane; or

(ii) Paint the words ''NO STEP'' approximately 6 inches from the bottom of the wing lift strut in a way that the letters can be read when entering and exiting the airplane. Use a minimum of 1-inch letters using a color that contrasts with the color of the airplane.

(2) *For all airplanes new to this AD (not previously affected by AD 99–01–05 R1):* Within 1 calendar month after the effective date of this AD or within 24 calendar months after the last inspection required by AD 93–10–06 (which was superseded by AD 99–01–05), whichever occurs later, and before further flight after any replacement of a wing lift strut assembly required by this AD, do one of the following actions in paragraph (m)(2)(i) or (m)(2)(ii) of this AD. The ''NO STEP'' markings required by paragraph (m)(2)(i) or (m)(2)(ii) of this AD must remain in place for the life of the airplane.

(i) Install ''NO STEP'' decal, Piper (P/N) 80944–02, on each wing lift strut approximately 6 inches from the bottom of the wing lift strut in a way that the letters can be read when entering and exiting the airplane; or

(ii) Paint the words ''NO STEP'' approximately 6 inches from the bottom of the wing lift strut in a way that the letters can be read when entering and exiting the airplane. Use a minimum of 1-inch letters using a color that contrasts with the color of the airplane.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD related to Piper Aircraft, Inc. airplanes; the Manager, Seattle ACO, FAA has the authority to approve AMOCs for this AD related to FS 2000 Corp, FS 2001 Corp, FS 2002 Corporation, and FS 2003 Corporation airplanes; and the Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD related to LAVIA ARGENTINA S.A. (LAVIASA) airplanes, if requested using the procedures found in 14 CFR 39.19. In

accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the appropriate person identified in paragraph (o) of this AD.

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

(3) AMOCs approved for AD 93–10–06, AD 99–01–05, and AD 99–01–05 R1, are approved as AMOCs for this AD.

(o) Related Information

(1) For more information about this AD related to Piper Aircraft, Inc. airplanes, contact: Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov*.

(2) For more information about this AD related to FS 2000 Corp, FS 2001 Corp, FS 2002 Corporation, and FS 2003 Corporation airplanes, contact: Jeff Morfitt, Aerospace Engineer, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057; phone: (425) 917–6405; fax: (245) 917–6590; email: *jeff.morfitt@faa.gov*.

(3) For more information about this AD related to LAVIA ARGENTINA S.A. (LAVIASA) airplanes, contact: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; email: *sarjapur.nagarajan@faa.gov*.

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on February 8, 1999 (63 FR 72132, December 31, 1998).

(i) Piper Aircraft Corporation Mandatory Service Bulletin No. 528D, dated October 19, 1990.

(ii) Piper Aircraft Corporation Mandatory Service Bulletin No. 910A, dated October 10, 1989.

(iii) F. Atlee Dodge Aircraft Services, Inc. Installation Instructions No. 3233–I for Modified Piper Wing Lift Struts Supplemental Type Certificate (STC) SA4635NM, dated February 1, 1991.

(iv) Jensen Aircraft Installation Instructions for Modified Lift Strut Fittings, which incorporates pages 1 and 5, Original Issue, dated July 15, 1983; pages 2, 4, and 6, Revision No. 1, dated March 30, 1984; and pages a and 3, Revision No. 2, dated April 20, 1984.

(4) For Piper Aircraft, Inc. service information identified in this AD, contact Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: *www.piper.com*. Copies of the instructions to the F. Atlee Dodge STC and information about the Jensen Aircraft STCs may be obtained from F. Atlee Dodge, Aircraft Services, LLC., 6672 Wes Way, Anchorage, Alaska 99518–0409, Internet: *www.fadodge.com*.

(5) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1083.

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

Appendix to AD 2015–08–04

Procedures and Requirements for Ultrasonic Inspection of Piper Wing Lift Struts

Equipment Requirements

1. A portable ultrasonic thickness gauge or flaw detector with echo-to-echo digital thickness readout capable of reading to 0.001-inch and an A-trace waveform display will be needed to do this inspection.

2. An ultrasonic probe with the following specifications will be needed to accomplish this inspection: 10 MHz (or higher), 0.283-inch (or smaller) diameter dual element or delay line transducer designed for thickness gauging. The transducer and ultrasonic system shall be capable of accurately measuring the thickness of AISI 4340 steel down to 0.020-inch. An accuracy of +/− 0.002-inch throughout a 0.020-inch to 0.050-inch thickness range while calibrating shall be the criteria for acceptance.

3. Either a precision machined step wedge made of 4340 steel (or similar steel with equivalent sound velocity) or at least three shim samples of same material will be needed to accomplish this inspection. One thickness of the step wedge or shim shall be less than or equal to 0.020-inch, one shall be greater than or equal to 0.050-inch, and at least one other step or shim shall be between these two values.

4. Glycerin, light oil, or similar non-water based ultrasonic couplants are recommended in the setup and inspection procedures. Water-based couplants, containing appropriate corrosion inhibitors, may be utilized, provided they are removed from both the reference standards and the test item after the inspection procedure is completed and adequate corrosion prevention steps are then taken to protect these items.

• NOTE: Couplant is defined as ''a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across the transducer/strut interface.''

• NOTE: If surface roughness due to paint loss or corrosion is present, the surface should be sanded or polished smooth before testing to assure a consistent and smooth surface for making contact with the transducer. Care shall be taken to remove a minimal amount of structural material. Paint repairs may be necessary after the inspection to prevent further corrosion damage from occurring. Removal of surface irregularities will enhance the accuracy of the inspection technique.

1. Set up the ultrasonic equipment for thickness measurements as specified in the instrument's user's manual. Because of the variety of equipment available to perform ultrasonic thickness measurements, some modification to this general setup procedure may be necessary. However, the tolerance requirement of step 13 and the record keeping requirement of step 14, must be satisfied.

2. If battery power will be employed, check to see that the battery has been properly charged. The testing will take approximately two hours. Screen brightness and contrast should be set to match environmental conditions.

3. Verify that the instrument is set for the type of transducer being used, *i.e.* single or dual element, and that the frequency setting is compatible with the transducer.

4. If a removable delay line is used, remove it and place a drop of couplant between the transducer face and the delay line to assure good transmission of ultrasonic energy. Reassemble the delay line transducer and continue.

5. Program a velocity of 0.231-inch/microsecond into the ultrasonic unit unless an alternative instrument calibration procedure is used to set the sound velocity.

6. Obtain a step wedge or steel shims per item 3 of the EQUIPMENT REQUIREMENTS. Place the probe on the thickest sample using couplant. Rotate the transducer slightly back and forth to ''ring'' the transducer to the sample. Adjust the delay and range settings to arrive at an A-trace signal display with the first backwall echo from the steel near the left side of the screen and the second backwall echo near the right of the screen. Note that when a single element transducer is used, the initial pulse and the delay line/steel interface will be off of the screen to the left. Adjust the gain to place the amplitude of the first backwall signal at approximately 80% screen height on the A-trace.

7. ''Ring'' the transducer on the thinnest step or shim using couplant. Select positive half-wave rectified, negative half-wave rectified, or filtered signal display to obtain the cleanest signal. Adjust the pulse voltage, pulse width, and damping to obtain the best signal resolution. These settings can vary from one transducer to another and are also user dependent.

8. Enable the thickness gate, and adjust the gate so that it starts at the first backwall echo and ends at the second backwall echo. (Measuring between the first and second backwall echoes will produce a measurement of the steel thickness that is not affected by the paint layer on the strut). If instability of the gate trigger occurs, adjust the gain, gate level, and/or damping to stabilize the thickness reading.

9. Check the digital display reading and if it does not agree with the known thickness of the thinnest thickness, follow your instrument's calibration recommendations to

produce the correct thickness reading. When a single element transducer is used this will usually involve adjusting the fine delay setting.

10. Place the transducer on the thickest step of shim using couplant. Adjust the thickness gate width so that the gate is triggered by the second backwall reflection of the thick section. If the digital display does not agree with the thickest thickness, follow your instruments calibration recommendations to produce the correct thickness reading. A slight adjustment in the velocity may be necessary to get both the thinnest and the thickest reading correct. Document the changed velocity value.

11. Place couplant on an area of the lift strut which is thought to be free of corrosion and ''ring'' the transducer to surface. Minor adjustments to the signal and gate settings may be required to account for coupling improvements resulting from the paint layer. The thickness gate level should be set just high enough so as not to be triggered by irrelevant signal noise. An area on the upper surface of the lift strut above the inspection area would be a good location to complete this step and should produce a thickness reading between 0.034-inch and 0.041-inch.

12. Repeat steps 8, 9, 10, and 11 until both thick and thin shim measurements are within tolerance and the lift strut measurement is reasonable and steady.

13. Verify that the thickness value shown in the digital display is within +/− 0.002-inch of the correct value for each of the three or more steps of the setup wedge or shims. Make no further adjustments to the instrument settings.

14. Record the ultrasonic versus actual thickness of all wedge steps or steel shims available as a record of setup.

1. Clean the lower 18 inches of the wing lift struts using a cleaner that will remove all dirt and grease. Dirt and grease will adversely affect the accuracy of the inspection technique. Light sanding or polishing may also be required to reduce surface roughness as noted in the EQUIPMENT REQUIREMENTS section.

2. Using a flexible ruler, draw a 1/4-inch grid on the surface of the first 11 inches from the lower end of the strut as shown in Piper MSB No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989, as applicable. This can be done using a soft (#2) pencil and should be done on both faces of the strut. As an alternative to drawing a complete grid, make two rows of marks spaced every 1/4-inch across the width of the strut. One row of marks should be about 11 inches from the lower end of the strut, and the second row should be several inches away where the strut starts to narrow. Lay the flexible ruler between respective tick marks of the two rows and use tape or a rubber band to keep the ruler in place. See Figure 1.

3. Apply a generous amount of couplant inside each of the square areas or along the edge of the ruler. Re-application of couplant may be necessary.

4. Place the transducer inside the first square area of the drawn grid or at the first 1/4-inch mark on the ruler and ''ring'' the transducer to the strut. When using a dual element transducer, be very careful to record the thickness value with the axis of the transducer elements perpendicular to any curvature in the strut. If this is not done, loss of signal or inaccurate readings can result.

5. Take readings inside each square on the grid or at 1/4-inch increments along the ruler and record the results. When taking a thickness reading, rotate the transducer slightly back and forth and experiment with the angle of contact to produce the lowest thickness reading possible. Pay close attention to the A-scan display to assure that the thickness gate is triggering off of maximized backwall echoes.

• NOTE: A reading shall not exceed .041 inch. If a reading exceeds .041-inch, repeat steps 13 and 14 of the INSTRUMENT SETUP section before proceeding further.

6. If the A-trace is unsteady or the thickness reading is clearly wrong, adjust the signal gain and/or gate setting to obtain reasonable and steady readings. If any instrument setting is adjusted, repeat steps 13 and 14 of the INSTRUMENT SETUP section before proceeding further.

7. In areas where obstructions are present, take a data point as close to the correct area as possible.

• NOTE: The strut wall contains a fabrication bead at approximately 40% of the strut chord. The bead may interfere with accurate measurements in that specific location.

8. A measurement of 0.024-inch or less shall require replacement of the strut prior to further flight.

9. If at any time during testing an area is encountered where a valid thickness measurement cannot be obtained due to a loss of signal strength or quality, the area shall be considered suspect. These areas may have a remaining wall thickness of less than 0.020-inch, which is below the range of this setup, or they may have small areas of localized corrosion or pitting present. The latter case will result in a reduction in signal strength due to the sound being scattered from the rough surface and may result in a signal that includes echoes from the pits as well as the backwall. The suspect area(s) shall be tested with a Maule ''Fabric Tester'' as specified in Piper MSB No. 528D, dated October 19, 1990, or Piper MSB No. 910A, dated October 10, 1989.

10. Record the lift strut inspection in the aircraft log book.

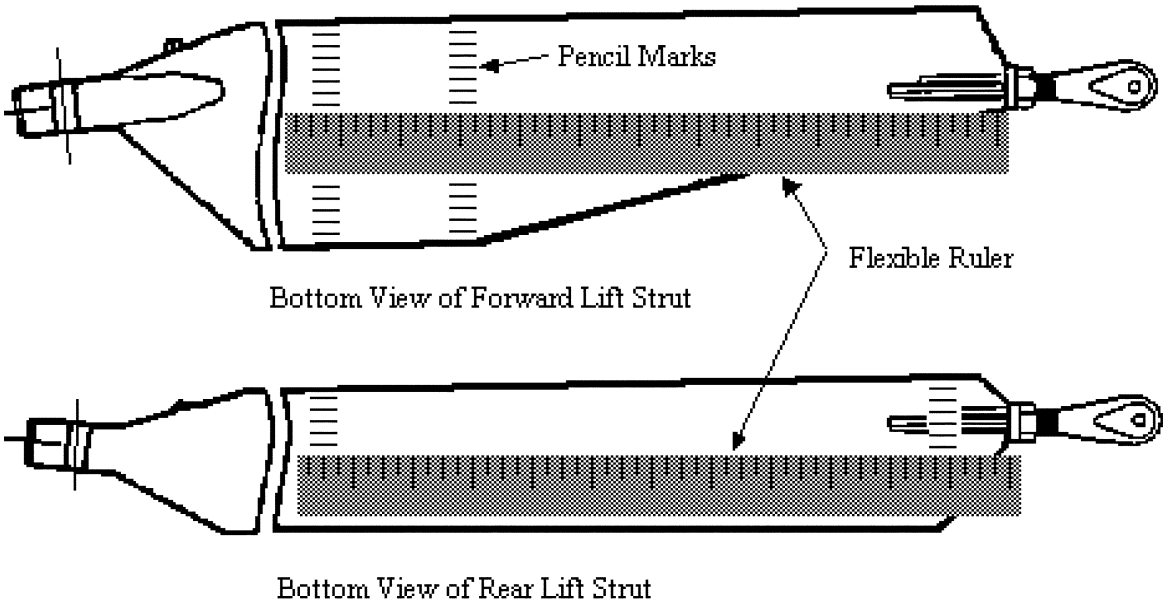

Figure 1

Issued in Kansas City, Missouri, on April 8, 2015.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–08732 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0745; Airspace Docket No. 14–ACE–3]

Establishment of Class E Airspace; Alma, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Alma, NE. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Alma Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. This action also corrects the state from KS to NE under the airport designation.

DATES: Effective date, 0901 UTC, June 25, 2015. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7740.

SUPPLEMENTARY INFORMATION:

History

On October 28, 2014, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Alma Municipal Airport, Alma, NE (79 FR 64152) Docket No. FAA–2014–0745. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publications, an error was found under the airport designation listing the airport in KS, instead of NE. This action corrects the error.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Y dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Y, airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Alma Municipal Airport, Alma, NE. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures at the airport. This action enhances the safety and management of IFR operations for SIAPs at the airport. This action also correctly lists the airport state as NE instead of KS under the airport designation.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Alma Municipal Airport, Alma, NE.

Environmental Review

The FAA has determined that this action qualifies for categorical under the National Policy Act in accordance with FAA Order 1050.1E,— ''Environmental Impacts: Policies and Procedures'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exit that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y,

Airspace Designations and Reporting Points, dated August 6, 2014 and effective September 15, 2014, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Alma, NE [New]

Alma Municipal Airport, NE
(Lat. 40°06′45″ N., long. 99°20′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Alma Municipal Airport.

Issued in Fort Worth, TX, on April 21, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–09871 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0741; Airspace Docket No. 14–ASW–4]

Establishment of Class E Airspace; Encinal, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Encinal, TX. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at El Jardin Ranch Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Effective 0901 UTC, June 25, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7740.

SUPPLEMENTARY INFORMATION:

History

On October 28, 2014, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at El Jardin Ranch Airport, Encinal, TX, (79 FR 64153). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraphs 6005, respectively, of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Y, airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of El Jardin Ranch Airport, Encinal, TX, to accommodate new Standard Instrument Approach Procedures at airport. The FAA is taking this action to enhance the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at El Jardin Ranch Airport, Encinal, TX.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E. ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014 and effective September 15, 2014, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Encinal, TX [New]

El Jardin Ranch Airport, TX
(Lat. 28°04′26″ N., long. 99°17′5.0″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of El Jardin Ranch Airport.

Issued in Fort Worth, TX, on April 21, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–09873 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–0793; Airspace Docket No. 15–AEA–3]

Proposed Amendment of Class E Airspace; Baltimore, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends Class D Airspace at Baltimore, MD, bringing current the regulatory text under the designation for Martin State Airport by adding the words ''and Restricted Area R–4001C, which is continuously active up to 10,000 feet AGL''. This is an administrative change to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, June 25, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/*. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

In a review of the airspace, the FAA found the airspace description for Martin State Airport, Baltimore, MD, Class D Airspace, in FAA Order 7400.9Y, Airspace Designations and Reporting Points, did not match the FAA's charting information. This administrative change coincides with the FAA's aeronautical database.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Y, airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by referencing Restricted Area R–4001C in the regulatory text of the Class D airspace area at Martin State Airport, MD, adding the words ''and Restricted Area R–4001C, which is continuously active up to 10,000 feet AGL''. This is an administrative change amending the description for Martin State Airport, Baltimore, MD, to be in concert with the FAAs aeronautical database, and does not affect the boundaries, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it further clarifies the description of controlled airspace at Martin State Airport, Baltimore, MD.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, effective September 15, 2014, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO MD D Baltimore, MD [Amended]

Martin State Airport, MD
(Lat. 39°19′32″ N., long. 76°24′50″ W.)
Baltimore VORTAC
(Lat. 39°10′16″ N., long. 76°39′41″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.2-mile radius of Martin State Airport and within 4.4 miles each side of a 14.7-mile radius arc of the Baltimore VORTAC extending clockwise from the Baltimore VORTAC 030° radial to the VORTAC 046° radial, excluding that airspace within the Washington Tri-Area Class B airspace area and Restricted Areas R–4001A and R–4001B when they are in effect, and Restricted Area R–4001C, which is continuously active up to 10,000 feet AGL. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on April 21, 2015.

Gerald E. Lynch,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2015–09870 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–0518; Airspace Docket No. 15–ANM–2]

Amendment of Class E Airspace; Livingston, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends the legal description of the Class E airspace area at Livingston, MT. The geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database as well as correcting a longitudinal point of the airspace boundary. This does not affect the charted boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC, June 25, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Y, Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/.* The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 29591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4563.

SUPPLEMENTARY INFORMATION:

History

The Aeronautical Information Services branch identified an error in a longitudinal coordinate in the legal description extending upward from 1,200 feet above the surface, and the airport reference point (ARP) was not coincidental with the FAA's aeronautical database. This action makes these corrections.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Y dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Y, airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the legal description of the Class E airspace area extending upward from 700 feet above the surface at Livingston, MT. The geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database, and a longitudinal point of the airspace boundary extending from 1,200 feet above the surface is corrected from ''long. 112°29′00″W., to ''long 110°29′00″W.''. This does not affect the boundaries or operating requirements of the airspace.

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Mission Field Airport, Livingston, MT.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71:

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, effective September 15, 2014, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ANM MT E5 Livingston, MT [Modified]

Livingston, Mission Field Airport, MT
(Lat. 45°41′58″ N., long. 110°26′53″ W.)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of Mission Field Airport, and that airspace bounded by a line beginning at lat. 45°40′30″ N., long. 110°15′20″ W.; to lat. 45°47′30″ N., long. 110°15′30″ W.; to lat. 45°47′30″ N., long. 110°23′00″ W.; to lat. 46°02′20″ N., long. 110°31′00″ W.; to lat. 45°58′00″ N., long. 110°47′15″ W.; to lat. 45°38′45″ N., long. 110°37′00″ W.; thence to point of beginning, and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 46°16′00″ N., long 112°00′00″ W.; to lat. 46°37′00″ N., long. 111°30′00″ W.; to lat. 46°37′00″ N., long. 110°43′00″ W.; to lat. 46°00′00″ N., long. 110°29′00″ W.; to lat. 46°00′00″ N., long. 109°30′00″ W.; to lat. 45°30′00″ N., long. 109°30′00″ W.; to lat. 45°30′00″ N., long. 112°00′00″ W.; thence to point of beginning; excluding that airspace within Federal airways, the Helena, MT, and the Billings, MT, Class E airspace areas.

Issued in Seattle, Washington, on April 21, 2015.

Christopher Ramirez,

Acting Manager, Operations Support Group Western Service Center, AJV–W2.

[FR Doc. 2015–09874 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0117]

RIN 1625–AA00

Safety Zone, Southern Branch Elizabeth River; Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the Southern Branch of the Elizabeth River in support of the Elizabeth River Park Grand Re-opening fireworks event. This safety zone will restrict vessel movement in the specified area during the fireworks display. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the fireworks display.

DATES: This rule is effective from April 29, 2015 through May 30, 2015 and enforced from 8:30 p.m. to 9 p.m. on May 30, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0117]. To view documents mentioned in this preamble as being available in the docket, go to *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 rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Gregory Knoll, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757) 668–5580, email *HamptonRoadsWaterway@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final 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 written 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 due to the short time period between event planners notifying the Coast Guard of details concerning the event, on March 24, 2015, and publication of this safety zone. As such, it is impracticable for the Coast Guard to provide a full comment period due to lack of time. Furthermore, delaying the effective date of this safety zone would be contrary to the public interest as immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. The Coast Guard will provide advance notifications to users of the affected waterway via marine information broadcasts, local notice to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction on vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33. U.S.C. 1231; 33 CFR 1.05–1, 6.04–1, 160.5; Department of Homeland Security Delegation No. 0170–1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The purpose of this safety zone is to protect event participants, patrol vessels, spectator craft and other vessels transiting navigable waters on the Southern Branch of the Elizabeth River from hazards associated with a fireworks display. The potential hazards to mariners within the safety zone include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

C. Discussion of the Final Rule

On May 30, 2015, the City of Chesapeake Parks, Recreation and Tourism will be hosting the Elizabeth River Park Grand Re-opening which will include a fireworks display on the bank of the Southern Branch of the Elizabeth River in Chesapeake, VA. The fireworks debris fallout area will extend over the navigable waters of the Southern Branch of the Elizabeth River.

The Captain of the Port of Hampton Roads is establishing a safety zone on specified waters of the Southern Branch of the Elizabeth River in Chesapeake, VA. The fireworks will be launched from the shore located in the Elizabeth River Park. The safety zone will encompass all navigable waters within a 140 foot radius of the fireworks launching location at position 36°48′31.0818″ N, longitude 076°17′14.2506″ W. This safety zone will be established and enforced from 8:30 p.m. to 9 p.m. on May 30, 2015. Access to the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Captain of the Port of his Representative, no person or vessel may enter or remain in the regulated area.

The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice to the affected segments of the public. This includes publication in the Local Notice to Mariners and Marine Information Broadcasts.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this safety zone restricts vessel traffic through the regulated area, the effect of this rule will not be significant because: (i) This rule will only be enforced for the limited size and duration of the event; and (ii) the Coast Guard will make extensive notification to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in waters of the Southern Branch of the Elizabeth River during the enforcement period.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone is of limited size and duration, and (ii) Sector Hampton Roads will issue maritime advisories widely available to users of the Southern Branch of the Elizabeth River allowing mariners to adjust their plans accordingly.

3. Assistance for Small Entities

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**, above.

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.

4. 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).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive

Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. 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 (NEPA) (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 the establishment of a safety zone. This rule 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.

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, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0117 to read as follows:

165.T05–0117 Safety Zone, Southern Branch Elizabeth River; Chesapeake, VA.

(a) *Definitions.* For the purposes of this section:

Captain of the Port means the Commander, Sector Hampton Roads.

Participants mean individuals responsible for launching the fireworks.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Locations.* The following area is a safety zone:

(1) All waters of the Southern Branch of the Elizabeth River within a 140 foot radius of the fireworks display in approximate position 36°48′31.0818″ N, 076°17′14.2506″ W, located near the Elizabeth River Park, Chesapeake, Virginia.

(c) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(3) All vessels underway within this safety zone at the time it is implemented are to depart the zone immediately.

(4) The Captain of the Port, Hampton Roads or his representative can be reached at telephone number (757) 668–5555.

(5) The Coast Guard vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(6) This section applies to all persons or vessels wishing to transit through the safety zone except participants and vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) servicing aids to navigation, and

(iii) Emergency response vessels.

(7) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(d) *Enforcement periods.* This rule will be enforced from 8:30 p.m. to 9 p.m. on May 30, 2015.

Dated: April 17, 2015.

Christopher S. Keane,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2015–10018 Filed 4–28–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0969; FRL–9926–81–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Infrastructure SIP Requirements for the 2008 Ozone National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a state implementation plan (SIP) submission by Indiana regarding the infrastructure requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 ozone national ambient air quality standards (NAAQS). 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. The proposed rulemaking associated with this final action was published on August 19, 2013, and EPA received two comment letters during the comment period, which ended on September 18, 2013. The concerns raised in these letters, as well as EPA's responses, will be addressed in this final action.

DATES: This final rule is effective on May 29, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0969. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information 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 in *www.regulations.gov* or in hard copy at the U.S. Environmental

Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of this SIP submission?

A. What does this rulemaking address?

This rulemaking addresses a December 12, 2011, submission from the Indiana Department of Environmental Management (IDEM) intended to meet the applicable infrastructure SIP requirements for the 2008 ozone NAAQS.

B. Why did the state make this SIP submission?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 ozone NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for ozone already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidance documents, including the most recent guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)'' issued on September 13, 2013.

C. What is the scope of this rulemaking?

EPA is acting upon Indiana's SIP submission that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone NAAQS. The requirement for states to make SIP submissions of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (''SSM'')at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (collectively referred to as ''director's discretion''); and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemaking. A detailed rationale, history, and interpretation related to infrastructure SIP requirements can be found in our May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245).

In addition, EPA is not acting on section 110(a)(2)(D)(i)(I), interstate transport significant contribution and interference with maintenance, a portion of section 110(a)(2)(D)(i)(II) with respect to visibility, and 110(a)(2)(J) with respect to visibility. EPA is also not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on elements of these requirements was included in EPA's August 19, 2013, proposed rulemaking or discussed below in today's response to comments.

II. What is our response to comments received on the proposed rulemaking?

The public comment period for EPA's proposed actions with respect to Indiana's satisfaction of the infrastructure SIP requirements for the 2008 ozone NAAQS closed on September 18, 2013. EPA received two comment letters, which were from the Sierra Club and the state of Connecticut. A synopsis of the comments contained in these letters and EPA's responses are provided below.

Comment 1: The Sierra Club states that, on its face, the CAA ''requires I–SIPs to be adequate to prevent violations of the NAAQS.'' In support, the commenter quotes the language in section 110(a)(1) that requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenters claimed include the maintenance plan requirement. Sierra Club notes the CAA definition of ''emission limit'' and reads these provisions together to require ''enforceable emission limitations on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 1: EPA disagrees that section 110 must be interpreted in the manner suggested by Sierra Club. Section 110 is only one provision that is part of the complex structure governing implementation of the NAAQS program under the CAA, as

amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA interprets the requirement in section 110(a)(2)(A) that the plan provide for ''implementation, maintenance and enforcement'' to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program.

With regard to the requirement for emission limitations, EPA has interpreted this to mean that, for purposes of section 110, the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. As EPA stated in ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013 (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS.'' Infrastructure SIP Guidance at p. 2.

Comment 2: Sierra Club cites two excerpts from the legislative history of the CAA Amendments of 1970 asserting that they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of Indiana. Sierra Club also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 2: The CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history the commenter cites merely provide that states should include enforceable emission limits in their SIPs; they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP.

Comment 3: Sierra Club cites to 40 CFR 51.112(a), providing that each plan must ''demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' The commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter states that ''[a]lthough these regulations were developed before the Clean Air Act separated Infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' The commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act. . . .'' 51 FR 40656 (November 7, 1986).

Response 3: The commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits ''adequate to prohibit NAAQS violations'' and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the commenter recognizes this regulatory provision was initially promulgated and ''restructured and consolidated'' prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A). In addition, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 182.

The commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. Id. at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_X and PM (portion)''), 51.14 (''Control strategy: CO, HC, Ox and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). Id. at 40660. Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

Comment 4: Sierra Club references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs, and claimed they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. The commenter first points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the sulfur dioxide (SO_2) NAAQS. In that action, EPA cited section 110(a)(2)(A) as a basis for disapproving a revision to the state plan on the basis that the state failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, commenter cites a 2013 proposed disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the state. EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the state had not demonstrated that the emission limit was ''redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions.'' EPA further stated in that proposed disapproval that the state had not demonstrated that removal of the limit would not ''affect the validity of the

emission rates used in the existing attainment demonstration.''

Response 4: EPA does not agree that the two prior actions referenced by the commenter establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rule and the now final Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent.

EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP addressed a control strategy SIP and not an infrastructure SIP (71 FR 12623).

The Indiana action provides even less support for the commenter's position (78 FR 78720). The review in that rule was of a completely different requirement than the 110(a)(2)(A) SIP. Rather, in that case, the state had an approved SO_2 attainment plan and was seeking to remove from the SIP, provisions relied on as part of the modeled attainment demonstration. EPA determined that the state had failed to demonstrate under section 110(l) of the CAA that the SIP revision would not result in increased SO_2 emissions and thus not interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS.

Comment 5: Sierra Club discusses several cases applying to the CAA which it claims support its contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS and demonstrate maintenance throughout the area. Sierra Club first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meet the national standards.'' Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS and *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the state''). The commenter also cites *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 5: None of the cases the commenter cites supports the commenter's contention that section 110(a)(2)(A) requires that infrastructure SIPs include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state, nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train,* 421 U.S. 60, none of the cases the commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, in the context of a challenge to an EPA action, revisions to a SIP that were required and approved as meeting other provisions of the CAA or in the context of an enforcement action, the court references section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of its decision.

In *Train,* a case that was decided almost 40 years ago, the court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus, the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation'' not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The commenters do not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are ''emissions limitations'' and the decision in this case has no bearing here.

In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the court was reviewing a Federal implementation plan that EPA promulgated after a long history of the state failing to submit an adequate state implementation plan. The court cited generally to sections 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure

attainment and maintenance of NAAQS through emission limitations but this language was not part of the court's holding in the case.

The commenter suggests that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, the commenter also quotes the court's statement that ''SIPs must include certain measures Congress specified'' but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the cases the commenter cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret CAA section 110(l), the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

Comment 6: Sierra Club contends that EPA cannot approve the section 110(a)(2)(A) portion of Indiana's 2008 ozone infrastructure SIP revision because an infrastructure SIP should include enforceable emission limits to prevent NAAQS violations in areas not designated nonattainment. Specifically, Sierra Club cited air monitoring reports for Clark, Floyd, and LaPorte Counties indicating violations of the NAAQS based on 2010–2012 and 2011–2013 design values and air quality monitoring reports for Greene County indicating violations based on data from 2010–2012. The commenter alleges that these violations demonstrate that the infrastructure SIP fails to ensure that air pollution levels meet or are below the level of the NAAQS and thus the infrastructure SIP must be disapproved. Sierra Club noted that the violation of the NAAQS based on data from 2010–2012 had been known for over four months, and that Indiana failed to strengthen its infrastructure SIP and address the violations by enacting enforceable limits.

Furthermore, the commenter suggests that the state adopt specific controls that they contend are cost-effective for reducing NOx, a precursor to ozone.

Response 6: We disagree with the commenter that infrastructure SIPs must include detailed attainment and maintenance plans for all areas of the state and must be disapproved if air quality data that became available late in the process or after the SIP was due and submitted changes the status of areas within the state. We believe that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS.

The suggestion that the infrastructure SIP must include measures addressing violations of the standard that did not occur until shortly before or even after the SIP was due and submitted cannot be supported. The CAA provides states with three years to develop infrastructure SIPs and states cannot reasonably be expected to address the annual change in an area's design value for each year over that period. Moreover, the CAA recognizes and has provisions to address changes in air quality over time, such as an area slipping from attainment to nonattainment or changing from nonattainment to attainment. These include provisions providing for redesignation in section 107(d) and provisions in section 110(k)(5) allowing EPA to call on the state to revise its SIP, as appropriate.

We do not believe that section 110(a)(2)(A) requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state. The infrastructure SIP is triggered by promulgation of the NAAQS, not designation. Moreover, infrastructure SIPs are due three years following promulgation of the NAAQS and designations are not due until two years (or in some cases three years) following promulgation of the NAAQS. Thus, during a significant portion of the period that the state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state.[1] In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

Our interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in ''air quality control regions'' (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].''

In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (*i.e.,* were nonattainment) or were meeting the NAAQS (*i.e.,* were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS.

In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A).

Additionally, Congress replaced the clause ''as may be necessary to insure attainment and maintenance [of the NAAQS]'' with ''as may be necessary or appropriate to meet the applicable

[1] While it is true that there may be some monitors within a state with values so high as to make a nonattainment designation of the county with that monitor almost a certainty, the geographic boundaries of the nonattainment area associated with that monitor would not be known until EPA issues final designations.

requirements of this chapter.'' Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. And, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

For all of the above reasons, we disagree with the commenter that EPA must disapprove an infrastructure SIP revision if there are monitored violations of the standard in the state and the section 110(a)(2)(A) revision does not have detailed plans for demonstrating how the state will bring that area into attainment. Rather, EPA believes that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate when EPA is acting upon the submittal.

Moreover, Indiana's SIP contains existing emission reduction measures that control emissions of VOCs and NO_X found in 326 IAC 8 and 326 IAC 10, respectively. Indiana's SIP revision reflects several provisions that have the ability to reduce ground level ozone and its precursors. The Indiana SIP relies on measures and programs used to implement previous ozone NAAQS. Because there is no substantive difference between the previous ozone NAAQS and the more recent ozone NAAQS, other than the level of the standard, the provisions relied on by Indiana will provide benefits for the new NAAQS; in other words, the measures reduce *overall* ground-level ozone and its precursors and are not limited to reducing ozone levels to meet one specific NAAQS. Further, in approving Indiana's infrastructure SIP revision, EPA is affirming that Indiana has sufficient authority to take the types of actions required by the CAA in order to bring such areas back into attainment.

Comment 7: Sierra Club asserted that Indiana's infrastructure SIP fails to meet the requirements of section 110(a)(2)(A) and section 110(a)(2)(E) because IC 13–14–8–8 contains provisions that would allow the board to grant variances to rules when the rules would impose ''undue hardships or burden.'' The commenter noted that EPA had cited IC 13–14–8 as one of IDEM's mechanisms for satisfying the requirements of section 110(a)(2)(A) and section 110(a)(2)(E), but contended that the variance provisions in IC 13–14–8–8 are too broad and vague to ensure that emission limits and controls are properly enforced, or to ensure that adequate legal authority is provided to carry out Indiana's SIP. Therefore, EPA cannot approve IC 13–14–8 to meet any requirements of section 110.

Response 7: EPA disagrees the commenter's claim that Indiana's infrastructure SIP fails to meet the requirements of section 110(a)(2)(A) and section 110(a)(2)(E). As an initial matter, IC 13–14–8–8 is not a regulation that has been approved into the SIP. Thus, any variance granted by the state pursuant to this provision would not modify the requirements of the SIP. Furthermore, for a variance from the state to be approved into the SIP, a demonstration must be made under CAA section 110(l) showing that the revision does not interfere with any requirements of the act including attainment or maintenance of a NAAQS. We disagree that the existence of this provision as solely a matter of state law means that the state does not have adequate authority to carry out the implementation plan.

Comment 8: Sierra Club asserted that EPA must disapprove Indiana's infrastructure SIP because it does not address the visibility provisions under section 110(a)(2)(D)(i)(II). The commenter noted that EPA's basis for proposing approval for the visibility protection provisions of section 110(a)(2)(D)(i)(II) was contingent upon EPA's claim that Indiana has an approved regional haze SIP. The commenter contended that Indiana's regional haze SIP was only partially approved and no action has been taken on issues addressing the Best Available Retrofit Technology requirements for EGUs. Therefore, the commenter believes that EPA must disapprove the visibility protection requirements found in section 110(a)(2)(D)(i)(II) for Indiana's infrastructure SIP.

Response 8: The commenter is correct that EPA issued a limited disapproval of Indiana's regional haze SIP. Our limited disapproval was based on Indiana's reliance on the Clean Air Interstate Rule (CAIR) to satisfy certain requirements for controlling emissions of SO_2 and NO_X from EGUs. EPA also issued a limited approval of the remaining portion of the regional haze plan. However, in response to this comment, EPA is not taking final action today on the portion of Indiana's infrastructure SIP addressing the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

Comment 9: Sierra Club asserted that EPA must disapprove Indiana's infrastructure SIP because it does not address the visibility protection provisions, as described above, for section 110(a)(2)(J). The commenter contended that EPA did not provide a rationale for why the visibility provisions in section 110(a)(2)(J) are not applicable to the 2008 Pb and 2008 ozone NAAQS.

Response 9: The visibility requirements in part C of the CAA that are referenced in section 110(a)(2)(J) are not affected by the establishment or revision of a NAAQS. As a result, there are no ''applicable'' visibility protection obligations associated with the promulgation of a new or revised NAAQS. Because there are no applicable requirements, states are not required to address section 110(a)(2)(J) in their infrastructure SIP.

Comment 10: Sierra Club stated that EPA cannot approve Indiana's infrastructure SIP, specifically the infrastructure element under section 110(a)(2)(A), for the 2008 ozone NAAQS because the state has not incorporated this NAAQS into the SIP. Instead, the commenter noted that the SIP at the time of proposed rulemaking, specifically at 326 Indiana Administrative Code (IAC) 1–3–4(b)(4)(B), contained the older 8-hour ozone NAAQS promulgated in 1997.

Response 10: In a rulemaking published on December 18, 2014 (79 FR 75527), EPA approved revisions to Indiana's SIP incorporating the 2008 ozone NAAQS.

Comment 11: Sierra Club asserted that EPA must clarify two repealed regulations that were cited in the proposed rulemaking. Specifically, the commenter observed that EPA cited 326 IAC 11–5 as helping Indiana satisfy the requirements of section 110(a)(2)(G) ''Emergency Powers'' and IC 13–4–8 which was cited to satisfy section 110(a)(2)(H), ''Future SIP Revisions.''

Response 11: EPA did not intend to engender any confusion with these citations. The commenter is correct in noting that 326 IAC 11–5 has been repealed. That rule was of little relevance to section 110(a)(2)(G) and was incorrectly cited; the correct citation that was provided by IDEM is SIP-approved IAC 1–5, ''Alert Levels.'' In a similar manner, IDEM provided IC 13–14–8 as helping to meet the requirements under section 110(a)(2)(H), but EPA incorrectly cited IC 13–4–8.

Comment 12: Sierra Club asserted that EPA must disapprove portions of Indiana's infrastructure SIP for the 2008 ozone NAAQS addressing certain $PM_{2.5}$ requirements under section 110(a)(2)(C). In particular, the commenter objected to the fact that Indiana has not codified the

increments for areas designated as class I or class III for $PM_{2.5.}$ The commenter noted that while Indiana does not have class I or class III areas, the increments for class I and class III areas are still a requirement to satisfy section 110(a)(2)(C). The commenter contends it is insufficient for EPA to ''hope'' that the state will adopt the increments if areas in the state are later redesignated to class I or class III, and therefore EPA must disapprove this section of Indiana's infrastructure SIP.

Response 12: EPA disagrees with the commenter's view that Indiana's infrastructure SIP related to section 110(a)(2)(C) must be disapproved because the state has not codified the $PM_{2.5}$ increments for class I and class III areas as provided at 40 CFR 52.166(c) and 40 CFR 52.21(c). As explained in the August 19, 2013, proposed approval, Indiana does not currently have any areas designated class I or class III for $PM_{2.5.}$ Accordingly, EPA does not consider the $PM_{2.5}$ increments for class I and class III areas to be necessary for the implementation of PSD permitting in Indiana at this time. In the event that areas in Indiana are one day classified as class I or class III, EPA expects IDEM to adopt these increments and submit them for incorporation into the SIP (*see* 78 FR 50360 at 50364). Federal regulations at 40 CFR 51.166(g)(1) and 52.21(g)(1) specify that if a state seeks to have an area reclassified to either class I or class III, it must submit such a request as a revision to its SIP for approval by the EPA Administrator. Thus, no areas in Indiana can be reclassified to class I or class III without EPA approval, and the process of evaluating such a request for approval requires a notice-and-comment rulemaking process. The EPA and other interested parties can evaluate the adequacy of Indiana's PSD regulations as they apply to the proposed reclassified area at that time and, if necessary, initiate a process to cure any identified deficiency. However, at this time, EPA does not believe there to be an applicability gap for the $PM_{2.5}$ increments as they apply in the state of Indiana.

Comment 13: The State of Connecticut asserts that its ability to attain the 2008 ozone NAAQS is substantially compromised by the transport of pollution from upwind states. Specifically, modeling conducted by both the Ozone Transport Commission and EPA as part of the Cross-State Air Pollution Rule (CSAPR) shows emissions from Indiana contributing to the nonattainment problem in Connecticut. The State of Connecticut states that it has done its share to reduce in-state emissions, and EPA should ensure that each upwind state addresses contribution to another downwind state's nonattainment. With regard to the ''good neighbor provision'' in Section 1109(a)(1) of the CAA, Connecticut characterizes Indiana's 2008 ozone submission as relying on state regulations which implement the Clean Air Interstate Rule and CSAPR, and that such programs were intended by EPA to address the 1997 ozone NAAQS and not the more stringent 2008 standard. Connecticut asserts EPA should therefore disapprove the Indiana submission. Connecticut also states that, under section 110(a)(2), Indiana was required to submit a complete SIP that demonstrated compliance with the good neighbor provision of section 110(a)(2)(D)(i)(I). Connecticut further suggests that the CAA does not give EPA discretion to take no action on the submitted good neighbor provisions on the grounds of taking a separate action. Instead, it asserts that the only action available to EPA is to determine the approvability of the good neighbor provision of Indiana's 2008 ozone NAAQS infrastructure SIP submission, or promulgate a FIP under section 110(c)(1) within two years.

Response 13: As explained in the notice of proposed rulemaking (NPR), this action does not address, for the 2008 ozone NAAQS, the good neighbor provision in section 110(a)(2)(D)(i)(I), which prohibits emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. Thus, to the extent the comment relates to the substance or approvability of the good neighbor provision in Indiana's 2008 ozone infrastructure SIP submission, the comment is not relevant to the present rulemaking. As stated herein and in the NPR, EPA will take later, separate action to address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

EPA disagrees with the commenter's argument that EPA cannot approve a SIP without the good neighbor provision. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve the states' SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. See S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

The Agency interprets its authority under section 110(k)(3) as affording it the discretion to approve or conditionally approve individual elements of Indiana's infrastructure submission for the 2008 ozone NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements, and interprets section 110(k)(3) as allowing EPA to act on individual severable measures in a plan submission. In short, EPA has discretion under section 110(k) to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate. The commenter raises no compelling legal or environmental rationale for an alternate interpretation.

EPA notes, however, that it is working with state partners to assess next steps to address air pollution that crosses state boundaries and will later take a separate action to address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. EPA's approval of the Indiana infrastructure SIP submission for the 2008 ozone NAAQS for the portions described in the NPR is, therefore, appropriate.

III. What action is EPA taking?

For the reasons discussed in our August 19, 2013, proposed rulemaking and in the above responses to public comments, EPA is taking final action to approve Indiana's infrastructure SIP for the 2008 ozone NAAQS as proposed with the exception of not taking final action on section 110(a)(2)(D)(i)(II) with respect to visibility. In EPA's August 19, 2013, proposed rulemaking for these infrastructure SIPs, EPA also proposed to approve Indiana's satisfaction of the state board requirements contained in section 128 of the CAA, as well as certain PSD requirements obligated by EPA's October 20, 2010, final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs), Significant Monitoring Concentration (SMC)'' (2010 NSR Rule), and the infrastructure requirements for the 2008 lead NAAQS. The final approvals for each of the above requirements were published in the **Federal Register** on December 24, 2013 (*see* 78 FR 77599, state board

requirements), July 2, 2014 (*see* 79 FR 37646, 2010 NSR Rule requirements), August 11, 2013 (see 78 FR 46709, 2010 NSR Rule requirements, continued), and October 16, 2014 (see 79 FR 62035, 2008 Lead Infrastructure requirements). In today's rulemaking, we are taking final action on only the infrastructure SIP requirements for the 2008 ozone NAAQS. Our final actions by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Ozone NAAQS
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	NA
(D)2: PSD	A
(D)3: Visibility Protection	NA
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement	A
(E)1: Adequate resources	A
(E)2: State boards	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	NA
(J)1: Consultation with government officials	A
(J)2: Public notification	A
(J)3: PSD	A
(J)4: Visibility protection (Regional Haze)	NA
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the table above, the key is as follows:

A	Approve.
NA	No Action/Separate Rulemaking.

IV. Statutory and Executive Order Reviews

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

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

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

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 June 29, 2015. 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: April 16, 2015.

Susan Hedman,

Regional Administrator, Region 5.

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. In § 52.770, the table in paragraph (e) is amended by adding an entry in alphabetical order for ''Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA Approval	Explanation
* *	*	* *	* * *
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	12/12/2011	4/29/2015, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) except visibility, (D)(ii), (E), (F), (G), (H), (J) except visibility, (K), (L), and (M).
* *	*	* *	* * *

[FR Doc. 2015–09883 Filed 4–28–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2014–0755; FRL–9926–95–Region 10]

Approval and Promulgation of Implementation Plans; Washington: Prevention of Significant Deterioration and Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Washington State Implementation Plan (SIP) that were submitted by the Department of Ecology (Ecology) on January 27, 2014. These revisions implement the preconstruction permitting regulations for large industrial (major source) facilities in attainment and unclassifiable areas, called the Prevention of Significant Deterioration (PSD) program. The PSD program in Washington has been historically operated under a Federal Implementation Plan (FIP). This approval of Ecology's PSD program narrows the FIP to include only those few facilities, emission sources, geographic areas, and permits for which Ecology does not have PSD permitting jurisdiction or authority. The EPA is also approving Ecology's visibility protection permitting program which overlaps significantly with the PSD program.

DATES: This final rule is effective on May 29, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2014–0755. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Planning Unit, Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov,* or by using the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

Definitions

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 words ''EPA'', ''we'', ''us'' or ''our'' mean or refer to the Environmental Protection Agency.

(iii) The initials ''SIP'' mean or refer to State Implementation Plan.

(iv) The words ''Washington'' and ''State'' mean the State of Washington.

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I. Background Information

On January 27, 2014, Ecology submitted revisions to update the general air quality regulations contained in Chapter 173–400 of the Washington Administrative Code (WAC) that apply to sources within Ecology's jurisdiction, including minor new source review, major source nonattainment new source review (major NNSR), PSD, and the visibility protection (visibility) program. On October 3, 2014, the EPA finalized approval of provisions contained in Chapter 173–400 WAC that apply generally to all sources under Ecology's jurisdiction, but stated that we would act separately on the major source-specific permitting programs in a phased approach (79 FR 59653). On November 7, 2014, the EPA finalized the second phase in the series, approving the major NNSR regulations contained in WAC 173–400–800 through 173–400–860, as well as other parts of Chapter 173–400 WAC that support major NNSR (79 FR 66291).

On January 7, 2015, the EPA proposed approval of the remainder of Ecology's January 27, 2014 submittal, covering the PSD and visibility requirements for

major stationary sources under Ecology's jurisdiction (80 FR 838). An explanation of the Clean Air Act (CAA) requirements, submitted revisions, and the EPA's reasons for and limitations of the proposed approval are provided in the notice of proposed rulemaking, which, together with this document, provides the basis for our final action. The public comment period for this proposed rule ended on February 6, 2015. The EPA received two sets of similar comments on the proposal.

Before addressing the public comments, the EPA is clarifying its discussion in the January 7, 2015 proposal, regarding two important distinctions between the applicability of Ecology's minor NSR program and its PSD program. These differences arise from the State's definitions of the terms ''modification'' in WAC 173–400–030(48) and ''major modification'' in WAC 173–400–710 and –720, which adopt the Federal definitions in 40 CFR 52.21(b)(2) for Ecology's PSD program. See 80 FR at 840. The proposal first noted that the applicability test for ''modifications'' under Ecology's minor NSR program is based on the definition of modification in CAA section 111(a)(4) and the EPA's implementing rules at 40 CFR 60.14, and specifically, that a modification is an increase in the emission rate of an existing facility in terms of kilograms per hour. See WAC 173–400–030(48). The proposal then noted that the applicability test under the Federal PSD program is based on tons per year. The EPA is clarifying here that under Washington's PSD program, the determination of whether a project (as that term is defined in 40 CFR 52.21(b)(52) and which is adopted by reference at WAC 173–400–720(4)(a)(vi)) is a ''major modification'' is, consistent with the Federal PSD program, based on whether the project results in both a significant emissions increase and a significant net emissions increase in terms of tons per year. See WAC 400–173–720(4)(a)(vi) (which adopts by reference the Federal PSD applicability test and definitions in 40 CFR 52.21(a)(2) and (b)(2), respectively); see also WAC 173–400–710(a). Therefore, as stated in the proposal, for any physical or operational change at an existing stationary source, regulated sources and permitting authorities will need to calculate emission changes in terms of both kilograms per hour and tons per year to determine whether changes are subject to minor NSR, PSD, or both.

Second, the proposal discussed a difference in minor NSR versus PSD review in Washington that arises from a limitation on the scope of the review of a modification under Ecology's minor NSR program. The EPA first noted that, under Ecology's minor NSR program, new source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. See WAC 173–400–110(1)(d) (''New source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.''). In contrasting this minor NSR provision with the requirements of Ecology's PSD program (and the Federal PSD program), the EPA incorrectly used the phrase ''new and modified units'' rather than the terms ''new emissions units'' and ''existing emissions units,'' the terminology used in 40 CFR 52.21(a)(2), which is incorporated into Washington's PSD regulations and the subject of this final SIP approval. The EPA is emphasizing here that, under Ecology's PSD program (as under the Federal PSD program), review of a project that is a ''major modification'' must be done in accordance with the provisions of WAC 173–400–700 through 173–400–750, and that the limitation in WAC 173–400–110(1)(d) on the review of a ''modification'' does not apply to a ''major modification.'' See WAC 173–400–110(1)(d) (''Review of a major modification must comply with WAC 173–400–700 through 173–400–750 or 173–400–800 through 173–400–860, as applicable.'').

II. Response to Comments

The EPA received two sets of similar comments from the Northwest Pulp & Paper Association and the Washington Forest Protection Association regarding carbon dioxide (CO_2) emissions from industrial combustion of biomass.

A. CO_2 Emissions From Industrial Combustion of Both Fossil Fuel and Biomass

Comment: The EPA must clearly explain in the final approval that, due to the limitations imposed by Revised Code of Washington (RCW) 70.235.020(3) concerning the industrial combustion of biomass,[1] the EPA is retaining the authority to conduct the best available control technology (BACT) analysis for PSD permits only for biogenic CO_2 emissions from biomass and will coordinate its processing and issuance of PSD permits with the Department of Ecology. One of the commenters specifically requests clarity regarding situations where there are multiple combustion fuels producing CO_2 from a source and whether Ecology would retain PSD permitting authority for CO_2 emissions resulting from the industrial combustion of non-biomass fuels from such a source.

Response: As discussed in the proposal of this rule, RCW 70.235.020(3) statutorily bars Ecology from regulating CO_2 under Ecology's PSD program in some circumstances. That statute provides that ''[e]xcept for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased.'' The EPA has been actively examining whether under Federal law CO_2 emissions from the industrial combustion of biomass may be exempt from the PSD permitting requirements in a manner similar to RCW 70.235.020(3). In 2011, the EPA adopted a rule that deferred, for a period of three years, the application of the PSD and Title V permitting requirements to CO_2 emissions from bioenergy and other biogenic stationary sources (biogenic CO_2). 76 FR 43490 (July 20, 2011) (Biomass Deferral Rule). During the three-year deferral period, the EPA conducted a detailed examination of the science associated with biogenic CO_2 emissions from stationary sources and developed a document entitled ''Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources,'' which the Agency submitted to the EPA Science Advisory Board (SAB) for peer review.

On July 12, 2013, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision overturning the Biomass Deferral Rule. *Center for Biological Diversity* v. *EPA,* 722 F.3d 421 (D.C. Cir. 2013). Although this decision has not yet taken effect because of matters still pending in the courts, the Biomass Deferral Rule expired on its own terms on July 21, 2014. The EPA was not able to issue an additional rule before this date addressing the regulation of biogenic CO_2 emissions from stationary sources in the PSD permitting program. However, the EPA plans to propose revisions to the PSD

[1] Note that one commenter refers to the exemption in RCW 70.235.020(3) as applying to ''forest biomass'' and points to the definition of that term in RCW 79.02.010(7)(a). RCW 70.235.020(3), however, uses the term ''biomass,'' not ''forest biomass,'' and nothing in RCW Ch. 70.235 indicates that the definitions in RCW Ch. 79.02 are to be used in interpreting RCW Ch. 70.235. We therefore continue to use the terminology in RCW Ch. 79.02 in describing the scope of the remaining Federal Implementation Plan for PSD in Washington.

rules to include an exemption from the BACT requirement for GHGs from waste-derived feedstocks and from non-waste biogenic feedstocks derived from sustainable forest or agricultural practices. For all other biogenic feedstocks, the EPA intends to propose that biogenic CO_2 emissions would remain subject to the GHG BACT requirement at this time. *See* Memorandum from Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation, to EPA Air Division Directors, Regions 1–10, ''Addressing Biogenic Carbon Dioxide Emissions from Stationary Sources,'' (Nov. 19, 2014). In addition, to continue advancing our understanding of the role biomass can play in reducing overall GHG emissions, the EPA has developed a second draft of the Framework for Assessing Biogenic CO_2 Emissions from Stationary Sources, and is initiating a second round of targeted peer review through its SAB.

Although the EPA is planning to initiate the rulemaking described above that would enable states to avoid applying BACT to GHG emissions from combustion of biogenic feedstocks derived from sustainable forest or agricultural practices, the CAA and EPA regulations presently require that PSD permitting programs address CO_2 emissions from the industrial combustion of biomass. CO_2 is a gas included in the definition of ''greenhouse gas'' used in the Federal PSD program.[2] Because GHGs are a pollutant subject to regulation under the CAA, section 165 of the Act requires GHG emissions from a major source obtaining a PSD permit to be subject to PSD requirements, particularly the requirement to meet emission limitations based on application of BACT. After the expiration of the three-year period in the EPA's Biomass Deferral Rule, there is presently no EPA rule in place that exempts the CO_2 emissions from the industrial combustion of biomass from the requirements of the PSD permitting program. As discussed in our January 7, 2015 proposal (80 FR 838), because of the Supreme Court decision in *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427, the EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a physical change or change in the method of operation of a major stationary source.[3] However, the BACT requirement remains applicable to GHGs from a source that is subject to PSD because it is major for another regulated NSR pollutant (what is known as an ''anyway source'') and which would emit a significant amount of GHGs (*i.e.,* more than 75,000 tons per year CO_2 equivalent emissions, CO_2e, as defined in 40 CFR 52.21(b)(49)). Absent an EPA rule establishing an exemption for CO_2 emissions from biomass combustion, the determination of BACT for a regulated NSR pollutant must consider all of the emissions of each pollutant subject to regulation under the Act. Because RCW 70.235.020(3) prohibits Ecology from establishing BACT limits for such sources that include CO_2 emissions resulting from the industrial combustion of biomass, Washington law is inconsistent with the EPA's current regulations implementing the PSD provisions in the CAA in that regard.

As a result, the EPA must retain a FIP under 40 CFR 52.21 and issue partial PSD permits to ensure that major sources in Washington have a means to satisfy the CAA construction permit requirements for GHGs when CO_2 emissions from the industrial combustion of biomass in Washington cannot be considered or regulated by Ecology under its PSD rules.[4] Because Ecology does have authority to carry out all PSD requirements for GHGs except for sources permitted to engage in the industrial combustion of biomass, the EPA is approving Ecology's regulations as part of the Washington PSD SIP for such purposes.

For sources subject to the FIP, the EPA is retaining the authority to conduct the BACT analysis for all GHGs when necessary, not just the biogenic CO_2 emissions not covered by the Washington permitting program under RCW 70.235.020(3). Because the regulated NSR pollutant is GHGs and not CO_2, the Federal PSD permit issued by the EPA under the FIP will contain a BACT limit covering all GHG emissions from a subject emission unit when that unit is permitted to emit biogenic CO_2 not covered by the Washington permitting program. The EPA believes it should retain authority over all GHG emissions at such sources to avoid difficulties that could arise if Ecology and the EPA each separately evaluated BACT for only a portion of the GHG emissions from an emission unit. For example, each agency could end up calculating cost values that would not reflect the true cost of the control options for GHG emissions because not all GHGs, as defined under the Federal PSD program, would be considered by either agency.

Thus, the EPA FIP addresses the impact of the Washington statutory provision in two ways. First, the Ecology and the EPA definitions of GHGs are effectively different, with the EPA's definition being more inclusive (*i.e.*, it does not exclude CO_2 emissions from the industrial combustion of biomass) so an ''anyway source'' could be subject to PSD for GHGs under the FIP when it would not be subject to PSD under the SIP. In this situation, the EPA will issue a Federal PSD permit under 40 CFR 52.21 for the new major stationary source or major modification that would require BACT for GHGs for all subject emission units at the source, regardless of whether CO_2 emissions were from the industrial combustion of biomass or from other sources of GHG emissions at the facility. Second, if an ''anyway source'' is subject to PSD for GHG emissions under both the SIP and the FIP, but there are CO_2 emissions from the industrial combustion of biomass that cannot be addressed in the Ecology PSD permit, the EPA will issue a Federal PSD permit under 40 CFR 52.21 requiring BACT for GHGs for each subject emissions unit with CO_2 emissions from the industrial combustion of biomass. Note that the Ecology PSD permit issued under the SIP will address all other subject emission units that do not have CO_2 emissions from the industrial combustion of biomass. We have revised the language of 40 CFR 52.2497 to reflect this clarification.

Given this dual CAA PSD permitting authority in situations where there are multiple combustion fuels producing CO_2 from a source engaged in the industrial combustion of biomass in Washington, the EPA will coordinate closely with Ecology during the PSD permit issuance process.

B. EPA Guidance

Comment: The EPA should also clarify that it will follow the EPA's existing guidance on BACT for biogenic emissions, ''Guidance for Determining

[2] See 40 CFR 52.21(b)(49)(definition of ''subject to regulation'').

[3] Under this decision, the Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or major modification thereof) required to obtain a PSD permit, but that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of BACT. See 80 FR at 842.

[4] PSD permitting of CO_2 emissions from such sources was also excluded from the 2013 Delegation Agreement between the EPA and Washington.

Best Available Control Technology for Reducing Carbon Dioxide Emissions from Bioenergy Production'' (March 2011 guidance).

Response: The March 2011 guidance is the EPA's most recent guidance on the topic of BACT determinations for bioenergy production and the EPA will consider it, as appropriate, in issuing PSD permits under the FIP. The EPA will also consider prior BACT determinations for GHGs at biomass facilities, such as the one reflected in the permit EPA Region 9 issued to Sierra Pacific Industries. In the November 19, 2014 Memorandum cited above, the EPA has also stated that the Agency anticipates providing additional guidance to sources undergoing BACT analyses involving biogenic feedstocks. To the extent that guidance is available at the time the EPA issues permits under the FIP discussed in this rule, the EPA will consider that guidance as well.

C. The EPA's Next Steps on Biogenic CO_2 Emissions From Stationary Sources

Comment: One commenter referenced the EPA's memorandum, ''Addressing Biogenic Carbon Dioxide Emissions from Stationary Sources,'' from Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation, to EPA Air Division Directors, Regions 1—10, November 19, 2014, regarding biogenic CO_2 emissions and urged the EPA to complete rulemaking regarding this issue in an expeditious manner.

Response: The EPA will endeavor to complete this rulemaking in a timely manner. After considering public comments on the proposal for that rule, if the final rule contains an exemption that aligns with the scope of RCW 70.235.020(3), the EPA will reevaluate the extent to which the FIP established in this rule should remain applicable to Washington facilities with CO_2 emissions from the industrial combustion of biomass. To enable the EPA to remove such sources from the FIP, Washington may need to consider whether an amendment to RCW 70.235.020(3) is appropriate to match the scope of any final rule adopted by the EPA.

III. Final Action

For the reasons set forth in our proposed rulemaking at 80 FR 838, January 7, 2015, as further discussed above, the EPA is approving and incorporating by reference the PSD and visibility permitting regulations submitted by Ecology on January 27, 2014. This action is the third and final in a series approving the remaining elements contained in Ecology's January 27, 2014 submittal. The previous two actions consisted of the EPA's October 3, 2014 (79 FR 59653) approval of general provisions that apply to all air pollution sources and the EPA's November 7, 2014 (79 FR 66291) approval of requirements that implement major source NNSR.

A. Rules Approved and Incorporated by Reference Into the SIP

The EPA is approving and incorporating by reference into Washington's SIP at 40 CFR part 52, subpart WW, the PSD and visibility permitting regulations listed in the table below. A full copy of the regulations is included in the docket for this action. The EPA has also determined that the general air quality regulations at WAC 173–400–036, WAC 173–400–110, WAC 173–400–111, WAC 173–400–112, WAC 173–400–113, WAC 173–400–171, and WAC 173–400–560, to the extent they relate to implementation of Ecology's PSD and visibility programs, also meet the EPA's requirements for subject sources.[5]

REGULATIONS APPROVED AND INCORPORATED BY REFERENCE

State citation	Title/Subject	State effective date	Explanation
Chapter 173–400 WAC, General Regulations for Air Pollution Sources			
173–400–036	Relocation of Portable Sources	12/29/12	
173–400–110	New Source Review (NSR) for Sources and Portable Sources.	12/29/12	Except: 173–400–110(1)(c)(ii)(C); 173–400–110(1)(e); 173–400–110(2)(d); The part of WAC 173–400–110(4)(b)(vi) that says, • ''not for use with materials containing toxic air pollutants, as listed in chapter 173–460 WAC,''; The part of 400–110 (4)(e)(iii) that says, • ''where toxic air pollutants as defined in chapter 173–460 WAC are not emitted''; The part of 400–110(4)(e)(f)(i) that says, • ''that are not toxic air pollutants listed in chapter 173–460 WAC''; The part of 400–110 (4)(h)(xviii) that says, • '', to the extent that toxic air pollutant gases as defined in chapter 173–460 WAC are not emitted''; The part of 400–110 (4)(h)(xxxiii) that says, • ''where no toxic air pollutants as listed under chapter 173–460 WAC are emitted''; The part of 400–110(4)(h)(xxxiv) that says, • '', or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173–460 WAC''; The part of 400–110(4)(h)(xxxv) that says, • ''or ≤ 1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xxxvi) that says, • ''or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173–460 WAC''; 400–110(4)(h)(xl) , second sentence; and

[5] The EPA previously approved these regulations as part of our October 3, 2014 approval of Ecology's minor new source review (NSR) program. Approval of these regulations for purposes of implementing the PSD and visibility programs is subject to the exceptions and explanations described in the EPA's July 10, 2014 proposed (79 FR 39351) and October 3, 2014 final action (79 FR 59653), and the January 7, 2015 proposed action (80 FR 838) on the general air quality regulations contained in WAC 173–400–036, WAC 173–400–110, WAC 173–400–111, WAC 173–400–112, WAC 173–400–113, WAC 173–400–171, and WAC 173–400–560.

REGULATIONS APPROVED AND INCORPORATED BY REFERENCE—Continued

State citation	Title/Subject	State effective date	Explanation
			The last row of the table in 173–400–110(5)(b) regarding exemption levels for Toxic Air Pollutants.
173–400–111	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	12/29/12	Except: 173–400–111(3)(h); 173–400–111(3)(i); The part of 173–400–111(8)(a)(v) that says, • ''and 173–460–040,''; and 173–400–111(9).
173–400–112	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	12/29/12	Except: 173–400–112(8).
173–400–113	New Sources in Attainment or Unclassifiable Areas—Review for Compliance with Regulations.	12/29/12	Except: 173–400–113(3), second sentence.
173–400–116	Increment Protection	9/10/11	
173–400–117	Special Protection Requirements for Federal Class I Areas.	12/29/12	
173–400–171	Public Notice and Opportunity for Public Comment.	12/29/12	Except: The part of 173–400–171(3)(b) that says, • ''or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173–460 WAC''; and 173–400–171(12).
173–400–560	General Order of Approval	12/29/12	Except: The part of 173–400–560(1)(f) that says, ''173–460 WAC''.
173–400–700	Review of Major Stationary Sources of Air Pollution.	4/1/11	
173–400–710	Definitions	12/29/12	
173–400–720	Prevention of Significant Deterioration (PSD).	12/29/12	Except: 173–400–720(4)(a)(i through iv); 173–400–720(4)(b)(iii)(C); and 173–400–720(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(49)(v), 52.21(i)(5)(i), and 52.21(k)(2).
173–400–730	Prevention of Significant Deterioration Application Processing Procedures.	12/29/12	
173–400–740	PSD Permitting Public Involvement Requirements.	12/29/12	
173–400–750	Revisions to PSD Permits	12/29/12	Except: 173–400–750(2) second sentence.

B. Transfer of Existing EPA-Issued PSD Permits

As discussed in the proposal, Ecology requested approval to exercise its authority to fully administer the PSD program with respect to those sources under Ecology's permitting jurisdiction that have existing PSD permits issued by the EPA since August 7, 1977. 80 FR 843, January 7, 2015. Upon the effective date of this approval of Ecology's PSD program into the SIP, we transfer the EPA-issued PSD permits issued on and after August 7, 1977 to Ecology. The EPA retains authority to administer PSD permits issued by the EPA in Washington prior to August 7, 1977. Id.

C. Scope of Final Action

1. WAC 173–400–700 Through 173–400–750

Under WAC 173–400–700, Ecology's PSD regulations contained in WAC 173–400–700 through 173–400–750 apply statewide, except where a local clean air agency has received delegation of the Federal PSD program from the EPA or has a SIP-approved PSD program. At this time, no local clean air agencies in Washington have a delegated or SIP-approved PSD program. For the reasons provided in the preambles to the proposed and final notices of rulemaking, the EPA is therefore approving WAC 173–400–700 through 173–400–750 to apply statewide, with the three exceptions described below. For the following exceptions, the PSD FIP codified at 40 CFR 52.2497 and 40 CFR 52.21 will continue to apply, and the EPA will retain responsibility for issuing PSD permits to and implementing the Federal PSD program for such sources:

a. Sources Under the Energy Facilities Site Evaluation Council (EFSEC) Jurisdiction

By statute, Ecology does not have authority to issue PSD permits to sources under the jurisdiction of EFSEC. See Chapter 80.50 of the Revised Code of Washington (RCW). Therefore, the EPA's approval of Ecology's PSD program, under WAC 173–400–700 through 173–400–750, excludes projects under the jurisdiction of EFSEC. Such sources will continue to be subject to the PSD FIP codified at 40 CFR 52.2497 and 40 CFR 52.21, until such time that EFSEC's PSD rules are approved into the SIP.

b. CO_2 Emissions From Industrial Combustion of Biomass

As discussed above, under a provision contained in RCW 70.235.020, Greenhouse Gas Emissions Reductions—Reporting Requirements, Ecology is statutorily barred from

regulating certain GHG emissions. As a result, the EPA is retaining a FIP under 40 CFR 52.21 and will issue partial PSD permits to ensure that major sources in Washington have a means to satisfy the CAA construction permit requirements for GHGs when CO_2 emissions from the industrial combustion of biomass in Washington are not being considered or regulated by Ecology under its PSD rules. Because Ecology does have authority to carry out all PSD requirements for GHGs except for sources permitted to engage in the industrial combustion of biomass, the EPA is approving Ecology's regulations as part of the Washington PSD SIP for such purposes.

c. Sources in Certain Areas of Indian Country

Excluded from the scope of this final approval of Ecology's PSD program are all Indian reservations in the State, except as specifically noted below, and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Sources on such lands will continue to be subject to the PSD FIP codified at 40 CFR 52.2497 and 40 CFR 52.21.

Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area) and the EPA is therefore proposing to approve Ecology's PSD regulations into the SIP with respect to such lands.

d. Scope of PSD FIP in Washington

Consistent with the limitations on the scope of the EPA's final approval of WAC 173–400–700 through 173–400–750 in the Washington SIP, the EPA retains, but significantly narrows, the scope of the current PSD FIP codified at 40 CFR 52.2497. The EPA will continue to implement the current PSD FIP as provided in III.C.1.a., b., and c. of this document.

2. WAC 173–400–116 and 173–400–117

With respect to the EPA's approval of WAC 173–400–116 and WAC 173–400–117, the SIP-approved provisions of WAC 173–400–020 govern jurisdictional applicability for those sections. WAC 173–400–020 states, ''[t]he provisions of this chapter shall apply statewide, except for specific subsections where a local authority has adopted and implemented corresponding local rules that apply only to sources subject to local jurisdiction as provided under RCW 70.94.141 and 70.94.331.'' Because Ecology will be the only authority in Washington with a SIP-approved PSD program that would implement WAC 173–400–116, *Increment Protection,* the EPA's approval of WAC 173–400–116 applies statewide, with the two exceptions discussed below. Similarly, the scope of our approval of WAC 173–400–117, *Special Protection Requirements for Federal Class I Areas,* applies statewide for PSD permits issued by Ecology under WAC 173–400–700 through 173–400–750, noting the two exceptions discussed below. However, for visibility-related elements associated with permits issued under the major NNSR program, the applicability of WAC 173–400–117 is more complicated because local clean air agencies have the authority under state law to have alternative, but no less stringent, permitting requirements. Therefore, consistent with the EPA's November 7, 2014 approval of Ecology's major NNSR program, our approval of WAC 173–400–117, as it relates to NNSR permits issues under WAC 173–400–800 through 173–400–860, is limited to only those counties or sources where Ecology has direct jurisdiction. The counties where Ecology has direct jurisdiction are: Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman Counties, with the two exceptions discussed below. The EPA also notes that under the SIP-approved provisions of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012, Ecology has statewide, direct jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants, excluding certain areas of Indian country as discussed further. The EPA is therefore approving WAC 173–400–117 in all areas of the state under Ecology's jurisdiction for those specified source categories.

For the following exceptions the visibility FIP codified at 40 CFR 52.2498 will continue to apply and the EPA will retain responsibility for issuing visibility permits for such sources:

a. Sources Under the Energy Facilities Site Evaluation Council (EFSEC) Jurisdiction

By State statute, Ecology does not have authority to issue permits to sources under the jurisdiction of EFSEC. See Chapter 80.50 of the Revised Code of Washington (RCW). Therefore, the EPA's approval of WAC 173–400–116 and 173–400–117 excludes projects under the jurisdiction of EFSEC. Such sources will continue to be subject to the visibility FIP codified at 40 CFR 52.2498, until such time that EFSEC's corollaries to WAC 173–400–116 and 173–400–117 are approved into the SIP.

b. Sources in Certain Areas of Indian Country

Excluded from the scope of this final approval of the visibility permitting program are all Indian reservations in the State, except as specifically noted below, and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Sources on such lands will continue to be subject to the visibility FIP codified at 40 CFR 52.2498.

Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area) and the EPA is therefore proposing to approve Ecology's visibility regulations into the SIP with respect to such lands for those facilities where Ecology has direct jurisdiction.

c. Scope of Visibility FIP in Washington

Consistent with the limitations on the scope of our approval of Ecology's major NNSR program (79 FR at 43349), the EPA retains, but significantly narrows, the scope of the current visibility FIP codified at 40 CFR 52.2498.

D. The EPA's Oversight Role

As discussed in the proposal, 80 FR at 845, in approving state new source review rules into SIPs, the EPA has a responsibility to ensure that all states properly implement their SIP-approved preconstruction permitting programs. The EPA's approval of Ecology's PSD rules does not divest the EPA of the responsibility to continue appropriate oversight to ensure that permits issued by Ecology are consistent with the requirements of the CAA, Federal regulations, and the SIP. The EPA's authority to oversee permit program implementation is set forth in sections 113, 167, and 505(b) of the CAA. For example, section 167 provides that the EPA shall issue administrative orders, initiate civil actions, or take whatever other action may be necessary to prevent the construction or modification of a major stationary source that does not ''conform to the requirements of'' the PSD program. Similarly, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever the EPA finds that a state ''is not acting in compliance with'' any requirement or prohibition of the CAA regarding the construction of new

sources or modification of existing sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever the EPA finds that a person is in violation of an applicable implementation plan.

In making judgments as to what constitutes compliance with the CAA and regulations issued thereunder, the EPA looks to (among other sources) its prior interpretations regarding those statutory and regulatory requirements and policies for implementing them. It follows that state actions implementing the Federal CAA that do not conform to the CAA may lead to potential oversight action by the EPA.

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 Washington State Department of Ecology regulations listed in section II.A. *Rules Approved and Incorporated by Reference into the SIP* of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Orders Review

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, the 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 this action does not involve technical standards; and
- does not provide the 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 in Washington except as specifically noted below and is also not approved to apply 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 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated February 25, 2014. The EPA did not receive a request for consultation.

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 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 June 29, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 13, 2015.

Dennis J. McLerran,

Regional Administrator, Region 10.

For the reasons stated in the preamble, 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.*

Subpart WW—Washington

■ 2. Section 52.2470 is amended in paragraph (c), Table 2—Additional Regulations Approved for Washington Department of Ecology (Ecology) Direct Jurisdiction by:

■ a. Revising the heading;

■ b. Revising the entries 173–400–036, 173–400–110, 173–400–111, 173–400–112, and 173–400–113;

■ c. Adding in numerical order entries for 173–400–116 and 173–400–117;

■ d. Revising the entries 173–400–171 and 173–400–560;

■ e. Adding in numerical order entries for 173–400–700, 173–400–710, 173–

400–720, 173–400–730, 173–400–740, and 173–400–750; and

■ f. Removing the footnote at end of Table 2.

The revisions and additions read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION

[Applicable in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction, Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation), and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. These regulations also apply statewide for facilities subject to the applicability sections of WAC 173–400–700, WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
*	*	*	*	* * *
173–400–036 ..	Relocation of Portable Sources.	12/29/12	04/29/15 [Insert **Federal Register** citation].	
*	*	*	*	* * *
173–400–110 ..	New Source Review (NSR) for Sources and Portable Sources.	12/29/12	04/29/15 [Insert **Federal Register** citation].	Except: 173–400–110(1)(c)(ii)(C); 173–400–110(1)(e); 173–400–110(2)(d); The part of WAC 173–400–110(4)(b)(vi) that says, • ''not for use with materials containing toxic air pollutants, as listed in chapter 173–460 WAC,''; The part of 400–110 (4)(e)(iii) that says, • ''where toxic air pollutants as defined in chapter 173–460 WAC are not emitted''; The part of 400–110(4)(e)(f)(i) that says, • ''that are not toxic air pollutants listed in chapter 173–460 WAC''; The part of 400–110 (4)(h)(xviii) that says, • '', to the extent that toxic air pollutant gases as defined in chapter 173–460 WAC are not emitted''; The part of 400–110 (4)(h)(xxxiii) that says, • ''where no toxic air pollutants as listed under chapter 173–460 WAC are emitted''; The part of 400–110(4)(h)(xxxiv) that says, • ''or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173–460 WAC''; The part of 400–110(4)(h)(xxxv) that says, • ''or ≤ 1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xxxvi) that says, • ''or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173–460 WAC''; 400–110(4)(h)(xl), second sentence; and The last row of the table in 173–400–110(5)(b) regarding exemption levels for Toxic Air Pollutants.
173–400–111 ..	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	12/29/12	04/29/15 [Insert **Federal Register** citation].	Except: 173–400–111(3)(h); 173–400–111(3)(i); The part of 173–400–111(8)(a)(v) that says, • ''and 173–460–040,''; and 173–400–111(9).
173–400–112 ..	Requirements for New Sources in Nonattainment Areas—Review for Compliance with Regulations.	12/29/12	04/29/15 [Insert **Federal Register** citation].	Except: 173–400–112(8).
173–400–113 ..	New Sources in Attainment or Unclassifiable Areas—Review for Compliance with Regulations.	12/29/12	04/29/15 [Insert **Federal Register** citation].	Except: 173–400–113(3), second sentence.
173–400–116 ..	Increment Protection	9/10/11	04/29/15 [Insert **Federal Register** citation].	

TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION—Continued

[Applicable in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction, Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation), and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. These regulations also apply statewide for facilities subject to the applicability sections of WAC 173–400–700, WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
173–400–117 ..	Special Protection Requirements for Federal Class I Areas.	12/29/12	04/29/15 [Insert **Federal Register** citation].	
*	*	*	*	* * *
173–400–171 ..	Public Notice and Opportunity for Public Comment.	12/29/12	04/29/15 [Insert **Federal Register** citation].	Except: The part of 173–400–171(3)(b) that says, • ''or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173–460 WAC''; and 173–400–171(12).
*	*	*	*	* * *
173–400–560 ..	General Order of Approval.	12/29/12	04/29/15 [Insert **Federal Register** citation].	Except: The part of 173–400–560(1)(f) that says, ''173–460 WAC''.
173–400–700 ..	Review of Major Stationary Sources of Air Pollution.	4/1/11	04/29/15 [Insert **Federal Register** citation].	
173–400–710 ..	Definitions	12/29/12	04/29/15 [Insert **Federal Register** citation].	
173–400–720 ..	Prevention of Significant Deterioration (PSD).	12/29/12	04/29/15 [Insert **Federal Register** citation].	Except: 173–400–720(4)(a)(i–iv); 173–400–720(4)(b)(iii)(C); and 173–400–720(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(49)(v), 52.21(i)(5)(i), and 52.21(k)(2).
173–400–730 ..	Prevention of Significant Deterioration Application Processing Procedures.	12/29/12	04/29/15 [Insert **Federal Register** citation].	
173–400–740 ..	PSD Permitting Public Involvement Requirements.	12/29/12	04/29/15 [Insert **Federal Register** citation].	
173–400–750 ..	Revisions to PSD Permits.	12/29/12	04/29/15 [Insert **Federal Register** citation].	Except: 173–400–750(2) second sentence.
*	*	*	*	* * *

* * * * *

■ 3. Section 52.2497 is amended by revising paragraphs (a) and (b) to read as follows:

§ 52.2497 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are not fully met because the plan does not include approvable procedures for preventing the significant deterioration of air quality from:

(1) Facilities subject to the jurisdiction of the Energy Facilities Site Evaluation Council pursuant to Chapter 80.50 Revised Code of Washington (RCW);

(2) Facilities with carbon dioxide (CO_2) emissions from the industrial combustion of biomass in the following circumstances:

(i) Where a new major stationary source or major modification would be subject to Prevention of Significant Deterioration (PSD) requirements for greenhouse gases (GHGs) under § 52.21, but would not be subject to PSD under the state implementation plan (SIP) because CO_2 emissions from the industrial combustion of biomass are excluded from consideration as GHGs as a matter of state law under RCW 70.235.020(3); or

(ii) Where a new major stationary source or major modification is subject to PSD for GHGs under both the Washington SIP and the FIP, but CO_2 emissions from the industrial combustion of biomass are excluded from consideration in the Ecology PSD permitting process because of the exclusion in RCW 70.235.020(3);

(3) Indian reservations in Washington, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area) as provided in the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and

(4) Sources subject to PSD permits issued by the EPA prior to August 7, 1977, but only with respect to the general administration of any such permits still in effect (*e.g.,* modifications, amendments, or revisions of any nature).

(b) *Regulations for preventing significant deterioration of air quality.* The provisions of § 52.21, except paragraph (a)(1), are hereby incorporated and made a part of the applicable plan for Washington for the facilities, emission sources, geographic areas, and permits listed in paragraph (a) of this section. For situations addressed in paragraph (a)(2)(i) of this section, the EPA will issue a Federal PSD permit under § 52.21 to the new major stationary source or major modification addressing PSD requirements applicable to GHGs for all subject emission units at the source, regardless of whether CO_2 emissions resulted from the industrial combustion of biomass or from other sources of GHGs at the facility. For situations addressed in paragraph (a)(2)(ii) of this section, the EPA will issue a Federal PSD permit under § 52.21 addressing PSD requirements applicable to GHGs for each subject emissions unit that is permitted to emit CO_2 from the industrial combustion of biomass.

* * * * *

■ 4. Section 52.2498 is amended by revising paragraphs (a) and (b) to read as follows:

§ 52.2498 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not fully met because the plan does not include approvable procedures for visibility new source review for:

(1) Facilities subject to the jurisdiction of the Energy Facilities Site Evaluation Council pursuant to Chapter 80.50 Revised Code of Washington;

(2) Sources subject to the jurisdiction of local air authorities;

(3) Indian reservations in Washington except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area) as provided in the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

(b) *Regulations for visibility new source review.* The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for Washington for the facilities, emission sources, and geographic areas listed in paragraph (a) of this section.

* * * * *

[FR Doc. 2015–09889 Filed 4–28–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0418; FRL–9925–78]

Phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends an exemption from the requirement of a tolerance for residues of phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- (CAS Reg. No. 23328–53–2) to allow its use on all growing crops as an inert ingredient (ultraviolet (UV) stabilizer) at a maximum concentration of 10% in pesticide formulations, Loveland Products Inc., submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA). This regulation eliminates the need to establish a maximum permissible level for residues of phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-.

DATES: This regulation is effective April 29, 2015. Objections and requests for hearings must be received on or before June 29, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0418, 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: Susan Lewis, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0418 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 29, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0418, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

II. Background and Statutory Findings

In the **Federal Register** of September 5, 2014 (79 FR 53009) (FRL–9914–98), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP IN–10704) by Loveland Products, Inc., 3005 Rocky Mountain Avenue, Loveland, CO 80538. The petition requested that the exemption from the requirement of a tolerance in 40 CFR 180.920 for residues of phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl be amended to allow for use on all growing agricultural crops when used as an inert ingredient (UV stabilizer) at a maximum concentration of 10% weight/weight in pesticide formulations. That document referenced a summary of the petition prepared by the petitioner Loveland Products, Inc., which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

In the **Federal Register** of August 18, 2010 (75 FR 50884) (FRL–8836–3), EPA published a final rule establishing an exemption from the requirement of tolerances for residues of phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- when used as an inert ingredient (UV

stabilizer) at a maximum concentration of 0.6% in insecticide formulations applied to adzuki beans, canola, chickpeas, cotton, fava beans, field peas, lentils, linola, linseed, lucerne, lupins, mung beans, navy beans, pigeon peas, safflower, sunflower, and vetch. Specific information on the studies received and the nature of the adverse effects caused by phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- as well as the NOAEL and the LOAEL from the toxicity studies are discussed in that rulemaking which can be found in the docket under docket ID numbers EPA–HQ–OPP–2008–0602.

Since that rulemaking, as part of the data submitted in support of the current petition, an additional study has been submitted. In this study, a one-generation oral reproduction study (OECD Test Guideline 443) with the rat, the NOAEL for phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- for parental and reproductive toxicity was 10,000 parts per million (ppm) (equal to 618 milligram/kilogram/day (mg/kg/day), the highest dose tested (HDT)). The NOAEL for offspring toxicity was 5,000 ppm (equal to 311 mg/kg/day) based on decreased body weight, body weight gain, increased absolute spleen weights in males and increased incidence of splenic extra medullary hematopoiesis in males at the LOAEL of 10,000 ppm (equal to 618 mg/kg/day). Specific information on the study received and the nature of the adverse effects caused by phenol-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, as well as the NOAEL and LOAEL can found at *http://www.regulations.gov* in the document ''Phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Amendment to the Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Preharvest Pesticide Products'' at pp. 16–19 in docket ID number EPA–HQ–OPP–2014–0418. Based on the results of this study, the NOAEL for parental and reproductive toxicity was 10,000 ppm (equal to 618 mg/kg/day, the HDT). The NOAEL for offspring toxicity was 5,000 ppm (equal to 311 mg/kg/day) based on the decreased body weight, body weight gain, increased absolute spleen weights in males and increased incidence of splenic extra medullary hematopoiesis in males at 10,000 ppm (equal to 618 mg/kg/day).

B. Toxicological Points of Departure/Levels of Concern

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

No acute effects were observed from a single dose so no acute POD was selected. The POD for risk assessment for all remaining durations and routes of exposure was from the 90-day toxicity study in rats. The NOAEL was 20 mg/kg/day and the LOAEL was 40 mg/kg/day based on increases in liver, kidney, spleen, and testes weights. Although the chronic point of departure was selected from a subchronic study, no additional uncertainty factor is necessary for use of subchronic study for chronic exposure assessment since available longer-term studies shows the lack of toxicity even at higher doses. A 100-fold uncertainty factor was used for the chronic exposure (10X interspecies extrapolation, 10X for intraspecies variability and 1X Food Quality Protection Act (FQPA) factor. The NOAEL of 20 mg/kg/day was used for all exposure duration via dermal and inhalation routes of exposure. The residential, occupational and aggregate level of concern (LOC) is for MOEs that are less than 100 and is based on 10X interspecies extrapolation, 10X for intraspecies variability and 1X FQPA factor. Dermal absorption is estimated to be 10% based on SAR analysis. A 100% inhalation absorption is assumed.

In the **Federal Register** of August 18, 2010 (75 FR 50884) (FRL–8836–3), EPA applied 10X FQPA factor for the lack of a reproduction study; however, the recently submitted Extended One-Generation Reproduction Toxicity Study of Tinuvin 571 in Wistar Rats provides a reliable basis for reducing the FQPA factor used in the previous risk assessment to 1X.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- in food as follows: Because no acute endpoint was identified, no acute dietary exposure assessment was conducted.

In conducting the chronic dietary exposure assessment using the Dietary Exposure Evaluation Model/Food Commodity Intake Database (DEEM–FCID)™, Version 3.16, EPA used food consumption information from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. As to residue levels in food, no residue data were submitted for phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-. In the absence of specific residue data, EPA has developed an approach that uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

In the case of phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- that may be in formulations (no more than 10% by weight in pesticide products applied to growing crops) and assumed that phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- is present at the maximum limitation in all pesticide product formulations used on growing crops.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, a conservative drinking water concentration value of 100 parts per billion (ppb) based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Residential uses of pesticides containing phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- are extremely limited. However, in order to account for all of the current and unanticipated potential residential uses of pesticide products containing phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- various exposure models were employed. The Agency believes that the scenarios assessed represent highly conservative worst-case short-term and intermediate-term exposures and risks to residential handlers and those experiencing post-application exposure resulting from the use of indoor and outdoor pesticide products containing this inert ingredient in residential environments. Based on the use pattern, chronic exposure is not anticipated. Therefore, the risk from the chronic residential exposure was not assessed.

Further details of this residential exposure and risk analysis can be found at *http://www.regulations.gov* in the memorandum entitled ''JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations'' (D364751, Lloyd/LaMay, 5/7/09) in docket ID number EPA–HQ–OPP–2008–0710.

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

EPA has not found phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, to share a common mechanism of toxicity with any other substances, and phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* Developmental studies have been conducted on two structurally similar chemicals. In one study, no maternal toxicity was evident and the rates of implantation and embryo toxicity were not affected by treatment in rats. No teratogenic effects were observed; however, the study does not specify what developmental endpoints were examined. The NOAEL for maternal and developmental toxicity was 1,000 mg/kg/day (HDT). In a separate study, there was no evidence of increased susceptibility in this developmental toxicity study in rats and mice at 1,000 mg/kg/day. In a second study in rats, no maternal toxicity was observed at any dose tested. The maternal toxicity NOAEL was 3,000 mg/kg/day. The developmental NOAEL was 1,000 mg/kg/day based on omphalocele seen in the one fetus in the high dose group (LOAEL 3,000 mg/kg/day). The data suggest evidence of increased susceptibility in this developmental toxicity study in rats. However, there is a low concern for this susceptibility because the adverse effect (omphalocele) was seen at a very high dose of 3,000 mg/kg/day and only in one fetus. In addition, the study did not provide historical controls that would assist in making a determination as to whether this effect is treatment related.

No adverse reproductive effects were observed in a one-generation reproductive toxicity study in rats at dose levels up to 10,000 ppm; equal to 618 mg/kg/day, the HDT. There is a quantitative evidence of increased susceptibility in the one-generation reproduction study in rats. In this study, the NOAEL for offspring toxicity was 5,000 ppm (equal to 311 mg/kg/day) based on decreased body weight, body weight gain, increased absolute spleen weights in males and increased incidence of splenic extra medullary hematopoiesis in males at the LOAEL of 10,000 ppm (equal to 618 mg/kg/day), while no systemic toxicity was observed in parental animals at doses up to 10,000 ppm (equal to 618 mg/kg/day). However, the concern for this susceptibility is low since there is a well characterized NOAEL for protecting the offspring and the NOAEL selected for chronic RfD is more than 12 fold lower. Therefore, there is no need for additional uncertainty factor.

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

i. The toxicity database for phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, is complete. Previously (2010), EPA identified study measuring reproductive parameters and lack of Immunotoxicity study as the data gaps. Since the last assessment, EPA received the one generation reproduction study. EPA concluded that the Immunotoxicity study is not required because the newly submitted study and previously reviewed studies do not show any indication of Immunotoxicity except one 90-day toxicity study in rats showing slight increases in spleen weights without histopathological findings and without changes in the blood parameters was observed at the HDT (80 mg/kg/day). Since this is an isolated finding, EPA concluded that the Immunotoxicity study is not required.

ii. There is no indication that phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity. No clinical signs of neurotoxicity were seen in any of the

repeat dose studies with phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-.

iii. No evidence of Immunotoxicity was seen in the available database except in one 90-day toxicity study in rats showing slight increases in spleen weights without histopathological findings and without changes in the blood parameters was observed at the HDT (80 mg/kg/day). Since this is isolated findings, EPA concluded that the Immunotoxicity study is not required.

iv. There is qualitative evidence of post natal susceptibility in 1-generation reproduction study in rats, however, EPA concluded that there is no need for additional uncertainty factor since there is well characterized NOAEL protecting the offspring and the NOAEL selected for chronic RfD is more than 12 fold lower.

v. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed using highly conservative model assumptions including 100 percent crop treated (PCT) and residue levels in crops equivalent to the highest established active ingredient tolerance. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk. A*n acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- from food and water will utilize 70.6% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure: Based on the explanation in this unit, regarding residential use patterns, chronic residential exposure to residues of phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl -, is not expected.

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

Phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, is currently used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-,.

Using the exposure assumptions described in this unit for short-term exposures and the use limitation described previously in Unit C. EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 170 for adult males and females. Adult residential exposure combines high-end dermal and inhalation handler exposure from liquids/trigger sprayer in home gardens with a high-end post-application dermal exposure from contact with treated lawns. EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 140 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to mouth exposures). The EPA's level of concern for phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- is for MOEs that are lower than 100; therefore, these MOEs are not of concern.

4. *Intermediate-term risk.* Phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, is currently used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-.

Intermediate-term aggregate risk assessment was not conducted because short-term aggregate risk assessment is protective of intermediate-term aggregate risk since the same endpoint of concern has been identified for both exposure durations.

5. *Aggregate cancer risk for U.S. population.* Phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- is not expected to pose a cancer risk to humans since there was no evidence of carcinogenicity in the available studies.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- in or on any food commodities. EPA is establishing a limitation on the amount of phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, that may be used in pesticide formulations. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide for sale or distribution that contains greater than 10% of phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, by weight in the pesticide formulation.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.920 for phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl- (CAS Reg. No. 23328–53–2) when used as an inert ingredient (UV stabilizer) at a maximum concentration of 10% in pesticide formulations applied to growing crops.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735,

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

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 16, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.920 revise the inert ingredient, phenol, 2-(2H-benzotriazole-2-yl)-6-dodecyl-4-methyl- (CAS Reg. No. 23328–53–2) in the table to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * *	* * *	*
Phenol, 2-(2H-benzotriazol-2-yl)-6-dodecyl-4-methyl-, (CAS Reg. No. 23328–53–2).	Not more than 10% by weight of pesticide formulations.	UV stabilizer.
* * * *	* * *	*

[FR Doc. 2015–09740 Filed 4–28–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 141021887–5172–02]

RIN 0648–XD920

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2015 Greenland turbot initial total allowable catch (ITAC) in the Aleutian Islands subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 1, 2015, through 2400 hrs, A.l.t., December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

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

The 2015 Greenland turbot ITAC in the Aleutian Islands subarea of the BSAI is 170 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015). The Regional Administrator has determined that the 2015 ITAC for Greenland turbot in the Aleutian Islands subarea of the BSAI is necessary to account for the

incidental catch of this species in other anticipated groundfish fisheries for the 2015 fishing year. Therefore, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowance for Greenland turbot in the Aleutian Islands subarea of the BSAI as zero mt. Consequently, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Greenland turbot in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as April 23, 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: April 24, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–09984 Filed 4–24–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 82
Wednesday, April 29, 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–2015–0593; Directorate Identifier 2015–NE–08–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Rolls-Royce plc (RR) RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 turbofan engines. This proposed AD was prompted by RR updating the life limits for certain high-pressure turbine (HPT) disks. This proposed AD would require reducing the cyclic life limits for certain HPT disks, removing those disks that have exceeded the new life limit, and replacing them with serviceable parts. We are proposing this AD to prevent failure of the HPT disk, which could result in uncontained disk release, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by June 29, 2015.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: 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: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 202–493–2251.

For service information identified in this proposed AD, Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Internet: *https://www.aeromanager.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2015–0593; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0593; Directorate Identifier 2015–NE–08–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 with FAA personnel concerning this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2014–0249R1, dated February 18, 2015 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An engineering analysis, carried out by RR, of the lives of critical parts of the RB211–535E4–37 engine, has resulted in reduced cyclic life limits for certain high pressure (HP) turbine discs. The reduced limits are published in the RR RB211–535E4–37 Time Limits Manual (TLM): 05–10–01–800–000, current Revision dated July 2014.
>
> Operation of critical parts beyond these reduced cyclic life limits may result in part failure, possibly resulting in the release of high-energy debris, which may cause damage to the aeroplane and/or injury to the occupants.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0593.

Related Service Information Under 1 CFR Part 51

We reviewed RR Non-Modification Service Bulletin (NMSB) No. RB.211–72–G188, Revision No. 1, dated October 30, 2013, and RR RB211–535E4–37, Time Limits Manual (TLM): 05–10–01–800–000, Revision dated July 1, 2014; and RR RB211–535E4–37, TLM: 05–00–01–800–000, Revision dated July 1, 2014. The NMSB describes the updated lifing analysis of the affected HP turbine disks. The TLMs provide revised life limits for the affected HP turbine disks. This service information is reasonably available because the interested parties have access to it through their normal course of business or see **ADDRESSES** for other ways to access this service information.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all

information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require reducing the cyclic life limits for certain HPT disks, removing those disks that have exceeded the new life limit, and replacing them with serviceable parts.

Costs of Compliance

We estimate that this proposed AD affects 650 engines installed on airplanes of U.S. registry. We also estimate that it would take about 0 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Pro-rated cost of required parts cost would be about $12,213 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $7,938,450.

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 to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

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):

Rolls-Royce plc: Docket No. FAA–2015–0593; Directorate Identifier 2015–NE–08–AD.

(a) Comments Due Date

We must receive comments by June 29, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce plc (RR), RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 turbofan engines.

(d) Reason

This AD was prompted by RR updating the life limits for certain high-pressure turbine (HPT) disks. We are issuing this AD to prevent failure of the HPT disk, which could result in uncontained disk release, damage to the engine, and damage to the airplane.

(e) Actions and Compliance

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

(1) After the effective date of this AD, use RR RB211–535E4–37 Time Limits Manual (TLM): 05–10–01–800–000, Revision dated July 1, 2014 (referred to hereafter as 'the TLM'), to determine the new life limits for the affected engine models and configurations, with the exception of those engine models mentioned in paragraph (e)(2) of this AD.

(2) For RR RB211–535E4–B–37 or RB211–535E4–C–37 engines with an affected HPT disk that was previously installed on an RB211–535E4–37 engine operated under Flight Plan A, use task 05–00–01–800–000 in the TLM to re-calculate equivalent cycles since new to obtain the new life limit.

(3) If an affected engine model has an HPT disk installed with P/N UL27681 or UL39767, remove the affected HPT disk before the accumulated cyclic life exceeds either 19,500 flight cycles (FCs) under Flight Plan A, or 14,700 FCs under Flight Plan B, or within 25 FCs after the effective date of this AD, whichever occurs later.

(4) For all affected engines, other than those specified in paragraph (e)(3) in this AD, remove each HPT disk before exceeding its applicable life limit as specified in the TLM.

(5) Install an HPT disk eligible for installation.

(f) Definition

For the purpose of this AD, a part eligible for installation is one with a part number listed in the TLM with a total accumulated cyclic life that is less than the applicable life limit specified in the TLM.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

(1) For more information about this AD, contact Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2014–0249R1, dated February 18, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–0593.

(3) RR Non-Modification Service Bulletin No. RB.211–72–G188, Revision No. 1, dated October 30, 2013, and RR RB211–535E4–37, TLM: 05–10–01–800–000, Revision dated July 1, 2014; and RR RB211–535E4–37, TLM: 05–00–01–800–000, Revision dated July 1, 2014, which are not incorporated by reference in this AD, can be obtained from Rolls-Royce plc, using the contact information in paragraph (h)(4) of this proposed AD.

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

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on April 22, 2015.

Colleen M. D'Alessandro,

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

[FR Doc. 2015–09816 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0932; Directorate Identifier 2014–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–8 series airplanes. This proposed AD was prompted by a report of improperly installed outboard stowage bin modules in the passenger compartment found during maintenance. Further investigation revealed that certain attachment bracket bushings were missing or had moved out of the holes. This proposed AD would require installing a spacer on the end of each quick-release pin that attaches the outboard stowage bin module to the lateral support tie rods of the main deck passenger compartment. We are proposing this AD to prevent detachment of the quick-release pin, which could result in separation of the lateral support tie rod and subsequent detachment of the module and consequent injuries to passengers or flightcrew.

DATES: We must receive comments on this proposed AD by June 15, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0932.

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–2015–0932; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6585; fax: 425–917–6590; email: *stanley.chen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0932; Directorate Identifier 2014–NM–205–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received a report of improperly installed outboard stowage bin modules in the passenger compartment found during maintenance. Further investigation revealed that certain attachment bracket bushings of the outboard stowage bin module were missing or had moved out of the holes, and pins were installed incorrectly. These bushings were designed to prevent disengagement of the quick release pins; however, migration of the bushings deters this. It was determined that the interference fit of the bushings in the attachment brackets was incorrect. Subsequently, installation of the quick release pins during production has caused bushings to migrate or detach. This condition, if not corrected, could result in separation of the lateral support tie rod, detachment of the outboard stowage bin module, and consequent injuries to passengers or flightcrew.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 747–25–3649, dated July 24, 2014. The service information describes procedures for installing a spacer on the end of each quick-release pin that attaches the outboard stowage bin module to the lateral support tie rods of the main deck passenger compartment. Refer to this service information for information on the procedures and compliance times. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information identified previously.

Explanation of ''RC'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee, to enhance the AD system. One enhancement was a

new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The actions specified in the service information described previously include steps that are labeled as RC (required for compliance) because these steps have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

Steps that are identified as RC in any service information must be done to comply with the proposed AD. However, steps that are not identified as RC are recommended. Those steps that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the steps identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps identified as RC will require approval of an AMOC.

Costs of Compliance

We estimate that this proposed AD affects 2 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Spacer installations	Up to 12 work-hours X $85 per hour = Up to $1,020	$0	$85 per spacer	Up to $2,040.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2015–0932; Directorate Identifier 2014–NM–205–AD.

(a) Comments Due Date

We must receive comments by June 15, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–8 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–25–3649, dated July 24, 2014.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of improperly installed outboard stowage bin modules in the passenger compartment found during maintenance. Further investigation revealed that certain attachment bracket bushings were missing or had moved out of the holes. We are issuing this AD to prevent detachment of the quick-release pin, which could result in separation of the lateral support tie rod and subsequent detachment of the module and consequent injuries to passengers or flightcrew.

(f) Compliance

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

(g) Installation

Within 36 months after the effective date of this AD: Install a spacer on the end of each quick-release pin that attaches the outboard stowage bin module to the lateral support tie rods of the main deck passenger compartment, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–25–3649, dated July 24, 2014.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(3) If any service information contains steps that are identified as RC (Required for

Compliance), those steps must be done to comply with this AD; any steps that are not identified as RC are recommended. Those steps that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC provided the steps identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps identified as RC require approval of an AMOC.

(i) Related Information

(1) For more information about this AD, contact Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6585; fax: 425–917–6590; email: *stanley.chen@faa.gov*.

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

Issued in Renton, Washington, on April 13, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–09793 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0095; Directorate Identifier 2015–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Rolls-Royce plc (RR) RB211–524B–02, RB211–524B2–19, RB211–524B3–02, RB211–524B4–02, RB211–524B4–D–02, RB211–524C2–19, RB211–524D4–19, RB211–524D4–39, and RB211–524D4X–19 turbofan engines. This proposed AD was prompted by several failures of affected high-pressure turbine (HPT) blades. This proposed AD would require removing affected HPT blades. We are proposing this AD to prevent failure of the HPT blade, which could lead to failure of one or more engines, loss of thrust control, and damage to the airplane.

DATES: We must receive comments on this proposed AD by June 29, 2015.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Internet: *https://www.aeromanager.com*. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2015–0095; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Katheryn Malatek, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *katheryn.malatek@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0095; Directorate Identifier 2015–NE–01–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 with FAA personnel concerning this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2014–0250, dated November 19, 2014 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There were a number of pre-MOD/SB 72–7730 High Pressure Turbine (HPT) blade failures, with some occurring within a relatively short time. Engineering analysis carried out by RR on those occurrences indicates that certain pre-MOD/SB 72–7730 blades, Part Number (P/N) UL32958 and P/N UL21691 (hereafter referred to as 'affected HPT blade'), with an accumulated life of 6500 flight hours (FH) since new or more, have an increased risk of in-service failure.
>
> This condition, if not corrected, could lead to HPT blade failure, release of debris and consequent (partial or complete) loss of engine power, possibly resulting in reduced control of the aeroplane.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0095.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require removal of the affected HPT blades.

Costs of Compliance

We estimate that this proposed AD affects 6 engines installed on airplanes of U.S. registry. We also estimate that it would take about 4 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Prorated cost of required parts is about $250,000 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,502,040.

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 to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

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):

Rolls-Royce plc: Docket No. FAA–2015–0095; Directorate Identifier 2015–NE–01–AD.

(a) Comments Due Date

We must receive comments by June 29, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce plc (RR) RB211–524B–02, RB211–524B2–19, RB211–524B3–02, RB211–524B4–02, RB211–524B4–D–02, RB211–524C2–19, RB211–524D4–19, RB211–524D4–39, and RB211–524D4X–19 turbofan engines with high-pressure turbine (HPT) blades, part numbers (P/Ns) UL32958 and UL21691, installed.

(d) Reason

This AD was prompted by several failures of affected HPT blades. We are issuing this AD to prevent failure of the HPT blade, which could lead to failure of one or more engines, loss of thrust control, and damage to the airplane.

(e) Actions and Compliance

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

After the effective date of this AD, within 2 months or before exceeding 6,500 flight hours since first installation of HPT blades, P/Ns UL32958, and UL21691, on an engine, whichever occurs later, remove all affected HPT blades from service.

(f) Alternative Methods of Compliance (AMOCs)

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

(g) Related Information

(1) For more information about this AD, contact Katheryn Malatek, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *katheryn.malatek@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2014–0250, dated November 19, 2014, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–0095.

Issued in Burlington, Massachusetts, on April 22, 2015.

Colleen M. D'Alessandro,

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

[FR Doc. 2015–09815 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

RIN 0648–BD97

Proposed Expansion, Regulatory Revision and New Management Plan for the Public Hearings

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public hearings.

SUMMARY: On March 26, 2015, NOAA published a proposed rule in the **Federal Register** proposing to expand the boundaries and scope of the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) (80 FR 16224). This document adds two additional hearings to the public hearings listed in the proposed rule. The end of the scoping period remains June 19, 2015.

DATES: NOAA will accept public comments on the notice of proposed rulemaking published at 80 FR 16224 (March 26, 2015), the draft environmental impact statement, and draft management plan through June 19, 2015.

ADDRESSES: The instructions for submitting comments are detailed in the proposed rule published on March 26, 2015 (80 FR 16224). You may submit comments on this document, identified by NOAA–NOS–2015–0028, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/*

#!docketDetail;D=NOAA-NOS-2015-0028, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Public comments may be mailed to Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA/DKIRC, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, Attn: Malia Chow, Superintendent.

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

FOR FURTHER INFORMATION CONTACT: Malia Chow, Superintendent, Hawaiian Islands Humpback Whale National Marine Sanctuary at 808–725–5901 or *hihwmanagementplan@noaa.gov.*

Copies of the draft environmental impact statement and proposed rule can be downloaded or viewed on the Internet at *www.regulations.gov* (search for docket # NOAA–NOS–2015–0028) or at *http://hawaiihumpbackwhale.noaa.gov.* Copies can also be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: In addition to the ten hearings listed in the proposed rule (80 FR 16224) published on March 26, 2015, two public hearings will be held in the following locations at the locales and times indicated:

(1) Waimea, HI (Kaua'i)

Date: May 5, 2015

Location: Waimea Canyon Middle School Cafeteria

Address: 9555 Huakai Road, Waimea, Hawaii 96796

Time: 5:30 p.m.—8 p.m.

(2) Hilo, HI (Hawai'i)

Date: May 11, 2015

Location: Mokupāpapa Discovery Center

Address: 76 Kamehameha Avenue, Hilo, HI 96720

Time: 4:30 p.m.—7 p.m.

Authority: 16 U.S.C. 1431 *et seq.*

Dated: April 21, 2015.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. 2015–10015 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 725

RIN 1240–AA10

Black Lung Benefits Act: Disclosure of Medical Information and Payment of Benefits

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department is proposing revisions to the Black Lung Benefits Act (BLBA) regulations to address several procedural issues that have arisen in claims processing and adjudications. To protect a miner's health and promote accurate benefit determinations, the proposed rule would require parties to disclose all medical information developed in connection with a claim for benefits. The proposed rule also would clarify that a liable coal mine operator is obligated to pay benefits during post-award modification proceedings and that a supplemental report from a physician is considered merely a continuation of the physician's earlier report for purposes of the evidence-limiting rules.

DATES: The Department invites written comments on the proposed regulations from interested parties. Written comments must be received by June 29, 2015.

ADDRESSES: You may submit written comments, identified by RIN number 1240–AA10, by any of the following methods. To facilitate receipt and processing of comments, OWCP encourages interested parties to submit their comments electronically.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.

• *Facsimile:* (202) 693–1395 (this is not a toll-free number). Only comments of ten or fewer pages, including a Fax cover sheet and attachments, if any, will be accepted by Fax.

• *Regular Mail:* Submit comments on paper, disk, or CD–ROM to the Division of Coal Mine Workers' Compensation Programs, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–3520, 200 Constitution Avenue NW., Washington, DC 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must take this into consideration when preparing to meet the deadline for submitting comments.

• *Hand Delivery/Courier:* Submit comments on paper, disk, or CD–ROM to Division of Coal Mine Workers' Compensation Programs, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–3520, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Chance, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW., Suite N–3520, Washington, DC 20210. Telephone: 1–800–347–2502. This is a toll-free number. TTY/TDD callers may dial toll-free 1–800–877–8339 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

The BLBA, 30 U.S.C. 901–944, provides for the payment of benefits to coal miners and certain of their dependent survivors on account of total disability or death due to coal workers' pneumoconiosis. 30 U.S.C. 901(a); *Usery* v. *Turner Elkhorn Mining Co.,* 428 U.S. 1, 5 (1976). Benefits are paid by either an individual coal mine operator that employed the coal miner (or its insurance carrier), or the Black Lung Disability Trust Fund. *Director, OWCP* v. *Bivens,* 757 F.2d 781, 783 (6th Cir. 1985). The Department has undertaken this rulemaking primarily to resolve several procedural issues that have arisen in claims administration and adjudication. Each of these issues is fully explained in the Section-By-Section Explanation below.

II. Summary of the Proposed Rule

A. General Provisions

The Department is proposing several general revisions to advance the goals

set forth in Executive Order 13563. 76 FR 3821 (Jan. 18, 2011). That Order states that regulations must be ''accessible, consistent, written in plain language, and easy to understand.'' *Id.; see also* E.O. 12866, 58 FR 51735 (Sept. 30, 1993) (Agencies must draft regulations that are ''simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.''). Accordingly, the Department proposes to remove the imprecise term ''shall'' throughout those sections it is amending and substitute ''must,'' ''must not,'' ''will,'' or other situation-appropriate terms. These changes are designed to make the regulations clearer and more user-friendly. *See generally* Federal Plain Language Guidelines, *http://www.plainlanguage.gov/howto/guidelines.* In some instances, the Department has also made minor technical revisions to these sections to comply with the Office of the Federal Register's current formatting requirements. *See, e.g.,* proposed § 725.414(a)(2)(ii) (inserting ''of this chapter'' after reference to § 718.107). No change in meaning is intended.

B. Section-by-Section Explanation

20 CFR 725.310 Modification of awards and denials.

Section 725.310 implements section 22 of the Longshore and Harbor Workers' Compensation Act (Longshore Act or LHWCA), 33 U.S.C. 922, as incorporated into the BLBA by section 422(a) of the Act, 30 U.S.C. 932(a). Section 22 generally allows for the modification of claim decisions based on a mistake of fact or a change in conditions up to one year after the last payment of benefits or denial of a claim. The Department proposes several revisions to this regulation to ensure that responsible operators (and their insurance carriers) fully discharge their payment obligations while pursuing modification.

While modification is a broad remedy available to responsible operators as well as claimants, a mere request for modification does not terminate an operator's obligation to comply with the terms of a prior award, or otherwise undermine the effectiveness, finality, or enforceability of a prior award. *See Vincent* v. *Consolidated Operating Co.,* 17 F.3d 782, 785–86 (5th Cir. 1994) (enforcing award despite employer's modification request); *Williams* v. *Jones,* 11 F.3d 247, 259 (1st Cir. 1993) (same); *Hudson* v. *Pine Ridge Coal Co.,* No. 11–00248, 2012 WL 386736, *5 (S.D. W.Va. Feb. 6, 2012) (same); *see also National Mines Corp.* v. *Carroll,* 64 F.3d 135, 141 (3d Cir. 1995) (''[A]s the DOL points out in its brief, 'as a general rule, the mere existence of modification proceedings does not affect the finality of an existing award of compensation.' ''); *Crowe ex rel. Crowe* v. *Zeigler Coal Co.,* 646 F.3d 435, 445 (7th Cir. 2011) (Hamilton, J., concurring) (''If Zeigler Coal believed the June 2001 award of benefits was wrong, it was entitled to seek modification. But Zeigler Coal was not legally entitled simply to ignore the final order of payment.''). Thus, an operator must continue to pay any benefits due under an effective award even when seeking to overturn that award through a section 22 modification proceeding.

The plain language of the Act and its implementing regulations support this conclusion. An operator is required to pay benefits ''after an effective order requiring the payment of benefits''—generally an uncontested award by a district director or any award by an administrative law judge, the Benefits Review Board, or a reviewing court—even if the operator timely appeals the effective award. 20 CFR 725.502(a)(1); *see also* 33 U.S.C. 921(a), as incorporated by 30 U.S.C. 932(a). There is only one exception to an operator's obligation to pay benefits owed under an effective award: The Board or a reviewing court may issue a stay pending its resolution of an appeal based on a finding that ''irreparable injury would otherwise ensue to the employer or carrier.'' 30 U.S.C. 921(a)(3), (c); *see also* 20 CFR 725.482(a), 725.502(a)(1). Otherwise, an effective award requires payment until it is (1) ''vacated by an administrative law judge on reconsideration,'' (2) ''vacated . . . upon review under section 21 of the LHWCA, by the Benefits Review Board or an appropriate court,'' or (3) ''superseded by an effective order issued pursuant to § 725.310.'' 20 CFR 725.502. Notably absent from this list is a request for modification pursuant to § 725.310. Thus, only an administrative or judicial order relieves the operator of the obligation to pay benefits, even if the operator continues to contest the award. The operator may not terminate the obligation unilaterally.

Despite this clear authority, some operators obligated to pay benefits to claimants (and to repay the Black Lung Disability Trust Fund for interim benefit payments) by the terms of effective or final awards have refused to comply with those obligations, claiming that a subsequent modification request excuses their non-compliance. *See, e.g., Crowe,* 646 F.3d at 447 (Hamilton, J., concurring); *Hudson,* 2012 WL 386736, *3. In addition to being contrary to the unanimous weight of the courts of appeals and the plain text of the controlling statutory and regulatory provisions, the practice has a number of negative consequences.

First, it prevents claimants from timely receiving all the benefits to which they are entitled. If an operator fails to comply with the terms of an effective award, the Black Lung Disability Trust Fund pays benefits to the claimant in the operator's stead. *See* 20 CFR 725.522(a). But, in any claim filed after 1981, the Trust Fund is statutorily prohibited from paying retroactive benefits, *i.e.,* benefits owed for the period of time between the entitlement date specified in the order (typically the date the miner filed his or her claim or the date of the miner's death) and the initial determination that the claimant is entitled to benefits. 26 U.S.C. 9501(d)(1)(A)(ii). These retroactive benefits are sometimes substantial, and an operator's failure to pay them while pursuing modification imposes a similarly substantial burden on the claimant. *See Crowe,* 646 F.3d at 446 (''[T]he effect of Zeigler Coal's decision to disobey the final payment order [while it pursued modification for ten years] was to deny Mr. Crowe the $168,000 in back benefits to which he had been found entitled.'')

The Act currently provides two mechanisms for claimants to enforce these liabilities. Section 21(d) of the Longshore Act, 33 U.S.C. 921(d), as incorporated into the BLBA by section 422(a) of the Act, 30 U.S.C. 932(a), and implemented by 20 CFR 725.604, provides for the enforcement of final awards. And section 18(a) of the Longshore Act, 33 U.S.C. 918(a), as incorporated into the BLBA by section 422(a) of the Act, 30 U.S.C. 932(a), and implemented by 20 CFR 725.605, does the same for effective awards. These remedies are, however, imperfect. Even if the previous award is final, section 21(d) still requires the claimant to file an enforcement action in federal district court to secure compliance with the award, a substantial barrier for unrepresented claimants. And even for represented claimants, the process can be a source of substantial delay. For example, the district court's order enforcing a final award under section 21(d) in *Nowlin* v. *Eastern Associated Coal Corp.,* 266 F. Supp. 2d 502 (N.D. W.Va. 2003), was issued more than two years after the complaint was filed, and the consequent attorney's fee dispute took another seven months to resolve. Such delays should be minimized where possible to ensure prompt

compensation for claimants. A claimant seeking to enforce an effective but non-final award faces the same barriers, plus the additional hurdles of section 18(a)'s one-year limitations period and its requirement to obtain a supplemental order of default from the district director.

Second, the practice improperly shifts financial burdens from the responsible operator to the Trust Fund contrary to Congress's intent. Congress created the Trust Fund in 1978 to assume responsibility for claims for which no operator was liable or in which the responsible operator defaulted on its payment obligations. But Congress intended to ''ensure that individual coal operators rather than the trust fund bear the liability for claims arising out of such operator's mines, to the maximum extent feasible.'' S. Rep. No. 95–209 at 9 (1977), reprinted in Committee on Education and Labor, House of Representatives, 96th Cong., Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977 at 612 (Comm. Print) (1979). Thus, operators are required to reimburse the Trust Fund for all benefits it paid to a claimant on the operator's behalf under an effective or final order. *See* 30 U.S.C. 934(b); 20 CFR 725.522(a), 725.601–603.

This intent is undermined if an operator does not pay benefits or reimburse the Trust Fund while seeking to modify an effective award. One of the few events that terminates an effective order is being ''superseded by an effective order issued pursuant to § 725.310.'' 20 CFR 725.502(a)(1). Thus, if an operator evades its obligation to pay benefits under the terms of an effective or final order until it successfully modifies that order under § 725.310, the operator may entirely evade its obligation to pay benefits (or to reimburse the Trust Fund for paying benefits on the operator's behalf) under the initial order. Moreover, because § 725.310(d) allows only certain benefits paid under a previously effective order to be recovered (generally only benefits for periods after modification was requested), the Trust Fund will be unable to recoup benefits paid prior to that date from the claimant. And the Trust Fund's right to recover the remaining overpayment is of little practical value in many cases given that claimants may be entitled to waiver of overpayments by operation of §§ 725.540–548.

Section 725.502's requirement that operators pay benefits owed under the terms of effective (as well as final) awards is designed to place these overpayment recovery risks where they properly belong: On the operator who, if successful, has the same overpayment recoupment rights as the Trust Fund. *See* 65 FR 80009–80011 (explaining rationale for § 725.502); 20 CFR 725.547 (extending overpayment provisions to operators and their insurance carriers). The tactic of refusing to pay benefits owed while seeking modification threatens to transfer this risk to the Trust Fund, essentially rewarding operators that behave lawlessly and encouraging others to do the same. *See Crowe,* 646 F.3d at 446–47.

To deal with this recurring problem, the Department proposes adding new paragraph (e) to § 725.310. Proposed paragraphs (e)(1) and (2) provide that an operator's request to modify any effective award will be denied unless the operator proves that it has complied with all of its obligations under that award, and any other currently effective award (such as an attorney fee award) in the claim, unless payment has been stayed. By incorporating § 725.502(a)'s definition of effective award, the proposed regulation clarifies that an operator is not required to prove compliance with formerly effective awards that have been vacated either on reconsideration by an administrative law judge, or on appeal by the Board or a court of appeals, or that have been superseded by an effective modification order.

Proposed paragraph (e)(3) integrates the requirements of paragraph (e)(1) into the overall modification procedures outlined by § 725.310(b)–(c). The Department anticipates that compliance with the requirements of outstanding effective awards will be readily apparent from the documentary evidence in most cases and that any non-compliance with those obligations will be easily correctable by the operator based on that evidence. Accordingly, paragraph (e)(3) encourages the parties to submit all documentary evidence at the earliest stage of the modification process (*i.e.,* during proceedings before the district director) by forbidding the admission of any new documentary evidence addressing the operator's compliance with paragraph (e)(1) at any subsequent stage of the litigation absent extraordinary circumstances. The Department intends that the term ''extraordinary circumstances'' in this context be understood the same way that the identical term has been applied in cases governed by § 725.456(b)(1). *See, e.g., Marfork Coal Co.* v. *Weis,* 251 F. App'x 229, 236 (4th Cir. 2007) (operator failed to demonstrate ''extraordinary circumstances'' justifying late submission of evidence under § 725.456(b)(1) where evidence was not ''hidden or could not have been located'' earlier).

Proposed paragraph (e)(4) clarifies that an operator has a continuing obligation to comply with the requirements of effective awards during all stages of a modification proceeding. The Department believes that imposing an affirmative obligation on operators to continually update the administrative law judge, Board, or court currently adjudicating its modification request about every continuing payment required by previous awards would be unduly burdensome on both operators and adjudicators. When an operator's non-compliance is brought to an adjudication officer's attention, however, the adjudicator must issue an order to show cause why the operator's modification petition should not be denied. Because the issue will be the operator's compliance with paragraph (e)(1) at the time of the order rather than at the time it requested modification, evidence relevant to this issue will be admissible even in the absence of extraordinary circumstances. In addition, to avoid the burden of a minor default resulting in the denial of modification, paragraph (e)(4) gives the operator an opportunity to cure any default identified by the Director or claimant before the modification petition is denied.

Proposed paragraph (e)(5) clarifies that the denial of a modification request on the ground that the operator has not complied with its obligations under previous effective awards will not prejudice the operator's right to make additional modification requests in that same claim in the future. At the time of that future request, of course, the operator must satisfy all modification requirements, including § 725.310(e).

Finally, proposed paragraph (e)(6) makes these requirements applicable only to modification requests filed on or after the effective date of the final rule. Making the rule applicable prospectively avoids any administrative difficulties that could arise from applying the rule's requirements to pending modification requests.

20 CFR 725.413 Disclosure of Medical Information

The Department proposes a new provision that requires the parties to disclose all medical information developed in connection with a claim. Currently, parties to a claim are free to develop medical information to the extent their resources allow and then select from that information those pieces they wish to submit into evidence, subject to the evidentiary limitations set out in § 725.414. *See* 20

CFR 725.414. Medical information developed but not submitted into evidence generally remains in the sole custody of the party who developed it unless an opposing party obtains the information through a formal discovery process.

Experience has demonstrated that miners may be harmed if they do not have access to all information about their health, including information that is not submitted for the record. Claimants who do not have legal representation are particularly disadvantaged because generally they are unfamiliar with the formal discovery process and thus rarely obtain undisclosed information. Moreover, benefit decisions based on incomplete medical information are less accurate. These results are contrary to the clear intent of the statute.

One recent case, *Fox* v. *Elk Run Coal Co.,* 739 F.3d 131 (4th Cir. 2014), aptly demonstrates these problems. Mr. Fox worked in coal mines for more than thirty years. In 1997, a chest X-ray disclosed a mass in his right lung. A pathologist who reviewed tissue collected from the mass during a 1998 biopsy diagnosed an inflammatory pseudotumor. Acting without legal representation, Mr. Fox filed a claim for black lung benefits in 1999. The responsible operator submitted radiologists' reports and opinions from four pulmonologists, all concluding that Mr. Fox did not have coal workers' pneumoconiosis. The operator had developed additional medical information, however—opinions from two pathologists who reviewed the 1998 biopsy tissue and other records and then authored opinions supporting the conclusion that Mr. Fox had complicated pneumoconiosis, an advanced form of the disease. But the operator did not submit the pathologists' reports into the record, provide them to Mr. Fox, or share them with the pulmonologists it hired. An administrative law judge denied Mr. Fox's claim in 2001. To support his family, Mr. Fox continued to work in the mines, where he was exposed to additional coal-mine dust.

Mr. Fox left the mines in 2006 at the age of 56 because his pulmonary capacity had diminished to the point he could no longer work. He filed a second claim for benefits that same year. This time he was represented by counsel, who successfully obtained discovery of the medical information that the responsible operator had developed in connection with Mr. Fox's first claim but had not disclosed. This additional information included the pathologists' opinions and X-ray interpretations showing that Mr. Fox had complicated pneumoconiosis. The operator did not disclose any of these documents, despite an order from an administrative law judge, until 2008. Mr. Fox died in 2009 while awaiting a lung transplant.

Had Mr. Fox received the responsible operator's pathologists' opinions in 2000 when they were authored, he could have sought appropriate treatment for his advanced pneumoconiosis five or six years sooner than he did. He also could have made an informed decision as to whether he should continue in coal mine employment, where he was exposed to additional coal-mine dust. Or, he might have transferred to a position in a less-dusty area of the mine. *See* 30 U.S.C. 943(b). Finally, if the pathology reports the operator obtained had been available, Mr. Fox's first claim might have been awarded; indeed, the operator conceded entitlement when ordered to disclose this information.

Mr. Fox's case highlights the longstanding problem claimants face in obtaining a full picture of the miner's health from testifying and non-testifying medical experts as well as examining and non-examining physicians. *See, e.g., Lawyer Disciplinary Board* v. *Smoot,* 716 SE.2d 491 (W. Va. 2010); *Belcher* v. *Westmoreland Coal Co.,* BRB No. 06–0653, 2007 WL 7629355 (Ben. Rev. Bd. May 31, 2007) (unpublished); *Cline* v. *Westmoreland Coal Co.,* 21 Black Lung Rep. 1–69 (Ben. Rev. Bd. 1997).

Ensuring that a miner has access to information about his or her health is consistent with the primary tenet of the Mine Safety and Health Act (Mine Act). Congress expressly declared that ''the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner.'' 30 U.S.C. 801(a). This priority informs the Secretary's administration of the BLBA—including adoption of appropriate regulations—because Congress placed the BLBA in the Mine Act.

By requiring disclosure, the rule also protects parties who do not have legal representation. Virtually without exception, coal mine operators are represented by attorneys in claims heard by administrative law judges. But claimants cannot always obtain legal representation. The Department estimates that approximately 23 percent of claimants appear before administrative law judges without any representation, and some of those claimants who have representation are represented by lay persons. Unrepresented claimants and lay representatives are generally unfamiliar with technical discovery procedures and thus do not pursue any information not voluntarily disclosed by the operator. And even when represented, not all attorneys use available discovery tools. Thus, making full disclosure mandatory will put all parties on equal footing, regardless of representation and regardless of whether they request disclosure of all medical information developed in connection with a claim.

Finally, allowing parties fuller access to medical information may lead to better, more accurate decisions on claims. Elevating correctness over technical formalities is a fundamental tenant of the BLBA. Subject to regulations of the Secretary, the statute gives the Department explicit authority to depart from technical rules: adjudicators ''shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure . . . but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties.'' 33 U.S.C. 923(a), as incorporated by 30 U.S.C. 932(a). *See also* 20 CFR 725.455(b). This statutory provision evidences Congress's strong preference for ''*best ascertain[ing] the rights of the parties''*— in other words, getting to the truth of the matter—over following the technical formalities associated with regular civil litigation. Full disclosure of medical information is therefore consistent with Congressional intent. Indeed, the current regulations require the miner to provide the responsible operator authorization to access his or her medical records. *See* 20 CFR 725.414(a)(3)(i)(A).

An incorporated provision of the Social Security Act provides additional authority for proposed § 725.413. *See* 30 U.S.C. 923(b), incorporating 42 U.S.C. 405(a). As incorporated into the BLBA, section 205(a) of the Social Security Act, 42 U.S.C. 405(a), gives the Department wide latitude in regulating evidentiary matters pertaining to an individual's right to benefits. Specifically, the Department is vested with ''full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and [to] adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits.'' Section 205(a) has been construed as granting ''exceptionally broad authority to prescribe standards'' for proofs and evidence. *Heckler* v.

Campbell, 461 U.S. 458, 466 (1983) (quoting *Schweiker* v. *Gray Panthers,* 453 U.S. 34, 43 (1981)). The proposed rule honors these tenets.

The proposed rule sets out both requirements for the disclosure of medical information and sanctions that may be imposed on parties that do not comply with the rule. Proposed § 725.413(a) defines what constitutes ''medical information'' for purposes of this regulation. The regulation casts a broad net by encompassing any medical data about the miner that a party develops in connection with a claim. Treatment records are not information developed in connection with a claim and thus do not fall within this definition. But any party may obtain and submit records pertaining to treatment for a respiratory or pulmonary or related disease under § 725.414(a)(4).

Proposed paragraph (a)(1) addresses examining physicians' opinions and includes all findings made by an examining physician in the definition of ''medical information.'' An examining physician's opinion may disclose incidental physical conditions beyond a miner's respiratory or pulmonary systems that need attention. Giving miners full access to this data is consistent with the Act's and the Department's intent to protect the miner's health. Proposed paragraphs (a)(2) through (a)(4) include all other physicians' opinions, tests, procedures and related documentation in ''medical information,'' but only to the extent they address the miner's respiratory or pulmonary condition.

Proposed § 725.413(b) sets out the duty to disclose medical information about the miner and a time frame for such disclosure. The duty to disclose arises when either a party or a party's agent receives medical information. By including a ''party's agent,'' the proposed rule requires disclosure of medical information received by any individual or business entity that develops or screens medical information for the party or the party's attorney. Thus, a party may not avoid disclosure by having medical opinions and testing results filtered through a third-party agent. The time frame for disclosure is generally 30 days after receipt of the medical information. Within that time period, the disclosing party must send a copy of the medical information obtained to all other parties of record. In the event the claim is already scheduled for hearing by an administrative law judge when the medical information is received, the proposed rule requires the disclosing party to send the information no later than 20 days prior to the hearing. This provision correlates with current § 725.456(b)(2)'s 20-day requirement for exchanging any documentary evidence a party wants to submit into the hearing record.

Proposed § 725.413(c) provides sanctions that an adjudication officer may impose on a party that does not comply with its obligation to disclose the medical information described in proposed § 725.413(a). In determining an appropriate sanction, the proposed rule requires the adjudication officer to consider whether the party who violated the disclosure rule was represented by counsel when the violation occurred. The proposed rule also requires the adjudication officer to protect represented parties when the violation was attributable solely to their attorney's errors. The sanctions listed are not exclusive, and an adjudication officer may impose a different sanction, so long as it is appropriate to the circumstances presented in the particular case. Two of the listed sanctions are unique to the BLBA claims context. First, the proposed rule allows the adjudication officer to disqualify the non-disclosing party's attorney from further participation in the claim proceedings. The Department believes this is an appropriate sanction when the party's attorney is solely at fault for the non-disclosure and the failure to disclose resulted from more than an administrative error. Second, the proposed rule empowers an adjudication officer to relieve a claimant from the impact of a prior claim denial (*see* 20 CFR 725.309(c)(6)) if the medical information was not disclosed in accordance with the regulation in the prior claim proceeding. This sanction removes an incentive for responsible operators to withhold medical information and, by encouraging operators to comply, helps protect miners like Mr. Fox.

Finally, proposed § 725.413(d) sets out when the rule is applicable. Significantly, proposed paragraph (d)(2) specifies that the rule applies to claims pending on the rule's effective date if an administrative law judge has not yet entered a decision on the merits. To provide adequate time for disclosure in pending cases, the proposed rule allows the parties 60 days to disclose evidence received prior to the rule's adoption. Evidence received after the rule's effective date remains subject to proposed § 725.413(b)'s 30-day time limit. After an administrative law judge issues a merits decision, proposed paragraph (d)(3) imposes the obligation to disclose medical information only when further evidentiary development is permitted on reconsideration, remand from an appellate body, or after a party files a modification request. Applying this rule to pending claims will further one of the rule's primary purposes: protecting the health of the nation's miners.

20 CFR 725.414 Development of Evidence

(a) Section 725.414 imposes limitations on the quantity of medical evidence that each party may submit in a black lung claim. The Department proposed the limitations, in part, to ensure that eligibility determinations are based on the quality, not the quantity, of evidence submitted and to reduce litigation costs. 62 FR 3338 (Jan. 22, 1997). Under the evidence limiting rule, each side in a living miner's claim—both the claimant and the responsible operator (or Director, when appropriate)—may submit two chest X-ray interpretations, the results of two pulmonary function tests, two arterial blood gas studies and two medical reports as its affirmative case. Current § 725.414(a)(1) defines a medical report as a ''written assessment of the miner's respiratory or pulmonary condition'' that ''may be prepared by a physician who examined the miner and/or reviewed the available admissible evidence.'' 20 CFR 725.414(a)(1). Because additional medical evidence may become available after a physician has prepared a medical report, physicians often update their initial reports in supplemental reports addressing the new evidence. This practice has, at times, caused confusion regarding whether the supplemental report must be deemed a second medical report for purposes of the evidentiary limitations. The Department proposes to amend § 725.414(a)(1) to reflect the Director's longstanding position that these supplemental reports are merely a continuation of the physician's original medical report for purposes of the evidence-limiting rules and do not count against the party as a second medical report. The revised rule would apply to all claims filed after January 19, 2001. *See* 20 CFR 725.2(c).

The Director's position flows from the language of the current rules, which constrains the evidence a physician may review in a written report based only on its admissibility. Current § 725.414(a)(1) makes clear that a physician who provides a written opinion on the miner's pulmonary condition may consider all ''admissible medical evidence.'' Significantly, a physician who prepares a written medical report may also provide oral testimony in a claim, either at the formal hearing or through a deposition, and may ''testify as to any other medical evidence of

record.'' 20 CFR 725.414(c), 725.457(d). Thus, so long as a piece of medical evidence is admissible, a physician may consider it when addressing the miner's condition in either a written report or oral testimony. The Benefits Review Board has long accepted the Director's position that the medical opinion of a physician may be submitted in more than one document and still be considered one medical report for purposes of § 725.414. *See, e.g., Akers* v. *TBK Coal Co.,* BRB No. 06–894 BLA, 2007 WL 7629772 (Ben. Rev. Bd. Nov. 30, 2007).

Supplemental reports are a reasonable and cost-effective means of providing medical opinion evidence given the practical realities of federal black lung litigation. Even with the evidence-limiting rules, a miner who files a black lung claim may undergo up to five sets of examinations and testing ''spread . . . out over time.'' 65 FR 79992 (Dec. 20, 2000). A physician who examines the miner early in the claim process will obviously not at that time have access to all the medical evidence that ultimately will be admitted into the record. Given that the rules allow the physician to review all admissible medical evidence when evaluating the miner's condition, it makes sense to allow the physician to supplement his or her original report as new evidence becomes available. Indeed, a contrary rule would increase litigation costs because the party would be forced to have the physician review new evidence during a deposition or in-court testimony, both of which are much more costly means of providing evidence. There is therefore no practical or logical reason to consider a physician's supplemental written report a second medical report under the evidence limiting rules.

(b) For cases in which the Trust Fund is liable for benefits, current § 725.414(a)(3)(iii) authorizes the Director to exercise the rights of a responsible operator for purposes of the evidentiary limitations. 20 CFR 725.414(a)(3)(iii). The current rule does not, however, allow the Director to submit medical evidence, except for the medical evidence developed under § 725.406, in cases in which a coal mine operator is deemed the liable party. The rule thus leaves the Trust Fund potentially unprotected in cases in which the identified responsible operator has ceased to defend a claim during the course of litigation because of adverse financial developments, such as bankruptcy or insolvency. The Department proposes to amend § 725.414(a)(3)(iii) to allow the Director to submit medical evidence, up to the limits allowed an identified responsible operator, in such cases. The revised rule would apply to all claims filed after January 19, 2001. *See* 20 CFR 725.2(c).

The Trust Fund is liable for the payment of benefits if no operator can be identified as liable or if the operator identified as liable fails to pay benefits owed. *See* 26 U.S.C. 9501(d)(1); 20 CFR 725.522. As a result, the Director's inability to develop medical evidence in responsible operator cases imperils the Trust Fund if the operator ceases to defend the claim. In such cases, the Director currently has only two choices: (1) Dismiss the operator and have the Trust Fund assume liability so that medical evidence can be developed; or (2) keep the operator as the liable party and, if an award is issued, attempt to enforce the award against the operator or related entities (*e.g.,* insurance carrier, surety-bond companies, successor operator, *etc.*).

The first choice forecloses any possibility of recovery from the operator in the case of an award because the award would run against the Trust Fund. To be enforceable against an operator, the order awarding benefits must identify the operator as the liable party. *See* 20 CFR 725.522(a), 725.601-.609. The second choice restricts the Trust Fund's ability to defend against an unmeritorious claim without providing any certainty as to the recovery of any benefits awarded. In both cases, the Trust Fund is unnecessarily put at risk. This risk can be ameliorated by the simple expedient of allowing the Director, at his or her discretion, to develop evidence in cases in which the identified responsible operator has ceased to defend the claim.

Proposed § 725.414(a)(3)(iii) allows the Director the option of developing evidence in such cases. This revision would not prejudice claimants because the Director would be bound by the same evidence-limiting rules as the operator. In a miner's claim, the medical evidence developed under § 725.406 counts as one medical report and one set of tests submitted by the Director, 20 CFR 725.414(a)(3)(iii), and the Director would be able to submit only one additional medical report and set of tests, along with appropriate rebuttal evidence. And in a survivor's claim, the Director, like an operator, is limited to two complete reports and rebuttal evidence. Moreover, in appropriate cases, the Director may determine that an award of benefits is justified, and decline to submit additional evidence. In sum, the proposed rule reasonably allows the Director to defend the Trust Fund against unwarranted liability in appropriate circumstances without unjustifiably burdening claimants.

20 CFR 725.601 Enforcement Generally

Current § 725.601 sets out the Department's policy regarding enforcing the liabilities imposed by Part 725. The last sentence of current paragraph (b) refers to ''payments in addition to compensation (see § 725.607)[.]'' For the reasons explained in the discussion under § 725.607, the Department proposes to replace the phrase ''payments in addition to compensation'' with the phrase ''payments of additional compensation.'' No substantive change is intended.

20 CFR 725.607 Payments in Addition to Compensation

The Department proposes two revisions to current § 725.607, which implements section 14(f) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 914(f), as incorporated into the BLBA by section 422(a) of the Act, 30 U.S.C. 932(a), to clarify that amounts paid under section 14(f) are compensation. Section 14(f) generally provides that claimants are entitled to an additional 20% of any compensation owed under the terms of an award that is not paid within ten days after it becomes due.

The majority of courts to consider the question have agreed with the Director's view that the 20% payment required by section 14(f) is itself ''compensation'' rather than a penalty. *See Newport News Shipbuilding and Dry Dock Co.* v. *Brown,* 376 F.3d 245, 251 (4th Cir. 2004) (''[I]t is plain that an award for late payment under [section] 14(f) is compensation.''); *Tahara* v. *Matson Terminals, Inc.,* 511 F.3d 950, 953–54 (9th Cir. 2007) (same); *but see Burgo* v. *General Dynamics Corp.,* 122 F.3d 140, 145–46 (2d Cir. 1997). Part 725 reflects this view by generally referring to 14(f) payments as ''additional compensation.'' *See* 20 CFR 725.530(a), 725.607(b), 725.608(a)(3); *see also* 65 FR 80014 (Dec. 20, 2000) (''Section 14(f) provides that additional compensation, in the amount of twenty percent of unpaid benefits, shall be paid if an employer fails to pay within ten days after the benefits become due.'').

Current § 725.607 does not consistently reflect the majority rule or the Director's position. Paragraph (b) describes section 14(f) payments as ''additional compensation.'' But both the title of the section and paragraph (c) describe them as payments ''in addition to compensation.'' The latter formulation could be read to suggest

that 14(f) payments are something other than compensation. While the ''in addition to compensation'' formulation has not caused any problems in the administration of § 725.607 thus far, the Department wishes to eliminate any possibility that the regulation's phrasing could confuse readers. Accordingly, the Department proposes to replace ''in addition to compensation'' with ''additional compensation'' in the title of § 725.607 and paragraph (c). To maintain consistency within part 725, the Department also proposes the same change to § 725.601(b).

III. Statutory Authority

Section 426(a) of the BLBA, 30 U.S.C. 936(a), authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration and enforcement of the Act.

IV. Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under the Proposed Rule

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its implementing regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person may generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

As discussed earlier in the preamble, proposed § 725.413 would require each party in a black lung benefits claim to disclose certain medical information about the miner that the party or the party's agent receives by sending a complete copy of the information to all other parties in the claim. The Department does not believe this rule will have a broad impact because in many (and perhaps the majority) of cases, the parties already exchange all of the medical information in their possession as part of their evidentiary submissions. But requiring an exchange of additional medical information could be considered a collection of information within the meaning of the PRA. Thus, consistent with the requirements codified at 44 U.S.C. 3506(c)(2)(B) and 3507(d), and at 5 CFR 1320.11, the Department has submitted a new Information Collection Request to OMB for approval under the PRA and is providing an opportunity for public comment. A copy of this request (including supporting documentation) may be obtained free of charge by contacting Michael Chance, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–3464, Washington, DC 20210. Telephone: (202) 693–0978 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–800–877–8339.

The Department has estimated the number of responses and burdens as follows for this information collection:

Title of Collection: Disclosure of Medical Information

OMB Control Number: 1240–0NEW [OWCP will supply before publication]

Total Estimated Number of Responses: 4,074

Total Estimated Annual Time Burden: 679 hours

Total Estimated Annual Cost Burden: $21,537.88

In addition to having an opportunity to file comments with the Department, the PRA provides that an interested party may file comments on the information collection requirements in a proposed rule directly with OMB at the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments to the Department by one of the methods set forth in the **ADDRESSES** section above. OMB will consider all written comments that the agency receives within 30 days of publication of this NPRM in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention the OMB control number listed above.

OMB and the Department are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

V. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

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

The Department has considered the proposed rule with these principles in mind and has determined that the regulated community will benefit from this regulation. The discussion below sets out the rule's anticipated economic impact and discusses non-economic factors favoring adoption of the proposal. OMB has reviewed this rule prior to publication in accordance with these Executive Orders.

A. Economic Considerations

The proposed rule includes only one provision that arguably could have an economic impact on parties to black lung claims or others: proposed § 725.310(e), which requires a responsible operator to pay effective awards of benefits while seeking to modify those awards. As set forth above in the Section-by-Section Explanation, within one year of an award of benefits or of the last payment of benefits, a liable coal mine operator may request modification of an award (*i.e.,* may seek to have the award converted to a denial) based on a change in conditions or because of a mistake in a determination of fact in the award. 20 CFR 725.310(a). Operators are legally obligated to make benefit payments during such modification proceedings. But few do, and the Trust Fund pays monthly benefits in their stead. To avoid this result, proposed § 725.310(e) would prohibit a responsible operator from seeking modification until it meets the

payment obligations imposed by effective awards in a claim. Because the proposed rule merely enforces operators' existing obligations, it imposes no additional costs and is thus cost neutral.

Even if the proposed rule were construed to impose a new obligation on operators, the Department believes any additional costs involved would not be burdensome for several reasons. First, if an operator's modification request is denied, the operator must reimburse the Trust Fund with interest for all benefits paid to the claimant during the proceeding. In such cases, whether the responsible operator starts paying benefits after the award is made initially or does so after the modification process has ended, the operator must pay all benefits owed. Second, in those instances where the operator's modification petition is successful, the operator can pursue reimbursement from the claimant for at least some of the benefits paid, including those paid during the modification proceeding itself. *See* 20 CFR 725.310(d). The potential economic impact on responsible operators in this instance is the amount that they cannot recoup from the claimant. In this regard, when an operator successfully modifies an award, the operator can seek only to recover cash benefits paid to the claimant and not medical benefits paid to hospitals and other health care providers. The Department believes, based on its experience in administering the program, that there are very few claims in which an operator is successful on modification. Thus, even if recoupment is unavailable, the cost impact would not be large.

B. Other Considerations

The Department has also considered other benefits and burdens that would result from the proposed rules apart from any potential monetary impact. As discussed in the Section-by-Section analysis, proposed § 725.310(e) requires responsible operators to meet their payment obligations on effective awards before modifying those awards. This rule strikes an appropriate balance between the parties' competing interests: claimants are made whole while operators who would be irreparably harmed by making such payments can seek a stay in payments. While there is some risk that the operator will not recover payments made after a successful modification petition, placing that risk on the operator, rather than the Trust Fund, is consistent with the Act's intent.

Proposed § 725.413, which requires the parties to disclose all medical information they develop, will help protect miners' health and assist in reaching more accurate benefits determinations. These concerns far outweigh any minimal additional administrative burden this rule would place on the parties as a result of the mandatory exchange of this information. Moreover, the Department does not believe this rule will have an extremely broad impact. In many (and perhaps the majority) of cases, the Department believes, and has been informed by the public, that the parties already exchange all of the medical information in their possession as part of their evidentiary submissions.

Finally, the proposed revisions to § 725.414 and § 725.607 will benefit all regulated parties simply by adding clarity to the rules.

VI. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to prepare a regulatory flexibility analysis when it proposes regulations that will have ''a significant economic impact on a substantial number of small entities,'' or to certify that the proposed regulations will have no such impact, and to make the analysis or certification available for public comment. 5 U.S.C. 605.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. While many coal mine operators are small entities within the meaning of the RFA, *see* 77 FR 19471–72 (Mar. 30, 2012), this proposed rule, if adopted in final, would not have a significant economic impact on them. As discussed above, the proposed rule addresses procedural issues that have arisen in claims administration and adjudication, and does not change the substantive standards under which claims are adjudicated. As such, the Department anticipates that the proposed rule would have little, if any, financial consequences for operators. Moreover, to the extent proposed § 725.310(e) requires that operators make benefit payments on effective awards while pursuing modification, the regulation merely reflects an existing payment obligation rather than imposing a new one on operators.

Based on these facts, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required. The Department invites comments from members of the public who believe the regulations will have a significant economic impact on a substantial number of small coal mine operators. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. *See* 5 U.S.C. 605.

VII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.,* directs agencies to assess the effects of Federal Regulatory Actions on State, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' 2 U.S.C. 1531. For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased expenditures by State, local, tribal governments, or increased expenditures by the private sector of more than $100,000,000.

VIII. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' E.O. 13132, 64 FR 43255 (Aug. 4, 1999). The proposed rule 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'' if promulgated as a final rule. *Id.*

IX. Executive Order 12988 (Civil Justice Reform)

The proposed rule meets the applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. *See* 61 FR 4729 (Feb. 5, 1996).

X. Congressional Review Act

The proposed rule is not a ''major rule'' as defined in the Congressional Review Act, 5 U.S.C. 801 *et seq.* If promulgated as a final rule, this rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Claims, Health care, Reporting and recordkeeping requirements, Vocational rehabilitation, Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 725 as follows:

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 1. The authority citation for part 725 continues to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.,* 902(f), 934, 936; 33 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

■ 2. In § 725.310, revise paragraphs (b), (c), and (d) and add paragraph (e) to read as follows:

§ 725.310 Modification of awards and denials.

* * * * *

(b) Modification proceedings must be conducted in accordance with the provisions of this part as appropriate, except that the claimant and the operator, or group of operators or the fund, as appropriate, are each entitled to submit no more than one additional chest X-ray interpretation, one additional pulmonary function test, one additional arterial blood gas study, and one additional medical report in support of its affirmative case along with such rebuttal evidence and additional statements as are authorized by paragraphs (a)(2)(ii) and (a)(3)(ii) of § 725.414. Modification proceedings may not be initiated before an administrative law judge or the Benefits Review Board.

(c) At the conclusion of modification proceedings before the district director, the district director may issue a proposed decision and order (§ 725.418) or, if appropriate, deny the claim by reason of abandonment (§ 725.409). In any case in which the district director has initiated modification proceedings on his own initiative to alter the terms of an award or denial of benefits issued by an administrative law judge, the district director must, at the conclusion of modification proceedings, forward the claim for a hearing (§ 725.421). In any case forwarded for a hearing, the administrative law judge assigned to hear such case must consider whether any additional evidence submitted by the parties demonstrates a change in condition and, regardless of whether the parties have submitted new evidence, whether the evidence of record demonstrates a mistake in a determination of fact.

(d) An order issued following the conclusion of modification proceedings may terminate, continue, reinstate, increase or decrease benefit payments or award benefits. Such order must not affect any benefits previously paid, except that an order increasing the amount of benefits payable based on a finding of a mistake in a determination of fact may be made effective on the date from which benefits were determined payable by the terms of an earlier award. In the case of an award which is decreased, no payment made in excess of the decreased rate prior to the date upon which the party requested reconsideration under paragraph (a) of this section will be subject to collection or offset under subpart H of this part, provided the claimant is without fault as defined by § 725.543. In the case of an award which is decreased following the initiation of modification by the district director, no payment made in excess of the decreased rate prior to the date upon which the district director initiated modification proceedings under paragraph (a) will be subject to collection or offset under subpart H of this part, provided the claimant is without fault as defined by § 725.543. In the case of an award which has become final and is thereafter terminated, no payment made prior to the date upon which the party requested reconsideration under paragraph (a) will be subject to collection or offset under subpart H of this part. In the case of an award which has become final and is thereafter terminated following the initiation of modification by the district director, no payment made prior to the date upon which the district director initiated modification proceedings under paragraph (a) will be subject to collection or offset under subpart H of this part.

(e)(1) Any modification request by an operator must be denied unless the operator proves that at the time of the request, the operator has complied with all of the obligations imposed by all awards in the claim that are currently effective as defined by § 725.502(a). These include the obligations to—

(i) Pay all benefits owed to the claimant (including retroactive benefits under § 725.502(b)(2), additional compensation under § 725.607, and medical benefits under §§ 725.701 *through 725.708*). If the prior award is final, these obligations also include the payment of approved attorney's fees and expenses under § 725.367 and witness fees under § 725.459; and

(ii) Reimburse the Black Lung Disability Trust Fund for all benefits paid (including payments prior to final adjudication under § 725.522, costs for the medical examination under § 725.406, and other benefits paid on behalf of the operator) with such penalties and interest as are appropriate.

(2) The requirements of paragraph (e)(1) of this section are inapplicable to any benefits owed pursuant to an effective but non-final order if the payment of such benefits has been stayed by the Benefits Review Board or appropriate court under 33 U.S.C. 921.

(3) Except as provided by paragraph (e)(4) of this section, the operator must submit all documentary evidence pertaining to its compliance with the requirements of paragraph (e)(1) of this section to the district director concurrently with its request for modification. The claimant is also entitled to submit any relevant evidence to the district director. Absent extraordinary circumstances, no documentary evidence pertaining to the operator's compliance with the requirements of paragraph (e)(1) at the time of the modification request will be admitted into the hearing record or otherwise considered at any later stage of the proceeding.

(4) The requirements imposed by paragraph (e)(1) of this section are continuing in nature. If at any time during the modification proceedings the operator fails to meet obligations imposed by all effective awards in the claim, the adjudication officer must issue an order to show cause why the operator's modification request should not be denied and afford all parties time to respond to such order. Responses may include evidence pertaining to the operator's continued compliance with the requirements of paragraph (e)(1). If, after the time for response has expired, the adjudication officer determines that the operator is not meeting its obligations, the adjudication officer must deny the operator's modification request.

(5) The denial of a request for modification under this section will not bar any future modification request by the operator, so long as the operator satisfies the requirements of paragraph (e)(1) of this section with each future modification petition.

(6) The provisions of this paragraph (e) apply to all modification requests filed on or after the effective date of this rule.

■ 3. Add § 725.413 to subpart E to read as follows:

§ 725.413 Disclosure of medical information.

(a) For purposes of this section, medical information is any medical data about the miner that a party develops in connection with a claim for benefits, including medical data developed with any prior claim that has not been disclosed previously to the other parties. Medical information includes, but is not limited to—

(1) Any examining physician's written or testimonial assessment of the miner, including the examiner's findings, diagnoses, conclusions, and the results of any tests;

(2) Any other physician's written or testimonial assessment of the miner's respiratory or pulmonary condition;

(3) The results of any test or procedure related to the miner's respiratory or pulmonary condition, including any information relevant to the test or procedure's administration; and

(4) Any physician's or other medical professional's interpretation of the results of any test or procedure related to the miner's respiratory or pulmonary condition.

(b) Each party must disclose medical information the party or the party's agent receives by sending a complete copy of the information to all other parties in the claim within 30 days after receipt. If the information is received after the claim is already scheduled for hearing before an administrative law judge, the disclosure must be made at least 20 days before the scheduled hearing is held (*see* § 725.456(b)).

(c) At the request of any party or on his or her own motion, an adjudication officer may impose sanctions on any party or his or her representative who fails to timely disclose medical information in compliance with this section.

(1) Sanctions must be appropriate to the circumstances and may only be imposed after giving the party an opportunity to demonstrate good cause why disclosure was not made and sanctions are not warranted. In determining an appropriate sanction, the adjudication officer must consider—

(i) Whether the sanction should be mitigated because the party was not represented by an attorney when the information should have been disclosed; and

(ii) Whether the party should not be sanctioned because the failure to disclose was attributable solely to the party's attorney.

(2) Sanctions may include, but are not limited to—

(i) Drawing an adverse inference against the non-disclosing party on the facts relevant to the disclosure;

(ii) Limiting the non-disclosing party's claims, defenses or right to introduce evidence;

(iii) Dismissing the claim proceeding if the non-disclosing party is the claimant and no payments prior to final adjudication have been made to the claimant unless the Director agrees to the dismissal in writing (*see* § 725.465(d));

(iv) Rendering a default decision against the non-disclosing party;

(v) Disqualifying the non-disclosing party's attorney from further participation in the claim proceedings; and

(vi) Relieving a claimant who files a subsequent claim from the impact of § 725.309(c)(6) if the non-disclosed evidence predates the denial of the prior claim and the non-disclosing party is the operator.

(d) This rule applies to—

(1) All claims filed after the effective date of this rule;

(2) Pending claims not yet adjudicated by an administrative law judge, except that medical information received prior to the effective date of this rule and not previously disclosed must be provided to the other parties within 60 days of the effective date of this rule; and

(3) Pending claims already adjudicated by an administrative law judge where—

(i) The administrative law judge reopens the record for receipt of additional evidence in response to a timely reconsideration motion (*see* § 725.479(b)) or after remand by the Benefits Review Board or a reviewing court; or

(ii) A party requests modification of the award or denial of benefits (*see* § 725.310(a)).

■ 4. In § 725.414, revise paragraphs (a), (c), and (d) to read as follows:

§ 725.414 Development of evidence.

(a) *Medical evidence.* (1) For purposes of this section, a medical report is a physician's written assessment of the miner's respiratory or pulmonary condition. A medical report may be prepared by a physician who examined the miner and/or reviewed the available admissible evidence. Supplemental medical reports prepared by the same physician must be considered part of the physician's original medical report. A physician's written assessment of a single objective test, such as a chest X-ray or a pulmonary function test, is not a medical report for purposes of this section.

(2)(i) The claimant is entitled to submit, in support of his affirmative case, no more than two chest X-ray interpretations, the results of no more than two pulmonary function tests, the results of no more than two arterial blood gas studies, no more than one report of an autopsy, no more than one report of each biopsy, and no more than two medical reports. Any chest X-ray interpretations, pulmonary function test results, blood gas studies, autopsy report, biopsy report, and physicians' opinions that appear in a medical report must each be admissible under this paragraph (a)(2)(i) or paragraph (a)(4) of this section.

(ii) The claimant is entitled to submit, in rebuttal of the case presented by the party opposing entitlement, no more than one physician's interpretation of each chest X-ray, pulmonary function test, arterial blood gas study, autopsy or biopsy submitted by the designated responsible operator or the fund, as appropriate, under paragraph (a)(3)(i) or (iii) of this section and by the Director pursuant to § 725.406. In any case in which the party opposing entitlement has submitted the results of other testing pursuant to § 718.107 of this chapter, the claimant is entitled to submit one physician's assessment of each piece of such evidence in rebuttal. In addition, where the responsible operator or fund has submitted rebuttal evidence under paragraph (a)(3)(ii) or (iii) of this section with respect to medical testing submitted by the claimant, the claimant is entitled to submit an additional statement from the physician who originally interpreted the chest X-ray or administered the objective testing. Where the rebuttal evidence tends to undermine the conclusion of a physician who prepared a medical report submitted by the claimant, the claimant is entitled to submit an additional statement from the physician who prepared the medical report explaining his conclusion in light of the rebuttal evidence.

(3)(i) The responsible operator designated pursuant to § 725.410 is entitled to obtain and submit, in support of its affirmative case, no more than two chest X-ray interpretations, the results of no more than two pulmonary function tests, the results of no more than two arterial blood gas studies, no more than one report of an autopsy, no more than one report of each biopsy, and no more than two medical reports. Any chest X-ray interpretations, pulmonary function test results, blood gas studies, autopsy report, biopsy report, and physicians' opinions that appear in a medical report must each be admissible under this paragraph (a)(3)(i)

or paragraph (a)(4) of this section. In obtaining such evidence, the responsible operator may not require the miner to travel more than 100 miles from his or her place of residence, or the distance traveled by the miner in obtaining the complete pulmonary evaluation provided by § 725.406, whichever is greater, unless a trip of greater distance is authorized in writing by the district director. If a miner unreasonably refuses—

(A) To provide the Office or the designated responsible operator with a complete statement of his or her medical history and/or to authorize access to his or her medical records; or

(B) To submit to an evaluation or test requested by the district director or the designated responsible operator, the miner's claim may be denied by reason of abandonment. (*See* § 725.409).

(ii) The responsible operator is entitled to submit, in rebuttal of the case presented by the claimant, no more than one physician's interpretation of each chest X-ray, pulmonary function test, arterial blood gas study, autopsy or biopsy submitted by the claimant under paragraph (a)(2)(i) of this section and by the Director pursuant to § 725.406. In any case in which the claimant has submitted the results of other testing pursuant to § 718.107 of this chapter, the responsible operator is entitled to submit one physician's assessment of each piece of such evidence in rebuttal. In addition, where the claimant has submitted rebuttal evidence under paragraph (a)(2)(ii) of this section, the responsible operator is entitled to submit an additional statement from the physician who originally interpreted the chest X-ray or administered the objective testing. Where the rebuttal evidence tends to undermine the conclusion of a physician who prepared a medical report submitted by the responsible operator, the responsible operator is entitled to submit an additional statement from the physician who prepared the medical report explaining his conclusion in light of the rebuttal evidence.

(iii) In a case in which the district director has not identified any potentially liable operators, or has dismissed all potentially liable operators under § 725.410(a)(3), or has identified a liable operator that ceases to defend the claim on grounds of an inability to provide for payment of continuing benefits, the district director is entitled to exercise the rights of a responsible operator under this section, except that the evidence obtained in connection with the complete pulmonary evaluation performed pursuant to § 725.406 must be considered evidence obtained and submitted by the Director, OWCP, for purposes of paragraph (a)(3)(i) of this section. In a case involving a dispute concerning medical benefits under § 725.708, the district director is entitled to develop medical evidence to determine whether the medical bill is compensable under the standard set forth in § 725.701.

(4) Notwithstanding the limitations in paragraphs (a)(2) and (3) of this section, any record of a miner's hospitalization for a respiratory or pulmonary or related disease, or medical treatment for a respiratory or pulmonary or related disease, may be received into evidence.

(5) A copy of any documentary evidence submitted by a party must be served on all other parties to the claim. If the claimant is not represented by an attorney, the district director must mail a copy of all documentary evidence submitted by the claimant to all other parties to the claim. Following the development and submission of affirmative medical evidence, the parties may submit rebuttal evidence in accordance with the schedule issued by the district director.

* * * * *

(c) *Testimony.* A physician who prepared a medical report admitted under this section may testify with respect to the claim at any formal hearing conducted in accordance with subpart F of this part, or by deposition. If a party has submitted fewer than two medical reports as part of that party's affirmative case under this section, a physician who did not prepare a medical report may testify in lieu of such a medical report. The testimony of such a physician will be considered a medical report for purposes of the limitations provided by this section. A party may offer the testimony of no more than two physicians under the provisions of this section unless the adjudication officer finds good cause under paragraph (b)(1) of § 725.456. In accordance with the schedule issued by the district director, all parties must notify the district director of the name and current address of any potential witness whose testimony pertains to the liability of a potentially liable operator or the designated responsible operator. Absent such notice, the testimony of a witness relevant to the liability of a potentially liable operator or the designated responsible operator will not be admitted in any hearing conducted with respect to the claim unless the administrative law judge finds that the lack of notice should be excused due to extraordinary circumstances.

(d) Except to the extent permitted by §§ 725.456 and 725.310(b), the limitations set forth in this section apply to all proceedings conducted with respect to a claim, and no documentary evidence pertaining to liability may be admitted in any further proceeding conducted with respect to a claim unless it is submitted to the district director in accordance with this section.

■ 5. In § 725.601, revise paragraphs (b) and (c) to read as follows:

§ 725.601 Enforcement generally.

* * * * *

(b) It is the policy and intent of the Department to vigorously enforce the provisions of this part through the use of the remedies provided by the Act. Accordingly, if an operator refuses to pay benefits with respect to a claim for which the operator has been adjudicated liable, the Director may invoke and execute the lien on the property of the operator as described in § 725.603. Enforcement of this lien must be pursued in an appropriate U.S. district court. If the Director determines that the remedy provided by § 725.603 may not be sufficient to guarantee the continued compliance with the terms of an award or awards against the operator, the Director may in addition seek an injunction in the U.S. district court to prohibit future noncompliance by the operator and such other relief as the court considers appropriate (see § 725.604). If an operator unlawfully suspends or terminates the payment of benefits to a claimant, the district director may declare the award in default and proceed in accordance with § 725.605. In all cases payments of additional compensation (see § 725.607) and interest (see § 725.608) will be sought by the Director or awarded by the district director.

(c) In certain instances the remedies provided by the Act are concurrent; that is, more than one remedy might be appropriate in any given case. In such a case, the Director may select the remedy or remedies appropriate for the enforcement action. In making this selection, the Director shall consider the best interests of the claimant as well as those of the fund.

■ 6. Revise § 725.607 to read as follows:

§ 725.607 Payments of additional compensation.

(a) If any benefits payable under the terms of an award by a district director (§ 725.419(d)), a decision and order filed and served by an administrative law judge (§ 725.478), or a decision filed by the Board or a U.S. court of appeals, are not paid by an operator or other employer ordered to make such

payments within 10 days after such payments become due, there will be added to such unpaid benefits an amount equal to 20 percent thereof, which must be paid to the claimant at the same time as, but in addition to, such benefits, unless review of the order making such award is sought as provided in section 21 of the LHWCA and an order staying payments has been issued.

(b) If, on account of an operator's or other employer's failure to pay benefits as provided in paragraph (a) of this section, benefit payments are made by the fund, the eligible claimant will nevertheless be entitled to receive such additional compensation to which he or she may be eligible under paragraph (a), with respect to all amounts paid by the fund on behalf of such operator or other employer.

(c) The fund may not be held liable for payments of additional compensation under any circumstances.

Signed at Washington, DC, this 20th day of April, 2015.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2015–09573 Filed 4–28–15; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF STATE

22 CFR Parts 22 and 51

[Public Notice: 9111]

RIN 1400–AD76

Proposed Elimination of Visa Page Insert Service for U.S. Passport Book Holders

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: Currently, all U.S. passport book applicants may apply for either a 28-page or 52-page passport book at no extra charge. U.S. passport book holders may then apply for additional visa pages while the passport book is still valid. The Department of State proposes eliminating the option to add visa pages in passports beginning January 1, 2016. To help mitigate the need for visa page inserts, the Department began issuing the larger 52-page passport book in October 2014 to all overseas U.S. passport applicants at no extra cost. U.S. passport applicants applying domestically can still obtain the 52-page passport book at no extra charge by requesting it on the application form. The elimination of visa page inserts coincides with the Department's anticipated rollout of the Next Generation Passport in 2016. The Next Generation Passport incorporates new security features designed to protect the integrity of U.S. passport books against fraud and misuse. An interagency working group determined that the addition of visa page inserts could reduce the effectiveness of these new security features. If this change is implemented, the fee for this service will be removed from the Schedule of Fees for Consular Services.

DATES: Written comments must be received on or before June 29, 2015.

ADDRESSES: Interested parties may submit comments by any of the following methods:

- Visit the Regulations.gov Web site at: *http://www.regulations.gov/index.cfm* and search the RIN 1400–AD76 or docket number DOS–2015–0017.
- Mail (paper, disk, or CD–ROM): U.S. Department of State, Office of Passport Services, Bureau of Consular Affairs (CA/PPT), Attn: CA/PPT/IA, 44132 Mercure Circle, P.O. Box 1227, Sterling, Virginia 20166–1227.

FOR FURTHER INFORMATION CONTACT: Michael Holly, Office of Passport Services, Bureau of Consular Affairs; 202–485–6373: *PassportRules@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department proposes eliminating the visa page insert service for regular fee passport book holders beginning January 1, 2016. The expected effective date of this rule coincides with when the Department expects to begin issuing an updated version of the Next Generation Passport book. The Department routinely updates the technology used to produce U.S. passport books so that U.S. passport books use the most current anti-fraud and anti-counterfeit measures. The Next Generation Passport, which is the next update of the U.S. passport book, will contain a polycarbonate data-page and will be personalized with laser engraving. This passport will also employ conical laser perforation of the passport number through the data and visa pages; display a general artwork upgrade and new security features including watermark, security artwork, optical variable security devices, tactile features, and optically variable inks. The primary reason for eliminating visa page inserts is to protect the integrity of the Next Generation Passport books.

In 2012, an interagency working group tasked with overseeing the development and deployment of Next Generation Passport books found that visa page inserts could compromise the effectiveness of security features of the new passport books that are intended to provide greater protections against fraud and misuse. To maximize the effectiveness of the Next Generation Passport that is expected to be issued to the general public in 2016, the Department considered whether visa page inserts could be phased out at the time that the Department begins to issue the new passport books.

As part of this study, the Department considered the extent of the public's usage of visa page inserts, costs to the Department of eliminating the service, and whether any inconvenience to the public could be minimized. A study of a sample of visa page insert applications revealed that a significant majority of those applying for visa page inserts had them added to 28-page passport books, rather than to the larger 52-page books. A set of visa page inserts is 24 pages. Accordingly, a 52-page passport book is the same size as a 28-page book with a set of extra visa pages. The Department determined that the demand for additional visa pages would be substantially reduced by issuing only the larger 52-page passport books to overseas U.S. passport applicants. Accordingly, the Department has begun issuing the 52-page book to overseas applicants, who are the most likely to apply for extra visa pages, at no additional cost. This should further reduce the already limited demand for visa page inserts, thus making the rule's impact on the public very minimal. Individuals who apply for U.S. passports within the United States will continue to have the option to request a 52-page passport at no additional charge.

Each version of the Next Generation Passport book contains two fewer pages total, but the same number of visa pages as the passport books currently in circulation. Accordingly, after the Department begins issuing the Next Generation Passport book, all domestic passport book applicants will still have the option to choose between a 26-page passport book and a larger 50-page passport book, but the larger 50-page passport books will be automatically issued to people applying overseas.

The Department believes the limited demand for visa page inserts is outweighed by the importance of ensuring that the Next Generation Passport provides the maximum protection against fraud and misuse. Furthermore, the Department must monitor unused inventories of passport products, and the elimination of visa page inserts would facilitate more secure inventory controls. Accordingly,

the Department proposes eliminating visa page inserts in passport books issued to the general public beginning January 1, 2016,

If this change is implemented, the fee for additional visa pages will be removed from the Schedule of Fees for Consular Services of the Department of State's Bureau of Consular Affairs (''Schedule of Fees'' or ''Schedule'').

What is the authority for this action?

The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a. The Department of State, Bureau of Consular Affairs, administers the U.S. passport issuance program and manages the consular sections of all U.S. consulates and embassies overseas. The Department of State derives the authority to eliminate visa page inserts from its statutory authority to issue U.S. passports and manage the U.S. passport issuance program.

When will the department of state implement this proposed rule?

The Department intends to implement this proposed rule on January 1, 2016.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a proposed rule, with a 60-day provision for public comments.

Regulatory Flexibility Act

The Department, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6). This rule eliminates the extra visa page insert service for U.S. passport book holders. Approximately 170,000 passport book holders applied for visa page inserts during Fiscal Year 2013. Only individuals, and no small entities, apply for visa page inserts.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $1 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1504.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, since it will not result in an annual impact on the economy of $100 million or more. *See* 5 U.S.C. 804(2).

Executive Order 12866

This rule is not economically significant under Executive Order 12866, section 3(f)(1), because it will not have an annual impact on the economy of $100 million or more. This rule has been submitted to the Office of Management and Budget for review.

The Department expects the proposed rule's impact on the public to be minimal because of the already low demand for visa page inserts and steps taken by the Department to reduce that demand even further. In Fiscal Year 2013, the Department processed only 170,000 requests for additional visa pages. By comparison, the Department issued more than 12 million passports during the same time period, and there are more than 122 million passports in circulation. The Department estimates that 97 percent of renewed U.S. passport books will use less than 18 visa pages, which is a strong indication that current book sizes (28 pages and 52 pages) meet the needs of U.S. travelers.

The Department of State does not anticipate that demand for passport services affected by this rule will change significantly because of the elimination of visa page inserts, and welcomes public comment on that expectation.

Executive Order 13132

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose or alter any reporting or record-keeping requirements under the Paperwork Reduction Act.

List of Subjects in 22 CFR Parts 22 and 51

Consular services, fees, passports and visas.

Accordingly, for the reasons stated in the preamble, 22 CFR parts 22 and 51 are proposed to be amended as follows:

PART 22—[AMENDED]

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1183a note, 1351, 1351 note, 1714, 1714 note; 10 U.S.C. 2602(c); 11 U.S.C. 1157 note; 22 U.S.C. 214, 214 note, 1475e, 2504(a), 4201, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Executive Order 10,718,22 FR 4632; Executive Order 11,295,31 FR 10603.

■ 2. Amend the table in § 22.1 to revise item 2c to read as follows:

§ 22.1 Schedule of Fees for Consular Services.

* * * * *

Item No.	Fee
PAssport and Citizenship Services	
* * * * *	
2. * * *	
(c) [RESERVED].	
* * * * *	

PART 51—[AMENDED]

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

Authority: 8 U.S.C. 1101 note, 1153 note, 1183a note, 1351, 1351 note, 1714,1714 note; 10 U.S.C. 2602 (c); 11 U.S.C. 1157 note; 22 U.S.C. 214, 214 note, 1475e, 2504(a), 4201,4206,4215, 4219,6551; 31 U.S.C. 9701; Executive Order 10,718,22 FR4632; Executive Order 11,295,31 FR 10603.

■ 4. In § 51.20 revise paragraph (a) to read as follows:

§ 51.20 General.

(a) An application for a passport, a replacement passport, or other passport related service must be completed using the forms the Department prescribes.

* * * * *

■ 5. In § 51.56, revise paragraph (a) to read as follows:

§ 51.56 Expedited passport processing.

(a) Within the United States, an applicant for a passport service (including issuance or the replacement of a passport) may request expedited processing. The Department may decline to accept the request.

* * * * *

Dated: April 8, 2015.

Michele T. Bond,

Assistant Secretary for Consular Affairs, Acting.

[FR Doc. 2015–09719 Filed 4–28–15; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0225; FRL–9927–04–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Minor New Source Review Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a January 24, 2013 State Implementation Plan (SIP) revision submitted for the State of Maryland by the Maryland Department of the Environment (MDE). This revision pertains to preconstruction permitting requirements under Maryland's minor New Source Review (NSR) program. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 29, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0225 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: campbell.dave@epa.gov.*

C. *Mail:* EPA–R03–OAR–2015–0225, David Campbell, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0225. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 24, 2013, MDE submitted a revision to the Maryland SIP.

I. Background

The proposed revision consists of amendments to Regulation .09 under section 26.11.02 of the Code of Maryland Regulations (COMAR). An amendment to COMAR 26.11.01.01 inadvertently widened the universe of sources that are required to obtain a permit to construct under COMAR 26.11.02.09. The previously approved version of COMAR 26.11.02.09A(4) requires that any ''National Emission Standards for Hazardous Air Pollutants Source (NESHAP Source) as defined in section 26.11.01.01 . . .'' obtain a permit to construct. The definition of NESHAP Source at COMAR 26.11.01.01B(21) was amended and simplified (specifically, 26.11.01.01B(21)(b)), effective March 5, 2012.[1] The revised definition had the unintended consequence of requiring that all sources subject to the NESHAP obtain a permit to construct, even the small emission sources which had previously been exempt under section 26.11.02.10.

The proposed revision to section 26.11.02.09A(4) allows MDE to retain the exemptions for smaller sources as originally intended and already approved in the Maryland SIP. Additionally, Regulations .09A(3) and .09A(4) under section 26.11.02 were revised to clarify that electric generating stations that meet the definitions of New Source Performance Standard (NSPS) sources and NESHAP sources are exempt from MDE permitting requirements only if they receive a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission (PSC).

II. Summary of SIP Revision

COMAR 26.11.02.09A(4) has been revised to specify that NESHAP sources ''. . . as defined by COMAR 26.11.01.01B(21)(a),'' are required to obtain a permit to construct. This corrects the unintended consequence of applying MDE permitting requirements to emission sources that would otherwise be exempt. COMAR 26.11.02.09A(6) will continue to require that all sources not explicitly exempt are required to obtain a permit to construct. Additionally, as previously discussed, Regulations .09A(3) and .09A(4) under section 26.11.02 have been revised to clarify that electric generating stations that meet the definitions of NSPS sources and NESHAP sources are exempt from permitting requirements only if they receive a CPCN from the Maryland PSC. The proposed revisions were effective in Maryland on July 8, 2013.

III. Proposed Action

EPA's review of this material indicates that it meets all applicable CAA requirements. EPA notes that in a February 10, 2012 final rulemaking action, limited approval was granted to a Maryland SIP revision that included amendments to COMAR 26.11.02.09. *See* 77 FR 6963. The reasons for that limited approval are unrelated to this action, and do not prevent EPA from granting full approval to the currently proposed amendments to section

[1] It should be noted that COMAR 26.11.01.01B(21) is not part of the Maryland SIP.

26.11.02.09. Therefore, EPA is proposing to approve MDE's January 24, 2013 SIP revision. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rulemaking action, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Maryland's permit to construct requirements as discussed in section II of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, relating to Maryland's preconstruction permitting requirements, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 16, 2015.

William C. Early,

Acting, Regional Administrator, Region III.

[FR Doc. 2015–10008 Filed 4–28–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2005–0002; FRL–9927–05–Region 2]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List: Deletion of the Crown Vantage Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 is issuing a Notice of Intent to Delete the Crown Vantage Landfill Superfund Site (Site), located in Alexandria Township, Hunterdon County, New Jersey, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of New Jersey, through the New Jersey Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, other than long-term maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by May 29, 2015.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2005–0002, by one of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Email: hess.alison@epa.gov:*
- *Mail:* To the attention of Alison Hess, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, Emergency & Remedial Response Division, 290 Broadway, 19th Floor, New York, NY 10007–1866.
- *Hand Delivery:* Superfund Records Center, 290 Broadway, 18th floor, New York, NY 10007–1866 (telephone: 212–637–4308). Such deliveries are only accepted during the Record Center's normal hours of operation (Monday to Friday from 9:00 a.m. to 5:00 p.m.). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2005–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM that you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, NY 10007–1866, *Telephone:* 212–637–4308, *Hours:* Monday through Friday from 9:00 a.m. to 5:00 p.m. and

Milford Public Library, Crown Vantage Landfill Site Repository File, 40 Frenchtown Road, Milford, NJ 08848, *Telephone:* 908 995–4072, *Hours:* Monday 12:00 p.m. to 7:00 p.m., Tuesday 11 a.m. to 5:00 p.m., Wednesday 12 p.m. to 8:00 p.m., Thursday 11 a.m. to 8:00 p.m., Friday 10:00 a.m. to 1:00 p.m. and 5:00 p.m. to 8:00 p.m., and Saturday 10:00 a.m. to 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Alison Hess, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, NY 10007–1866; *Telephone* 212–637–3959; or *Email hess.alison@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 2 is announcing its intent to delete the Crown Vantage Landfill Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the NCP, which EPA promulgated pursuant to section 105 of the CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**. Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Crown Vantage Landfill Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State before developing this Notice of Intent to Delete;

(2) EPA has provided the State 30 working days for review of this notice prior to publication of it today;

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

(4) The State of New Jersey, through the New Jersey Department of Environmental Protection (NJDEP), has concurred with deletion of the Site from the NPL;

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, the Hunterdon County Democrat. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(6) EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the Site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following summary provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Crown Vantage Landfill Site is an inactive former landfill located at 500 Milford-Frenchtown Road in Alexandria Township, New Jersey. The Site occupies about 10 acres and has approximately 1,500 feet of frontage on the eastern bank of the Delaware River. A mix of young and mature hardwood trees, shrubs and grasses covers the Site. Access to the landfill area is restricted by locked chain-link fencing.

To the west of the site, across the Delaware River, lies Bucks County, Pennsylvania. The Delaware and Raritan Canal foot path and a farm field bound the Site to the east. Historically, railroad tracks bounded the Site to the east. The landfill property is bounded to the south by the Delaware Raritan Canal State Park and to the north by the Curtis Specialty Papers Superfund site.

The landfill reportedly was utilized by the nearby former Curtis Specialty Papers mill, as well as by other nearby Riegel Paper Company facilities, for the disposal of waste beginning in the late 1930s through the early 1970s. The landfill may also have accepted flood-damaged items from the local community following record flooding of the Delaware River in 1955. Types of wastes disposed of at the landfill include fly ash, cinders, and bottom ash; paper mill and coating-related wastes, including foil-backed paper, off-specification paper, 55-gallon drums containing press room wastes, and paper fiber sludge from wastewater treatment plant operations; steel and fiber barrels and pallets; and construction and demolition debris. Historical aerial photos indicated that shallow trenches in the surface of the landfill may have been used for the burial of drummed wastes in the early 1970s.

Site characterization began in 1991 with the Preliminary Site Investigation (PSI), including an aerial photograph analysis, geophysical survey of the landfill area, soil gas sampling, ground water sampling and a wetlands assessment. The PSI was followed by the removal of drums (empty, full, and partially full) and paper products from the surface of the landfill. In 1994, monitoring wells were installed and the ground water quality was characterized.

From 2001 through 2003, the NJDEP fenced the Site, removed additional surface debris, including drums, and collected surface soil samples. The EPA conducted additional sampling of surface water, sediment, surface soil and fly ash, and ground water in 2003 and 2004. Additional wastes were removed from the surface and riprap was placed in flood-impacted areas.

The Site was proposed to the National Priorities List (NPL) in September 2004 (69 FR 56970) and listed on the NPL in April 2005 (70 FR 21644). The EPA CERCLIS ID# is NJN000204492.

In May 2005, Fort James Operating Company, a subsidiary of Georgia-Pacific, entered into an Administrative Order on Consent (AOC) with EPA for a Removal Action. Under the 2005 AOC, additional surficial drums were removed, additional fencing was provided, and an engineered slope stabilization wall was constructed to stabilize the landfill's western face. In total, over 700 surficial drums, drum remnants and drum carcasses were removed from the surface of the Site during investigations conducted between 1991 and 2007.

Further investigations and removal actions at the Site were performed by Georgia-Pacific Consumer Products, LP (GP) under an Administrative Agreement and Order on Consent signed in September 2007 and by International Paper Company (IP) under a Unilateral Administrative Order signed in December 2007. During the Remedial Investigation (RI) conducted in 2008–2009, more than 1,750 drums, drum carcasses and drum remnants were removed from the Site. Analytical data from surface water, pore water and groundwater sampling showed that these media were not impacted by the Site. The RI Report was completed in July 2010. The RI concluded that, after removal activities were conducted, all human health risks were within or below EPA's acceptable levels. An ecological risk assessment was also conducted and concluded that there was no need for remediation based on potential risks to ecological receptors. The Feasibility Study Report, developed to identify and compare cleanup alternatives, was completed in November 2010.

Selected Remedy

The Site remedy was selected and memorialized in the Site Record of Decision (ROD), which was issued on September 29, 2011. Because the baseline human health risk assessment and ecological risk assessments for the Site did not identify the presence of unacceptable human health or ecological risks requiring remediation under current and reasonably anticipated future Site use, the remedial action objectives were limited to preventing exposures to landfill materials. The major components of the selected remedy of the ROD are the following:

- Establishment of a deed restriction to ensure that future Site uses do not result in the disturbance of the surface of the Site, thereby preventing future residential or commercial/industrial development of the Site;
- Continued maintenance of security measures at the Site (*e.g.,* signage and fencing);
- Continued maintenance of the slope stabilization wall;
- Sealing of remaining shallow monitoring wells;
- Semi-annual monitoring of the Site, including the slope stabilization wall; and
- Five-Year Reviews by EPA to ensure that the remedy continues to be protective of public health and the environment.

Response Actions

A Consent Decree for IP's and GP's performance of the Remedial Design and Remedial Action was entered by the United States District Court for the District of New Jersey in April 2013.

The remedy was designed and constructed in a single phase pursuant to EPA-approved work plans. The monitoring well closures and fence relocation measures undertaken as part of maintaining the existing security as required by the ROD were conducted from February to April 2013. Three monitoring wells and two piezometers were located in the field and sealed in accordance with New Jersey well closure regulations. Another three monitoring wells and four piezometers were documented to have been closed in 2007. Lastly, two monitoring wells could not be located visually or with the use of a metal detector and may have been closed in 2007 or covered by silt and other materials since they were last sampled in 1994, and four piezometers located beneath the slope stabilization wall also could not be located and are presumed to no longer be accessible. New 12-foot fence posts were driven to a depth of four feet. Monitoring of ambient air was conducted during fence installation, with no measurable concentrations of volatile organic compounds detected above background levels. Old posts and fencing were removed and recycled, and a new section of fencing and fabric installed. New coated, rust-free aluminum signs were posted along the entire fence perimeter as needed. EPA conducted a final inspection in July 2013 and issued a Preliminary Site Close-Out Report in September 2013.

IP and GP prepared a draft deed notice pursuant to the April 2013 Consent Decree. EPA approved the final deed notice in December 2013. The deed notice was recorded by the Hunterdon County Clerk in February 2014.

EPA issued a Final Site Close-Out Report in December 2014.

Ongoing Maintenance

The ongoing maintenance plan was approved in June 2013. This plan covers site security, the long-term monitoring and maintenance of the slope stabilization wall and recertification of the deed notice.

Five-Year Review

Hazardous substances, pollutants, or contaminants will remain at the Site above levels that allow for unlimited use and unrestricted exposure. Therefore, pursuant to CERCLA Section 121(c), EPA is required to conduct a review of the remedy at least once every five years. The first Five-Year Review Report will be completed prior to February 2018, which is five years from the start of the on-site remedial action construction.

Community Involvement

Public participation activities for the Site have been satisfied as required by CERCLA sections 113(k) and 117, 42 U.S.C. 9613(k) and 9617. A Community Advisory Group (CAG) for the Site has been meeting quarterly since 2009. EPA finalized a site-specific Community Involvement Plan in March 2010. The CAG obtains information from EPA and provides community input on the site progress, including the implementation of field activities associated with investigations, removals and remedial construction. EPA maintains a local site information repository at the Milford Public Library and regularly adds site reports and other documents.

As part of the remedy selection process, the public was invited to comment on the proposed remedy. In June 2011, EPA released a Proposed Plan summarizing the RI/FS reports and identifying the preferred remedial alternative with the rationale for its preference. EPA held a public meeting on July 12, 2011 at the Milford Firehouse to explain the Proposed Plan and to receive public comments. EPA held a public comment period from July 1 through 31, 2011 to accept written comments. Responses to comments received at the public meeting and comments submitted during the public comment period are provided in the Responsiveness Summary section of the ROD.

All other documents and information the EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

Determination That the Site Meets the Criteria for Deletion From the NCP

All of the completion requirements for the Site have been met, as described in the December 29, 2014 Final Site Close-Out Report. The State of New Jersey, in January 12, 2015 letter, concurred with the proposed deletion of the Site from the NPL. As described in this Notice of Intent to Delete, the implemented remedy achieves the degree of cleanup specified in the ROD for all exposure pathways; the RAO has been met, and no further Superfund response is needed to protect human health and the environment.

The NCP specifies that EPA may delete a site from the NPL if responsible parties or other persons have implemented all appropriate response actions. EPA, with the concurrence of the State of New Jersey, believes that this criterion for deletion has been met. Consequently, EPA intends to delete the Crown Vantage Landfill Site from the NPL. Documents supporting this action are available for review at the information repositories identified above.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p.306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193. Dated: April 15, 2015.

Judith Enck,

Regional Administrator, Region 2.

[FR Doc. 2015–10001 Filed 4–28–15; 8:45 am]

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Notices

Federal Register
Vol. 80, No. 82
Wednesday, April 29, 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–2012–0020]

Risk-Based Sampling of Beef Manufacturing Trimmings for Escherichia coli (E. coli) O157:H7

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice: Response to comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is responding to comments on the September 19, 2012, **Federal Register** notice, ''Risk-Based Sampling of Beef Manufacturing Trimmings for *Escherichia coli* O157:H7 and Plans for Beef Baseline'' and providing updates on how it is scheduling sampling for beef manufacturing trimmings. Additionally, the Agency is announcing that it is changing its existing algorithms for sampling of bench trim and raw ground beef components other than trim to make them more risk-based. Finally, the Agency is making available the following report: ''Effective Implementation of Beef Manufacturing Trimmings Sampling Redesign (MT60).''

DATES: On July 28, 2015, FSIS will implement design changes in bench trim and other ground beef components besides trimmings.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2012, FSIS published a **Federal Register** notice (77 FR 58091) announcing its intention to redesign its *E. coli* O157:H7 verification testing program for trimmings to make the program more risk-based and to enable the Agency to calculate on-going statistical prevalence estimates for *E. coli* O157:H7 in raw trimmings (*http://www.fsis.usda.gov/wps/wcm/connect/15e75329-978f-43f0-b8fe-101845d898f0/Redesign_Beef_Trim_Sampling_Methodology.pdf?MOD=AJPERES*). FSIS also announced additional changes to the trimmings sampling program to increase collection rates and the likelihood of finding positive *E. coli* O157:H7 sample results. FSIS discussed its plans to conduct a beef carcass baseline. Finally, FSIS explained it was planning to conduct a survey, using its employees that are assigned to beef slaughter and processing establishments, to gather information on establishment controls for Shiga toxin-producing *Escherichia coli* (STECs) in beef. Results of the survey are available at: *http://www.fsis.usda.gov/wps/wcm/connect/fe95af5f-3271-41af-b92b-68490fa87cab/beef-operations-summary-results.pdf?MOD=AJPERES,* which FSIS previously announced in the **Federal Register** notice announcing the availability of its analysis of the costs and benefits associated with FSIS's non-O157 STEC testing on November 19, 2014 (79 FR 68843) at *http://www.fsis.usda.gov/wps/wcm/connect/ce564342-fa9c-44f4-a98a-a4a6b6797646/2010-0023.pdf?MOD=AJPERES.*

In June 2012, FSIS implemented the risk-based design and other changes discussed in the 2012 **Federal Register** notice. FSIS conducted analyses of the trimmings sampling program twelve months after implementation of the new risk-based design. Analyses show that the new design was successful at increasing the number of *E. coli* O157:H7 positives detected and also significantly increased the collection rate. In the first twelve months of implementation, FSIS analysis of routine sampling of trimmings detected 1.8 times more *E. coli* O157:H7 positives than FSIS had previously detected in this product. In the **Federal Register** notice FSIS estimated that the probability of obtaining *E. coli* O157:H7 results in trimmings during FSIS verification testing would increase by a factor of about 2.5. Possibilities for why FSIS did not detect an approximate 2.5 times as many *E. coli* O157:H7 positives are numerous and include changes to the data systems and the frame available during analysis and modeling, changes to the laboratory tests implemented at about the same time as the new statistical design, and positives being collected under follow-up sampling rather than routine sampling. The new statistical design and overscheduling to adjust for nonresponse solved the historically low response rates associated with trimmings. The report is posted at *http://www.fsis.usda.gov/wps/wcm/connect/31575c98-2c22-4e9c-a19d-b3511d106082/Analysis-Beef-Trim-Redesign.pdf?MOD=AJPERES.*

Therefore, FSIS has concluded that its change in sampling was effective. However, FSIS has not been able to estimate STEC prevalence in trimmings because it has not obtained a sufficient number of sample results. To address this issue, FSIS has increased the number of trim samples scheduled to be collected by inspectors for each month to that of the number of samples it had previously scheduled to be collected during months in the high prevalence season, effective November 2014. FSIS made this change to obtain the number of samples needed to allow on-going prevalence determinations to be made from the data collected.

FSIS started conducting the Beef-Veal carcass baseline on August 1, 2014, and will complete the survey July 31, 2015. As stated in the previous **Federal Register** notice discussed above, FSIS plans to use the results of the Beef-Veal carcass baseline and the results of the Pathogen Controls in Beef Operations survey data to conduct risk analyses to determine the relative impact of various establishment factors on the probability of *E. coli* O157:H7 contamination and subsequent illnesses, hospitalizations, and deaths. FSIS will post the survey results. In addition, now that FSIS also is analyzing beef samples for both STEC and *Salmonella* (79 FR 32436), FSIS is able to make statistically-based determinations about the on-going prevalence of these pathogens in beef samples at least on an annual basis.

FSIS conducted a statistical analysis of the results from its sampling of bench trim program and its sampling of other ground beef components besides trimmings to identify factors that would lead to a higher probability of detecting *E. coli* O157:H7. FSIS did not find a higher probability of finding *E. coli* O157:H7 in particular establishments when it looked at the factors considered for these products. Because

establishments make different volumes of product, FSIS is changing its existing sampling algorithms for bench trim and other ground beef components besides trim to sample establishments proportional to production volume. Additionally, FSIS intends to overschedule to adjust for nonresponse under the redesigned programs, similar to how FSIS implemented changes to the trimmings program.

Comments and Responses

FSIS received comments from seven industry and consumer organizations in response to the September 2012 notice. Both industry and consumer organizations supported the Agency's use of statistically significant data to make scientifically supported decisions regarding its sampling programs. Following is a discussion of these comments and FSIS's responses.

Sampling Programs

Comment: Two consumer organizations requested that more funding be provided to maintain FSIS's sampling in the low prevalence season of the year in addition to maintaining the increased sampling during the high prevalence season.

Response: As is stated above, the Agency has increased the number of trim samples. FSIS is now maintaining the high prevalence level of sampling throughout the entire year.

Comment: One consumer group questioned the statistical validity of using an N–60 collection method for trimmings that the Agency has reported on its Web site and cited the findings of the 2012 OIG audit report.

Response: FSIS's sampling and testing for *E. coli* O157:H7 is just one of the activities that FSIS conducts to verify that an establishment's food safety systems effectively address STEC. FSIS sampling of beef trim works along with other inspection and verification activities, including FSIS sampling of ground beef and other ground beef components and its review of establishment testing results, to detect and reduce *E. coli* O157:H7 in beef products.

As FSIS explained in response to the Office of the Inspector General's report on the Agency's sampling protocol for testing beef trim for *E. coli* O157:H7,[1] FSIS does not view a single N–60 sampling result apart from other verification activities. Note that along with sampling and carcass-by-carcass inspection, FSIS inspection personnel performed more than 839,000 inspection procedures in CY-2014 at roughly 635 slaughter establishments that would also be subject to trim sampling. These inspection procedures, performed daily at slaughter establishments, play an important role in ensuring that establishments are producing safe and wholesome products.

While a single N–60 sample result may not indicate definitively the success or failure of an establishment's process controls for beef trim, it can be an important part of the establishment's verification program, especially if the establishment or FSIS takes multiple N–60 samples over time.

FSIS' mission is not to screen the food supply through testing but to ensure the production of safe and wholesome food through inspection.

Comment: One industry organization suggested that the Agency consider market class of animal, size of the establishment, and the historical rate of *E. coli* O157:H7 detection at the establishment in Agency testing when making risk-based sampling program decisions.

Response: When considering the redesign of its trimmings sampling program, the Agency did consider establishment size in average pounds produced per day and historical positive sampling results over time. The Agency chose to consider the volume of product that an establishment produced to focus the Agency's resources on actual product produced.

As explained in the 2012 **Federal Register** notice (77 FR 58091), FSIS redesigned the sampling algorithm to collect more samples from establishments in establishment size categories with the highest probability of producing trimmings contaminated with *E. coli* O157:H7. As a result, the Agency is focusing on small establishments that produce between 1001 and 50,000 pounds per day.

At this time, FSIS does not have the means to collect different types of market class information other than to differentiate between beef and veal. FSIS will continue to report veal results separately from other beef results *http://www.fsis.usda.gov/wps/portal/fsis/topics/data-collection-and-reports/microbiology/ec/positive-results-current-cy/positive-results-current-cy.* In addition, FSIS will consider assessing the differences between veal and beef results and issuing necessary guidance and instructions to the field based on these results when appropriate. For example, based on its analysis of results, FSIS issued instructions, in 2011–2012, for inspectors to verify that establishments applied antimicrobial interventions to veal carcasses correctly, and that they maintained procedures to minimize cross-contamination among veal carcasses.

Comment: One industry organization encouraged FSIS to conduct risk-based sampling for ground beef as well.

Response: An FSIS risk assessment, presented in a public meeting on October 28, 1998, and updated thereafter, found that volume of production is a better determinant of risk for *E. coli* O157:H7 in ground beef than size of the establishment. Beginning on January 1, 2008, FSIS initiated an enhanced risk-based sampling and testing program for *E. coli* O157:H7 in raw ground beef. The risk-based sampling program took into account establishment volume, and whether the establishment had any FSIS or Agriculture Marketing Service positive results within the past 120 days. The current sampling is proportional to ground beef production volume. Consequently, the program supports on-going prevalence estimates from the data.

Comment: One industry organization commented that the Agency concluded that the rate of sanitary dressing procedure noncompliance reports could not be used to identify establishments that have a higher probability of *E. coli* O157:H7 positive tests result. The industry organization requested that FSIS determine whether the revised cattle sanitary dressing directive improved sanitary dressing procedures, and whether there is a correlation between sanitary dressing procedures and positive *E. coli* O157:H7 test results. The commenter stated that establishment size and animal market class should also be addressed in this review of sanitary dressing procedures.

Response: When FSIS did the analysis for the statistical redesign, it found that there is no predictive relationship between higher sanitary dressing noncompliances and the probability of *E. coli* O157:H7 positive sample results. Under the Public Health Inspection System (PHIS), the Agency tracks the inspection activities inspection personnel use to verify whether an establishment's food safety system meets regulatory requirements. The inspection activities tracked include the procedures used to verify whether establishments maintain effective sanitary dressing procedures. The Agency analyzes the PHIS data on inspection activities on a biannual basis.

FSIS reviewed the data for the relevant inspection tasks performed and FSIS positive results at establishments sampled under the trimmings (MT50)

[1] OIG Audit Report 24601–9–KC ''FSIS Sampling Protocol for Testing Beef Trim for *E. coli* O157:H7'' p. 31

sampling program. FSIS did not find a correlation between sanitary dressing or sanitation NRs and MT50 percent positive in trimmings.

Comment: One consumer organization recommended that FSIS take additional steps to improve the representativeness of the samples collected by eliminating FSIS's procedure of pre-notification of testing. The commenter stated that this notification allows establishments to adjust their operations before the sample is taken. The consumer group also recognized that FSIS mailed test kits to establishments before field personnel collected samples for chain of evidence reasons. The commenter stated that the arrival of a sample box would signal that a test is imminent and serves as a pre-notification. The consumer organization suggested that sample boxes be kept stocked by in-plant personnel.

Response: FSIS requires establishments to hold product tested for an adulterant such as *E. coli* O157:H7 pending the results of FSIS testing. Establishment management needs sufficient pre-notification of sampling in order to hold production lots in a manner such that they are microbiologically independent. Otherwise, FSIS would be collecting samples from production lots that may already be distributed in commerce, resulting in preventable product recalls. FSIS has issued instructions to field personnel to notify establishment that FSIS will be collecting a sample, but that the notification should only provide enough time for the establishment to be able to hold all affected product.

The Agency has a finite number of resources which makes stocking multiple sample boxes at establishments cost prohibitive. Additionally, some USDA offices in establishments are small and do not allow for storage of multiple sample boxes. If establishments change their food safety system on the days that FSIS collects samples in a manner to influence the sample result, FSIS has instructed inspection program personnel to notify their supervisory chain so that a determination can be made as to how to address this concern. In such circumstances, FSIS may decide to conduct additional sampling at the establishment or to conduct a Food Safety Assessment (which includes in-depth verification that the establishment meets regulatory requirements related to food safety).

Comment: One consumer organization questioned whether the results for FSIS's sampling programs can be used to develop reliable prevalence estimates.

Response: As noted above, FSIS has increased the number of trimming samples collected to achieve the number of samples needed to allow STEC on-going prevalence determinations to be made from the data collected. FSIS will make *E. coli* O157:H7 prevalence estimates for ground beef available in the near future. FSIS will make STEC prevalence (*E. coli* O157:H7 and other STEC) estimates for trim available in the first quarter of FY 2016.

Industry Survey

Comment: One industry organization had several suggestions regarding the beef survey that FSIS announced in the 2012 **Federal Register** notice (77 FR 58091). The commenter stated that the survey should: (1) have clear goals and deliverables, (2) not put an economic burden on industry, (3) have questions based on data that pertain to the problem of *E. coli* O157:H7 contamination, (4) collect data on the volume of source material produced by establishments that test for *E. coli* O157:H7, and (5) present results as volume-based to address the results from the survey.

Response: Through the survey described above, inspectors provided information on processing practices that establishments employ to reduce the likelihood of contamination of intact and non-intact raw beef products with STEC. FSIS did have clear goals when it put forth the survey. This survey was designed to gather information not collected in the Public Health Information System. FSIS is using the survey results to update the economic analysis to support the full implementation of its non-O157 STEC policy. Data from the 2013 Pathogen Controls in Beef Operations Survey (conducted in May–July 2013) allowed FSIS to estimate the number of non-O157 STEC tests conducted by the industry for a 12-month period. FSIS is also analyzing the survey results to develop targeted approaches for its risk-based verification testing program and to assist it in prioritizing the scheduling of Food Safety Assessments (FSA) by Enforcement, Investigations, and Analysis Officers (EIAO). FSIS did not collect production volume information in the survey and is not presenting the results as volume based. Establishment profiles contain production volume information in the Public Health Information System.

FSIS has used the numbers obtained in the survey to estimate sampling numbers for industry testing as part of the economic analysis for STEC sampling in all of the Agency's raw beef microbiological sampling programs. The economic analysis is available at *http://www.fsis.usda.gov/wps/wcm/connect/52afacbc-4780-4fba-a7ab-cde987ea1d45/STEC-cost-benefit-analysis.pdf?MOD=AJPERES.* Additionally, FSIS plans to conduct risk analyses, as appropriate, to determine the relative impact of various establishment factors on the probability of *E. coli* O157:H7 contamination and subsequent illnesses, hospitalizations, and deaths. FSIS intends to use the data generated by the actions listed above to assess and evaluate its trimmings sampling program and to make risk-based changes as appropriate.

FSIS implemented the survey in such a way as to not cause an undue economic burden on industry.

Comment: One consumer group commented that FSIS should make plans to routinely repeat the survey to inform sampling decisions made by the Agency.

Response: Conducting the survey is very time intensive for field personnel. FSIS must weigh the time spent completing a survey against the time spent conducting regular inspection duties. FSIS will conduct future surveys as necessary.

Carcass Baseline

Comment: An industry organization commented that the beef carcass baseline should include the whole beef trimmings production process, and that it should also include veal.

Response: The Beef-Veal carcass baseline began August 1, 2014. FSIS is including steers, heifers, cows, bulls, stag, dairy cows, and veal carcasses in the Beef-Veal carcass baseline. FSIS is collecting samples at two points in the process, immediately after hide removal (pre-evisceration) and at pre-chill (after all antimicrobial interventions).

Comment: An industry organization suggested that because FSIS is only testing for pathogenic organisms that are adulterants, the Agency should consider alternative baseline testing locations within the production supply chain. The commenter suggested that FSIS collect a post-hide removal sample to address the hide removal process, where cross-contamination is more likely to occur; a second sample site after antimicrobial interventions; and trim testing for *E. coli* O157:H7 for products that will be used in ground beef or veal production.

Response: The Agency is obtaining samples at two points in the slaughter process for the baseline study: immediately after hide removal but before evisceration, and at pre-chill before the carcasses enter the chillers and after all antimicrobial applications.

This study addresses three distinct objectives: to estimate the prevalence and quantitative levels of selected foodborne microorganisms, to obtain data for use in the development of Agency programs, and to obtain data for informing industry guidance related to process control. The sample design and the resulting sample size are limited for this survey by practical constraints such as finite personnel and financial resources, and the problems with implementing scientific studies in real-world production settings. Considering these constraints, FSIS expects that the Beef-Veal carcass baseline study will achieve the stated objectives because FSIS will collect and analyze as many samples as possible to ensure an appropriate level of statistical confidence.

With the two points that the Agency chose to use for sampling for the baseline carcass study, FSIS requires the establishment to hold or control the movement of sampled carcasses at pre-chill until the establishment is notified of STEC results. FSIS verifies that the establishment does not treat the sampled carcasses any differently than any of the other carcasses it is processing. In the event that a sampled carcass is treated differently, FSIS will randomly select another carcass during the same processing time and collect samples from that carcass.

The results from samples collected during the baseline carcass study become available after all analyses for STEC and *Salmonella* are complete. Baseline sample results usually are reported in two to six days but may take longer depending on individual circumstances. Post-hide/pre-evisceration and pre-chill sample results are reported through Laboratory Information Management System (LIMS) Direct.

FSIS is not issuing noncompliance records (NRs) for STEC positive results during the baseline. In response to a positive result from the pre-chill sample only, field personnel perform a directed Slaughter HACCP Verification task to verify that the establishment has adequate slaughter controls (including antimicrobial intervention implementation) for the specific production lot represented by the positive STEC carcass result. Field personnel also verify that the establishment implements corrective actions that meet the applicable requirements in 9 CFR 417.3. Field personnel do not verify corrective actions in response to a positive STEC result from the post-hide/pre-evisceration sample. Rather, FSIS verifies that establishments ensure that carcasses found positive for STECs during the pre-chill sampling and testing are not processed into raw non-intact product. The presence of STEC on a pre-chill carcass intended for use as raw non-intact product would adulterate the carcass. The presence of STEC on a carcass intended for use as raw intact product would not adulterate the carcass if the entire carcass is going for intact product. In the event that a carcass tests positive for STEC, establishments may take action to ensure that all products from the carcass go for cooking, or they may take action to recondition the carcass and ensure that the carcass goes for intact use only.

In the event of a STEC positive on a post-hide removal/pre-evisceration sample without a corresponding pre-chill sample on a carcass intended for raw non-intact use, the carcass would not be considered adulterated. The carcass presumably will undergo further interventions after post-hide removal/pre-evisceration. In the event of a STEC positive from a pre-chill test result on a carcass intended for raw non-intact use, the carcass is considered adulterated. The establishment is required to take corrective action.

Comment: One industry organization recommended that FSIS conduct a ''shakedown'' period at establishments representative of the industry in order to assess the logistics of sampling. The commenter stated that this shakedown should be done to provide a safe sampling environment for inspection personnel and to ensure that sampling will not interfere with the routine slaughter process.

Response: FSIS agrees with the comment. The Agency did conduct a shakedown training period before the actual baseline and confirmed that baseline sampling will not interfere with the routine slaughter process.

Comment: One industry organization commented that while the Agency is developing the baseline, the timeframe for the publication of study results should be outlined.

Response: FSIS posted the study design and sampling plan on the FSIS Web site at *http://www.fsis.usda.gov/wps/wcm/connect/5057f4ef-f924-422c-bafe-771b1ead78e4/Beef-Veal-Carcass-Baseline-Study-Design.pdf?MOD=AJPERES.* FSIS will publish a final report with the national prevalence calculations after the completion of the survey.

Comment: One industry organization commented that sampling immediately after de-hiding may not provide the most meaningful information as to the presence of the various organisms in the slaughter process. The commenter stated that although the sample may be taken before any on-line interventions, the condition of the carcass, in terms of potential microbial load, is not comparable across establishments. The commenter explained that some establishments have interventions and other practices that occur before de-hiding, such as bacteriophage sprays or hide washes. Likewise, the commenter stated that the effectiveness of hide removal in minimizing contamination of the carcass varies among establishments. If FSIS is seeking to use this baseline to assist establishments in assessing ''incoming'' contamination levels before on-line interventions, the commenter stated that not taking into account the steps that come before this sampling point at each establishment would likely limit the usability of the results.

Response: FSIS agrees that the incoming microbial load may vary from establishment to establishment depending on whether establishments use bacteriophage sprays or hide washes, and that the effectiveness of establishments in preventing cross-contamination in hide removal may also vary. Nevertheless, FSIS expects that the Beef-Veal carcass baseline study will achieve the stated objectives by collecting and analyzing as many samples as possible to ensure an appropriate level of statistical confidence.

Comment: Two commenters stated that carcass sampling immediately after de-hiding could pose a safety risk to inspection program personnel, as well as to establishment employees. According to the commenters, this location is in the middle of the harvest line, so taking a sample at this juncture will require inspection program personnel to enter an area of the process where hazards, such as dangerous equipment, are present and space is limited. Taking samples at this point could, in turn, also put establishment employees at risk.

Response: FSIS discussed with establishment management before collecting samples for the shakedown the following: (1) Where supervisory personnel could safely collect post-hide removal/pre-evisceration and pre-chill samples, (2) establishment safety requirements and protocols that supervisory field personnel must follow during sample collection, and (3) the potential need for line stoppages for supervisory field personnel to safely and properly collect the samples. FSIS also issued instructions to inspection program personnel for conducting sampling from a safe vantage point, especially when collecting the posterior

samples from the post-hide/pre-evisceration and pre-chill locations; following the same safety procedures provided for employees at that establishment which may require the use of a harness; slowing or stopping production lines; and acquiring needed tools to safely collect samples. Information on the Beef-Veal carcass baseline can be found at the following link *http://www.fsis.usda.gov/wps/wcm/connect/5d3552e7-9b81-4b2c-aa20-cfaeef77f251/36-14.pdf?MOD=AJPERES.*

Comment: One industry organization asked what type of carcass sampling the Agency will use for the carcass baseline study.

Response: As was done during the shakedown, FSIS is obtaining samples following the procedures described in the United States Department of Agriculture Agricultural Research Service Meat Animal Research Center Carcass Sampling Protocol [2] available at the following link: *http://www.ars.usda.gov/SP2UserFiles/Place/54380530/protocols/USMARC%20Carcass%20Sampling%20Protocol.pdf.*

Comment: One consumer organization stated that FSIS should conduct a baseline study to estimate the prevalence of *E. coli* O157:H7 in beef manufacturing trimmings and ground beef in order to improve the confidence in FSIS's efforts to detect contaminated product and effectively verify process controls.

Response: FSIS decided to focus on sampling carcasses for this baseline and not trimmings and ground beef because of resource limitations. The Beef–Veal carcass baseline survey will provide FSIS the necessary data on percent positives and quantitative levels of select foodborne bacterial pathogens (*e.g., Salmonella,* STEC, and certain indicator organisms). FSIS will use the data from the Beef–Veal carcass baseline survey to estimate the national prevalence of select microorganisms in carcasses, not trimmings and ground beef; to develop industry performance guidelines; to assess process control across the industry; and to inform additional policy considerations. Results of this study will be used to estimate volume-weighted prevalence and bacterial loads immediately after hide removal and at pre-chill. Moreover, FSIS has made changes to both the trimmings and ground beef verification testing programs to be able to obtain on-going prevalence of both *E. coli* O157:H7 and *Salmonella* (79 FR 32437).

[2] U.S. Meat Animal Research Center (MARC) Carcass Sampling Protocol.

Other Topics

The following comment topics that were received are outside the scope of this notice: disappearing schedule dates from PHIS, returned FedEx sample boxes, FSIS training materials, and purge studies.

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 segments 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 copies of 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 much broader, more 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.* 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.

Dated: April 23, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–09957 Filed 4–28–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Special Milk Program for Children

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this information collection. This collection is a revision of a currently approved collection which FNS employs to determine public participation in Special Milk Program for Children.

DATES: Written comments must be received on or before June 29, 2015.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Lynn Rodgers-Kuperman, Branch Chief, Program Monitoring, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 636,

Alexandria, VA 22302–1594. Comments may also be submitted via fax to the attention of Lynn Rodgers-Kuperman at 703–305–2879 or via email to *lynn.rodgers@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Lynn Rodgers-Kuperman at 703–305–2595.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 215, Special Milk Program for Children.

Form Number: FNS–66B.

OMB Number: 0584–0005.

Expiration Date: October 31, 2015.

Type of Request: Revision of a currently approved collection.

The Special Milk Program for Children

Abstract: Section 3 of the Child Nutrition Act (CNA) of 1966, (42 U.S.C. 1772) authorizes the Special Milk Program (SMP). It provides for the appropriation of such sums as may be necessary to enable the Secretary of Agriculture to encourage the consumption of fluid milk by children in the United States in: (1) Nonprofit schools of high school grade and under; and (2) nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a food service program authorized under the CNA or the National School Lunch Act.

Section 10 of the CNA (42 U.S.C. 1779) requires the Secretary of Agriculture to prescribe such regulations as deemed necessary to carry out this Act and the National School Lunch Act. Pursuant to that provision, the Secretary has issued 7 CFR part 215, which sets forth policies and procedures for the administration and operation of the SMP. State and local operators of the SMP are required to meet Federal reporting and accountability requirements. This information collection is required to administer and operate this program. The Program is administered at the State, school food authority (SFA), and child care institution levels; and operations include the submission of applications and agreements, submission and payment of claims, and maintenance of records. The reporting and record keeping burden associated with this revision has decreased from 21,246 to 14,914 hours. This change is mainly due to adjustments, such as corrections in the number of institutions and the amount of burden per response. All of the reporting and recordkeeping requirements associated with the SMP are currently approved by the Office of Management and Budget and are in force. This is a revision of the currently approved information collection.

Affected Public: State agencies, Non-profit Institutions.

Number of Respondents: 3,933 (54 State Agencies, 3,879 Non-profit Institutions).

Frequency of Responses per Respondent: 1.32.

Total Annual Responses: 5,175.

Reporting Time per Response: .25.

Estimated Annual Reporting Burden: 1,294.

Number of Recordkeepers: 3,933 (54 State Agencies, 3,879 Non-profit Institutions).

Number of Records per Recordkeeper: 23.87.

Estimated Total Number of Records/Response to Keep: 93,876.

Recordkeeping time per Response: 0.15.

Total Estimated Recordkeeping Burden: 13,620.

Total Annual Responses for Reporting/Recordkeeping: 99,051.

Annual Recordkeeping and Reporting Burden: 14,914.

Current OMB Inventory for Part 215: 21,246.

Difference (change in burden with this renewal): (6,332).

Refer to the table below for estimated total annual burden for each type of respondent.

Affected public	Estimated number of respondents	Frequency of responses per respondent	Total annual responses	Hours per response	Estimated total burden
Reporting					
State agencies	54	24	1,296	0.25	324
Non-profit Institutions	3,879	1	3,879	0.25	970
Total Estimated Reporting Burden	3,933	1.32	5,175	0.25	1,294
Recordkeeping					
State agencies	54	965.83	52,155	0.10	5,276
Non-profit Institutions	3,879	10.76	41,721	0.20	8,344
Total Estimated Recordkeeping Burden	3,933	23.87	93,876	0.15	13,620

Total Reporting and Recordkeeping

	Estimated number of respondents	Number of responses per respondent	Total annual responses	Estimated total hours per response	Estimated total burden
Reporting	3,933	1.32	5,175	0.25	1,294
Recordkeeping	3,933	23.87	93,876	0.15	13,620
Total	.....	.....	99,051	.....	14,914

Dated: April 20, 2015.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2015–09997 Filed 4–28–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Annual State Report on Verification of Supplemental Nutrition Assistance Program Participation

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection for the Annual State Report of Verification of SNAP Participation. This is a new collection. The purpose of the Annual State Report of Verification of Supplemental Nutrition Assistance Program (SNAP) Participants is to ensure that no person who is deceased, or has been permanently disqualified from SNAP, improperly received SNAP benefits for the fiscal year preceding the report submission. Section 4032 of the Agriculture Act of 2014 is the basis for this collection. Section 4032 mandates that States will ''submit to the Secretary a report containing sufficient information for the Secretary to determine whether the State agency has, for the most recently concluded fiscal year preceding that annual date, verified that the State agency in that fiscal year—(1) did not issue benefits to a deceased individual; and (2) did not issue benefits to an individual who had been permanently disqualified from receiving benefits.'' An annual email from each State agency to the corresponding Food and Nutrition Service (FNS) Regional SNAP Program Director will be used as the mechanism for State agencies to report their compliance with section 4032 of the Agriculture Act of 2014.

DATES: Written comments must be submitted on or before June 29, 2015.

ADDRESSES: Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimated burden for the proposed information collection, 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 information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jane Duffield, Branch Chief, State Administration Branch, Program Accountability and Administration Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 818, Alexandria, VA 22302. You may also download an electronic version of this notice at *http://www.fns.usda.gov/snap/federal-register-documents/rules/view-all* and comment via email at *SNAPSAB@fns.usda.gov* or the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 822, Alexandria, Virginia 22302.

All comments to this notice will be included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Clyde Thompson at (703) 305–2461.

SUPPLEMENTARY INFORMATION:

Title: Annual State Report on Verification of SNAP Participation.

OMB Number: 0584—NEW.

Expiration Date: Not Yet Determined.

Type of Request: New collection.

Abstract: SNAP regulations at 7 CFR 273.16 require that State agencies disqualify an individual who has committed an intentional program violation (IPV). Paragraph 7 CFR 273.16(e)(8) requires that these individuals ''be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section'' (273.16(b)). Paragraph 7 CFR 273.16(i) requires State agencies to report information concerning each individual disqualified for an IPV to the disqualified recipient database, the electronic Disqualified Recipient System (eDRS), and to use eDRS data to determine the eligibility of individual applicants prior to certification. SNAP regulations at 7 CFR 272.14 require that each State agency establish a system to verify and ensure that benefits are not issued to individuals who are deceased, and that data source is the Social Security Administration's (SSA) Death Master File. The information required for the Annual State Report on Verification of SNAP Participation is obtained by validating that the State had the appropriate systems in place and followed procedures currently mandated at 7 CFR 272.14 and 7 CFR 273.16 for the preceding fiscal year.

The burdens associated with the activity of establishing a system to verify and ensure that benefits are not issued to deceased individuals or those permanently disqualified from SNAP using both the SSA Death Master File and eDRS are already conducted during the SNAP eligibility benefit process and is currently approved under OMB burden number 0584–0064, expiration date April 30, 2016.

In order to meet the reporting requirements specified in section 4032 of the Act, States are required to confirm via email to their FNS Regional SNAP Program Director that in the immediately preceding Federal fiscal year, they had the appropriate systems in place to meet the requirements of regulations at 7 CFR 272.14 and 273.16(i)(4) and that they conducted the matches required by these regulations. States are required to submit their section 4032 reports to the FNS Regional SNAP Director by March 31 each year for the preceding Federal fiscal year. The estimated annual burden for this collection is 57.41 hours. This estimate includes the time it takes each State agency to confirm that they have complied with FNS regulations for performing mandated checks against both eDRS and the SSA Death Master File, send an email to their FNS Regional Office SNAP Program Director to provide the verification, and any additional recordkeeping associated with this burden. States must perform this verification once a year and must retain these records for 3 years.

Annual Reporting Burden Estimates

Affected Public: State, Local and Tribal Government Agencies.

Number of Respondents: 53 State Agencies.

Number of Responses per Respondent: 1.

Total Annual Responses: 53.

Reporting Time per Response: 1 Hour.

Estimated Annual Reporting Burden Hours: 53.

Annual Recordkeeping Burden Estimates.

Affected Public: State, Local and Tribal Government Agencies.

Number of Respondents: 53 State Agencies.

Number of Responses per Respondent: 1.

Total Annual Responses: 53.

Reporting Time per Response: 0.08333 Hours or 5 minutes.

Estimated Annual Reporting Burden Hours: 4.41649.

Annual Grand Total Burden Estimates for Reporting and Recordkeeping: 57.41 hours.

Dated: April 20, 2015.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2015–09995 Filed 4–28–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Child Nutrition Program Operations Study-II (CN–OPS–II)

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new information collection for the Child Nutrition Program Operations Study-II.

DATES: Written comments on this notice must be received on or before June 29, 2015.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: John Endahl, Senior Program Analyst, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of John Endahl at 703–305–2576 or via email to *john.endahl@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact John Endahl, Senior Program Analyst, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302; Fax: 703–305–2576; Email: *john.endahl@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Child Nutrition Program Operations Study-II (CN–OPS–II).

Form Number: N/A.

OMB Number: 0584—NEW.

Expiration Date of Approval: Not yet determined.

Type of Information Collection Request: New information collection.

Abstract: The objective of the Child Nutrition Program Operations Study-II (CN–OPS–II) is to collect timely data on policies, administrative, and operational issues on the Child Nutrition Programs. The ultimate goal is to analyze these data and to provide input for new legislation on Child Nutrition Programs as well as to provide pertinent technical assistance and training to program implementation staff.

The CN–OPS–II will help the Food and Nutrition Service (FNS) better understand and address current policy issues related to Child Nutrition Programs (CNP) operations. The policy and operational issues include, but are not limited to, the preparation of the program budget, development and implementation of program policy and regulations, and identification of areas for technical assistance and training. Specifically, this study will help FNS obtain:

- General descriptive data on the Child Nutrition (CN) program characteristics to help FNS respond to questions about the nutrition programs in schools;
- Data related to program administration for designing and revising program regulations, managing resources, and reporting requirements; and
- Data related to program operations to help FNS develop and provide training and technical assistance for School Food Authorities (SFAs) and State Agencies responsible for administering the CN programs.

The activities to be undertaken subject to this notice include:

- Conducting a multi-modal (*e.g.* paper, Web, and telephone) survey of approximately 1,500 SFA Directors.
- Conducting a paper survey of all 56 State Agency CN Directors.

Affected Public: State, Local and Tribal Governments.

Type of Respondents: 1,500 SFA Directors and 56 State CN Directors.

Estimated Total Number of Respondents: 1,556.

Frequency of Response: 3.

Estimated Total Annual Responses: 4,668.

Estimate of Time per Respondent and Annual Burden: Public reporting burden for this collection of information is estimated to average one hundred fifty (150) minutes per Self-Administered Survey for the SFA Directors and the State Agency CN Directors (this includes 60 minutes for data gathering, 60 minutes to respond to the questionnaire, and 30 minutes for pre-notification and follow-up activities). The average time across all respondents is 50 minutes (0.83 hours). The annual reporting burden is estimated at 3,890 hours (see table below).

Data collection activity	Respondents	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Total annual burden estimate (hours)
Pre-survey notification emails/FAQ/letters.	School Food Authority Directors.	1,500	1	1,500	0.25	375

Data collection activity	Respondents	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Total annual burden estimate (hours)
Self-Administered Web/ Telephone Survey.	School Food Authority Directors.	1,500	1	1,500	2	3,000
Post-survey follow-up reminder emails, phone calls, thank you emails.	School Food Authority Directors.	1,500	1	1,500	0.25	375
Pre-survey notification emails/FAQ/letters.	State Agency Child Nutrition Directors.	56	1	56	0.25	14
Self-Administered Web/ Telephone Survey.	State Agency Child Nutrition Directors.	56	1	56	2	112
Post-survey follow-up reminder emails, phone calls, thank you emails.	State Agency Child Nutrition Directors.	56	1	56	0.25	14
Total	.....	1,556	3.00	4,668	0.83	3,890

Dated: April 20, 2015.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2015–10012 Filed 4–28–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2015–0005]

Notice of Availability of the Record of Decision (ROD) in Cooperation With the Bureau of Land Management for the Green River Diversion Rehabilitation Project, Green River, Utah

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of the ROD for the Green River Diversion Rehabilitation Project, Green River, Utah, by the Utah office of NRCS. NRCS will use Emergency Watershed Protection (EWP) Program funds for the Green River Diversion Rehabilitation project in Emery and Grand counties, Utah as detailed in the ROD. The NRCS Utah State Conservationist, David Brown, signed the ROD on April 2, 2015, which constitutes the NRCS's final decision.

ADDRESSES: The complete text of the ROD and the final EIS can be viewed and downloaded from the project Web site at *http://www.nrcs.usda.gov/wps/port+al/nrcs/detail/ut/programs/planning/ewpp/?cid=nrcs141p2_034037*, or through *http://www.regulations.gov* by accessing Docket No. NRCS–2015–0005. Complete copies of the ROD are available upon request from the NRCS Utah State Office at 125 South State Street, Room 4010 in Salt Lake City, UT 84138.

FOR FURTHER INFORMATION CONTACT: David Brown, NRCS State Conservationist, 801–524–4555. Email: *David.Brown@ut.usda.gov.*

SUPPLEMENTARY INFORMATION: The NRCS, as the lead Federal Agency, is working with the Utah Department of Agriculture and Food and the Bureau of Land Management as cooperating agencies to rehabilitate the existing Green River Diversion Dam (diversion) system that will continue to provide water delivery to water rights holders. The ROD constitutes the NRCS's final decision to implement the diversion improvements, based upon the analysis in the Final Environmental Impact Statement (Notice of Availability 79 FR 36511, June 27, 2014), which identified the ''Replace In Place With Passages'' option as the environmentally preferred alternative. The ROD adopted this alternative.

Signed this 17th day of April 2015, in Salt Lake City, Utah.

Amanda Ettestad,

Acting State Conservationist.

[FR Doc. 2015–10014 Filed 4–28–15; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: National Survey of Children's Health.

OMB Control Number: 0607–XXXX.

Form Number(s): See following breakdown:

English survey forms include:

NSCH–P–S1 (English Screener), NSCH–P–T1 (English Topical for 0- to 5-year-old children), NSCH–P–T2 (English Topical for 6- to 11-year-old children), and NSCH–P–T3 (English Topical for 12- to 17-year-old children).

Spanish survey forms include:

NSCH–PS–S1 (Spanish Screener), NSCH–PS–T1 (Spanish Topical for 0- to 5-year-old children), NSCH–PS–T2 (Spanish Topical for 6- to 11-year-old children), and NSCH–PS–T3 (Spanish Topical for 12- to 17-year-old children).

Type of Request: Regular submission.

Number of Respondents: 12,534.

Average Hours per Response: 0.08 for the screener and 0.5 for the topical.

Burden Hours: 2,262 hours.

Needs and Uses: The National Survey of Children's Health (NSCH) Pretest is a small-scale (N = 16,000 addresses) national pretest conducted prior to fielding the first year production survey. This pretest is necessary to assess survey methodology, evaluate the survey instrument, and test operational procedures and processes. The pretest sample will consist of several panels to assess data collection mode preferences (Mail or Internet) of respondents, amount of respondent cash incentives ($5 or $10) needed to gain cooperation and participation in the survey, and telephone as a method of nonresponse follow-up.

Plans for pretest data collection include two modes. The first mode that will be tested is a mail out/mail back of a self-administered paper-and-pencil interviewing (PAPI) screener instrument followed by a separate mail out/mail back of a PAPI age-based topical instrument. The second mode that will be tested is an Internet survey that contains the screener and topical instruments. The Internet instrument

will take the respondent through both the screener questions and if the household screens into the study, they will be taken directly into one of the three age-based topical sets of questions.

The pretest allows for the preparation of a successful first year production survey based on previously tested methods and procedures. In turn, this enables the Maternal and Child Health Bureau (MCHB) of the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) to produce national and state-based estimates on the health and well-being of children, their families, and their communities as well as estimates of the prevalence and impact of children with special health care needs.

Affected Public: Parents, researchers, policymakers, and family advocates.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Census Authority: Title 13, U.S.C. Section 8(b) MCHB Authority: 42 U.S.C., Chapter 7, Title V (Social Security Act) Confidentiality: Confidential Information Protection and Statistical Efficiency Act (CIPSEA).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 24, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–09975 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[4/23/2015 through 4/23/2015]

Firm name	Firm address	Date accepted for investigation	Product(s)
RR Enterprises, Inc	1885 Weaversville Road, Allentown, PA 18109.	4/23/2015	The firm manufactures motorized display turntables and blistered card novelty gag items.
3rd Gen Machine	1435 North 200 West, Logan, UT 84341.	4/23/2015	The firm manufactures metal parts for the firearm and bow hunting industry.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: April 23, 2015.

Michael S. DeVillo,

Eligibility Examiner.

[FR Doc. 2015–09977 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[4/8/2015 through 4/23/2015]

Firm name	Firm address	Date accepted for investigation	Product(s)
Profile Cabinet and Design	7400 East 12th Street, Kansas City, MO 64126.	4/21/2015	The firm manufactures wooden cabinets for commercial and residential use made of various woods.
Nu Con Corporation	34100 Industrial Road, Livonia, MI 48150.	4/22/2015	The firm manufactures impellers, diffusers and similar parts for turbines, turbo machinery and impeller pump systems.
Kennedy Incorporated	21 Circuit Drive, North Kingston, RI 02852.	4/21/2015	The firm manufactures military insignia and challenge coins, corporate awards and promotional items.
Souders Industries, Inc. d/b/a SESCO.	19 Ash Street, Mont Alto, PA 17237.	4/22/2015	The firm manufactures wire harnesses and cable assemblies.
Oppenheimer Camera Products, Inc.	7400 3rd Ave South, Seattle, WA 98108.	4/22/2015	The firm manufactures arts, accessories and products for the film/video industry.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: April 23, 2015.

Michael S. DeVillo,

Eligibility Examiner.

[FR Doc. 2015–09976 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–57–2015]

Foreign-Trade Zone 231—Stockton, California; Application for Subzone Expansion Subzone 231A, Medline Industries, Inc., Lathrop, California

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of Stockton, California, grantee of FTZ 231, requesting two additional sites within Subzone 231A on behalf of Medline Industries, Inc. (Medline), located in Stockton and Tracy, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 22, 2015.

Subzone 231A was approved on March 4, 2007 (72 FR 14516, 03/28/2007) and currently consists of one site: *Site 1* (12.49 acres) 18250 Murphy Parkway, Lathrop. There is currently an application pending (S–166–2014, 79 FR 75787, 12/19/2014) requesting authority to add an additional site in Lathrop, CA (proposed *Site 2*). The applicant is now requesting authority to expand the subzone further to include two additional sites: Proposed *Site 3* (24.3 acres), 1030 Runway Drive, Stockton; and, proposed *Site 4* (61.53 acres), 24356 Hansen Road, Tracy. No authorization for production activity has been requested at this time. The expanded subzone would be subject to the existing activation limit of FTZ 231.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 8, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 23, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Christopher Kemp at *christopher.kemp@trade.gov* or (202) 482–0862.

Dated: April 22, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–10047 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China; Rescission of Antidumping Duty Administrative Review in Part and Rescission of New Shipper Review; 2013–2014

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

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review in part and rescinding a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) for the period September 1, 2013, through August 31, 2014.

DATES: *Effective Date:* April 29, 2015.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Minoo Hatten, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–1690 respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2014, we published a notice of opportunity to request an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC for the period of review (POR) September 1,

2013, through August 31, 2014.[1] On October 30, 2014, in response to requests from the petitioner, the Crawfish Processors Alliance, and Chinese exporters of subject merchandise, China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Deyan Aquatic Products and Food Co., Ltd. (Deyan Aquatic), Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor), and Xiping Opeck Food Co., Ltd. (Xiping Opeck), and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC with respect to four companies: China Kingdom; Deyan Aquatic; Shanghai Ocean Flavor; and Xiping Opeck.[2]

On October 31, 2014, in response to requests from Chinese producers and exporters of subject merchandise, Hubei Yuesheng Aquatic Products Co., Ltd., Weishan Hongda Aquatic Food Co., Ltd., and Wuhan Coland Aquatic Products and Food Co., Ltd. (Wuhan Coland), and in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i), we initiated new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC with respect to these three companies for the POR September 1, 2013, through August 31, 2014.[3]

On November 21, 2014, the Department aligned the new shipper reviews of freshwater crawfish tail meat from the PRC with the concurrent administrative review of freshwater crawfish tail meat from the PRC.[4] On December 16, 2014, the Department selected China Kingdom and Xiping Opeck for individual examination in this administrative review.[5]

On January 13, 2015, Xiping Opeck and Wuhan Coland withdrew their review requests.[6] On January 29, 2015, the Department selected Deyan Aquatic as the additional mandatory respondent in this administrative review.[7]

Rescission of Administrative Review in Part and Rescission of New Shipper Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' Because Xiping Opeck and Wuhan Coland withdrew their review requests in a timely manner, and because no other party requested a review of these companies, we are partially rescinding the administrative review with respect to Xiping Opeck, and we are rescinding the new shipper review with respect to Wuhan Coland. This rescission is in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For Xiping Opeck and Wuhan Coland, for which the reviews are rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: April 22, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–10046 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 79 FR 51958 (September 2, 2014).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 64565 (October 30, 2014).

[3] *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews,* 79 FR 64749 (October 31, 2014).

[4] *See* Memorandum to The File entitled ''Alignment of New-Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China with the concurrent Administrative Review of Freshwater Crawfish Tail Meat from the PRC'' dated November 21, 2014.

[5] *See* Memorandum to James Maeder, Senior Director, AD/CVD Operations, from Hermes Pinilla, International Trade Compliance Analyst, AD/CVD Operations, Office I entitled ''Freshwater Crawfish Tail Meat from the PRC—Respondent Selection for the 2013–2014 Antidumping Duty Administrative Review'' dated December 16, 2014.

[6] *See* the letters of withdrawal of the review requests from Xiping Opeck and Wuhan Coland dated January 13, 2015.

[7] *See* Memorandum to James Maeder, Senior Director, AD/CVD Operations, Office I from Hermes Pinilla, International Trade Compliance Analyst, AD/CVD Operations, Office I entitled ''Freshwater Crawfish Tail Meat from the PRC—Selection of Additional Mandatory Respondent and Analysis of Voluntary Respondent Request'' dated January 29, 2015.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Visiting Committee on Advanced Technology (VCAT or Committee), National Institute of Standards and Technology (NIST), will meet in open session on Tuesday, June 9, 2015 from 8:30 a.m. to 5:30 p.m. Eastern Time and Wednesday, June 10, 2015 from 8:30 a.m. to 12:15 p.m. Eastern Time. The VCAT is composed of fifteen members appointed by the NIST Director who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

DATES: The VCAT will meet on Tuesday, June 9, 2015, from 8:30 a.m. to 5:30 p.m. Eastern Time and Wednesday, June 10, 2015, from 8:30 a.m. to 12:15 p.m. Eastern Time.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, at NIST, 100 Bureau Drive, Gaithersburg, Maryland, 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899–1060, telephone number 301–975–2667. Ms. Shaw's email address is *stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include updates on NIST activities and a review of NIST's bioscience and information technology research along with external presentations on the future direction and trends of these technical areas. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda.

On Wednesday, June 10, approximately one-half hour in the morning will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to VCAT, NIST, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland, 20899, via fax at 301–216–0529 or electronically by email to *Karen.lellock@nist.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Stephanie Shaw by 5:00 p.m. Eastern Time, Tuesday, June 2, 2015. Non-U.S. citizens must submit additional information; please contact Ms. Shaw. Ms. Shaw's email address is *stephanie.shaw@nist.gov* and her phone number is 301–975–2667. Also, please note that under the REAL ID Act of 2005 (Pub. L. 109–13), federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if issued by states that are REAL ID compliant or have an extension. NIST also currently accepts other forms of federally-issued identification in lieu of a state-issued driver's license. For detailed information please contact Ms. Shaw or visit: *http://nist.gov/public_affairs/visitor/.*

Authority: 15 U.S.C. 278 and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Richard R. Cavanagh,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2015–09973 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request; Evaluation Support Services

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection for the National Oceanic and Atmospheric Administration. This is a new information collection for Evaluation Support Services.

DATES: Written comments should be received Written comments must be submitted on or before June 29, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Meka Laster at (301) 628–2906 or sent via email to *meka.laster@noaa.gov.* Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

Since its establishment in 1970 under the Department of Commerce, the National Oceanic and Atmospheric Administration (NOAA)'s primary goals are to understand and predict changes in the Earth's environment, to conserve and manage coastal and marine resources, and to serve the nation's economic, social, and environmental needs. One of NOAA's staff offices, the Office of Education (OEd), also serves a critical function as the nation's primary educator on matters related to the ocean, coastal resources, the atmosphere, and climate. One of the ways NOAA fulfills its national duty is by providing educational resources and scholarship opportunities for future scholars.

The Ernest F. Hollings Undergraduate Scholarship Program (HUSP) was established in 2005; since then, it has provided support to approximately 1,144 undergraduate students. This scholarship opportunity provides 2 academic years of tuition support (up to $8,000 per year) and a 10-week paid internship with a NOAA mentor to competitive undergraduate scholars in NOAA-related major fields of study. The HUSP also provides undergraduates with additional supports such as living expenses, travel stipends, and conference allowances. The main goals of HUSP include increasing undergraduate training and research in NOAA sciences; recruiting and preparig students for careers as public servants and environmental science educators; and building public understanding of and support for environmental stewardship issues (*i.e.,* increasing environmental literacy).

The Educational Partnership Program (EPP) comprises three unique components: The Undergraduate Scholarship Program (USP), the Graduate Studies Program (GSP), and four Cooperative Science Centers (CSCs). USP is a scholarship opportunity that provides recipients with hands-on research and training in NOAA-related sciences and provides scholars the opportunity to gain valuable work experience at NOAA facilities. To date, USP has funded 175 scholars. GSP is similar, and supported (funded 59 students) graduate students interested in pursuing NOAA mission-critical fields by providing them with work experience and hands-on training in NOAA-related research fields. The CSCs' overarching goal is to increase underrepresentation in STEM and NOAA-related fields by providing education and training opportunities in

these fields. Each CSC has a distinct educational focus, defined mission, partner institution, and designated research partner. In addition to providing education and training opportunities for students, CSCs assist their MSI partners in building their institutional management, scientific, and research capacities in NOAA-related fields.

The proposed evaluation will examine the effectiveness of two of NOAA's OEd scholarship programs: EPP and HUSP. It will also assess the efficacy of the CSCs, which constitute another educational component central to NOAA's educational mission. The primary objective of this evaluation is to determine how well NOAA's HUSP and EPP scholarship programs translate to measurable outcomes for participants.

II. Method of Collection

This proposed mixed-methods evaluation will include the following components:

- Reviews of extant data to understand the program and historical trends.
- Web surveys of HUSP and EPP alumni with telephone follow-up to describe participant experiences and outcomes.
- A regression discontinuity design evaluation of HUSP, EPP USP, and EPP GSP to compare scholarship recipients to similar applicants who did not receive scholarships.
- Site visits to the CSCs to describe institution-level contexts and outcomes.

III. Data

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Review: Request for a new information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,409 survey respondents (1,034 scholarship recipients and 375 scholarship non-recipients); 44 interviewees; 20 focus group participants (interviewees and focus groups composed of Cooperative Science Center management, faculty, and students).

Estimated Time per Response: 25 minutes per recipient survey; 15 minutes per nonrecipient survey; 60 minutes per community partner, institution partner, CSC administrator, and CSC center director interview; 90 minutes per student focus group.

Estimated Total Annual Burden Hours: 599.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are eligible to respond.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 24, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–09967 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD829

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for an incidental take authorization to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction activities associated with the East Span of the San Francisco-Oakland Bay Bridge (SF–OBB) in California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to CALTRANS to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year.

DATES: Comments and information must be received no later than May 29, 2015.

ADDRESSES: Comments on the application should be addressed to Rob Pauline, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *itp.pauline@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

The application used in this document may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On December 15, 2014 CALTRANS submitted its most recent request to NOAA requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction associated with a replacement bridge for the East Span of the SF–OBB, in San Francisco Bay (SFB, or Bay), California.

Description of the Specified Activity

An IHA was previously issued to CALTRANS for this activity on January 8, 2014 (79 FR 2421; January 14, 2014), based on activities described on CALTRANS' IHA application dated April 13, 2013. That IHA expired on January 7, 2015. Since the construction activity would last for approximately an additional two years after the expiration of the current IHA, CALTRANS requests to renew its IHA. In its IHA renewal request, CALTRANS also states that there has been no change in the scope of work for the SF–OBB Project from what was outlined in its April 13, 2013 IHA application project description, the **Federal Register** notice for the proposed IHA (78 FR 60852; October 2, 2013), and the **Federal Register** notice for the issuance of that IHA (79 FR 2421; January 14, 2013). This stage of the project will include the mechanical dismantling of marine foundations of the East Span of the bridge as well as the installation of approximately 200 steel piles. These activities will be covered under the proposed IHA. Refer to these documents for a detailed description of CALTRANS' SF–OBB construction activities.

Construction activities for the replacement of the SF–OBB east span commenced in 2002 and are expected to be completed in 2016 with the completion of the bike/pedestrian path and eastbound on ramp from Yerba Buena Island. The new east span is now open to traffic. On November 10, 2003, NMFS issued the first project-related IHA to the Department, authorizing the take of small numbers of marine mammals incidental to the construction of the SFOBB Project. The Department has been issued a total of seven subsequent IHAs for the SFOBB Project to date, excluding the application currently under review.

Description of Marine Mammals in the Area of the Specified Activity

General information on the marine mammal species found in California waters can be found in Carretta *et al.* 2013, which is available at the following URL: *http://www.nmfs.noaa.gov/pr/sars/pdf/pacific2013.pdf.* Refer to that document for information on these species.

The marine mammals most likely to be found in the SF–OBB area are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May gray whales may also be present in the SF–OBB area. Information on California sea lion, harbor seal, and gray whale was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice; information on harbor porpoise was provided in a Supplemental Environmental Assessment (SEA), which analyzed the potential impacts to marine mammals that would result from the modification of the original action. A Finding of No Significant Impact (FONSI) was signed on August 5, 2009. These documents were referenced in the December 13, 2010 (75 FR 77617) **Federal Register** notice of IHA. A copy of the SEA and FONSI is available upon request.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving and pile removal, as well as dredging and dismantling of concrete foundation of existing bridge by saw cutting, flame cutting, mechanical splitting, drilling, pulverizing and/or hydro-cutting, as outlined in the project description, have the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that incur PTS or TTS may have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS.

When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to a sound source can incur TTS, it is possible that some individuals might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals, based on anatomical similarities. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.,* 2007). On a sound exposure level (SEL) basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa^2-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Measured source levels from impact pile driving can be as high as 214 dB re

1 μPa @1 m. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single water gun pulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun pulse cited here, animals exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of sound exposure level (SEL) than from the single watergun pulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

Noises from dismantling of marine foundations by mechanical means include, but are not limited to, saw cutting, mechanical splitting, drilling and pulverizing. Saw cutting and drilling constitute non-pulse noise, whereas mechanical splitting and pulverizing constitute impulse noise. Although the characteristics of these noises are not well studied, noises from saw cutting and drilling are expected to be similar to vibratory pile driving, and noises from mechanical splitting and pulverizing are expected to be similar to impact pile driving, but at lower intensity, due to the similar mechanisms in sound generating but at a lower power outputs. CALTRANS states that drilling and saw cutting are anticipated to produce underwater sound pressure levels (SPLs) in excess of 120 dB RMS, but are not anticipated to exceed the 180 dB re 1 μPa (RMS). The mechanical splitting and pulverizing of concrete with equipment such as a hammer hoe has the potential to generate high sound pressure levels in excess of 190 dB re 1 μPa (RMS) at 1 m.

However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to repeated high intensity pulsed noise levels for prolonged period of time. Based on the best scientific information available, the expected received sound levels are far below the threshold that could cause TTS or the onset of PTS.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water pile driving during the SF–OBB construction activities is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by harbor porpoises. However, lower frequency noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009) and cause increased stress levels (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009).

Masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Prolonged masking affects both senders and receivers of the signals and could have long-term effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's oceans from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessels traffic, pile driving, dredging, and dismantling existing bridge by mechanic means, contribute to the elevated ambient noise levels, thus intensifying potential for masking.

Nevertheless, the sum of noise from the proposed SF–OBB construction activities is confined in an area of inland waters (San Francisco Bay) that is bounded by landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise. Due to shallow water depth near the Oakland shore, dredging activities are mainly used to create a barge access channel to dismantle the existing bridge. Therefore, underwater sound propagation from dredging is expected to be poor due to the extreme shallowness of the area to be dredged.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007), especially if the detected disturbances appear minor. The consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The proposed project area is not believed to be a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with SF–OBB construction and dismantling activities are expected to affect only a limited number of marine mammals on an infrequent basis.

Currently NMFS uses 160 dB re 1 μPa (RMS) at received level for impulse noises (such as impact pile driving, mechanic splitting and pulverizing) as the onset of marine mammal behavioral harassment, and 120 dB re 1 μPa (RMS) for non-impulse noises (vibratory pile driving, saw cutting, drilling, and dredging).

As far as airborne noise is concerned, based on airborne noise levels measured and on-site monitoring conducted during 2004 under a previous IHA, noise levels from the East Span project did not result in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to

result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to levels below where harassment would be expected by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site. Therefore, no pinniped hauled out would be affected as a result of the proposed pile-driving. A detailed description of the acoustic measurements is provided in the 2004 CALTRANS marine mammal and acoustic monitoring report for the same activity (CALTRANS 2005).

Short-term impacts to habitat may include minimal disturbance of the sediment where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Proposed Mitigation Measures

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed CALTRANS SF–OBB construction activities, CALTRANS worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purpose of these mitigation measures is to detect marine mammals within or about to enter designated exclusion zones corresponding to NMFS current injury thresholds and to initiate immediate shutdown or power down of the piling hammer, making it very unlikely potential injury or TTS to marine mammals would occur, and to reduce the intensity of Level B behavioral harassment.

Use of Noise Attenuation Devices

To reduce impact on marine mammals, CALTRANS shall use a marine pile driving energy attenuator (*i.e.,* air bubble curtain system), or other equally effective sound attenuation method (*e.g.,* dewatered cofferdam) for all impact pile driving, with the exception of pile proofing.

Establishment of Exclusion and Level B Harassment Zones

Before the commencement of in-water construction activities, which include impact pile driving, vibratory pile driving, and mechanical dismantling of existing bridge, CALTRANS shall establish ''exclusion zones'' where received underwater sound pressure levels (SPLs) are higher than 180 dB (rms) and 190 dB (rms) re 1 μPa for cetaceans and pinnipeds, respectively, and ''Level B behavioral harassment zones'' where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 μPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving and mechanic dismantling), respectively. Before the sizes of actual zones are determined based on hydroacoustic measurements, CALTRANS shall establish these zones based on prior measurements conducted during SF–OBB constructions, as described in Table 1 of this document.

TABLE 1—TEMPORARY EXCLUSION AND LEVEL B HARASSMENT ZONES FOR VARIOUS PILE DRIVING AND DISMANTLING ACTIVITIES

Pile driving/dismantling activities	Pile size (m)	Distance to 120 dB re 1 μPa (rms) (m)	Distance to 160 dB re 1 μPa (rms) (m)	Distance to 180 dB re 1 μPa (rms) (m)	Distance to 190 dB re 1 μPa (rms) (m)
Vibratory Driving	24	2,000	NA	NA	NA
	36	2,000	NA	NA	NA
	Sheet pile	2,000	NA	NA	NA
Attenuated Impact Driving	24	NA	1,000	235	95
	36	NA	1,000	235	95.
Unattenuated Proofing	24	NA	1,000	235	95
	36	NA	1,000	235	95.
Unattenuated Impact Driving.	H-pile	NA	1,000	235	95
Dismantling		2,000	NA	100	100

Once the underwater acoustic measurements are conducted during initial test pile driving, CALTRANS shall adjust the size of the exclusion zones and Level B behavioral harassment zones, and monitor these zones accordingly.

NMFS-approved marine mammal observers (MMOs) shall conduct initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones before impact pile driving of a pile segment begins. If marine mammals are found within the exclusion zone, impact pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes for pinnipeds and harbor porpoise and 30 minutes for gray whales. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.,* 1995).

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths

and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals, sea lions, or harbor porpoises enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone.

Soft Start

Although marine mammals will be protected from Level A harassment (*i.e.,* injury) through marine mammal observers monitoring a 190–dB exclusion zone for pinnipeds and 180–dB exclusion zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS and its contractor will also ''soft start'' the hammer prior to operating at full capacity. This should expose fewer animals to loud sounds both underwater and above water. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during the initial exclusion zone monitoring will not be injured.

Power Down and Shut-down

Although power down and shut-down measures will not be required for pile driving and removal activities for reasons explained above, these measures are required for mechanical dismantling of the existing bridge. The contractor performing mechanical dismantling work will stop in-water noise generating machinery when marine mammals are sighted within the designated exclusion zones.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned, and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of noises generated from ice overflight surveys, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of noises generated from ice overflight surveys, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of noises generated from ice overflight surveys, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting Measures

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of noises generated from ice overflight surveys that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

▪ Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

(1) Visual Monitoring

Besides using monitoring for implementing mitigation (ensuring exclusion zones are clear of marine mammals before pile driving begins and power down and shut-down measures for mechanical bridge dismantling), marine mammal monitoring will also be conducted to assess potential impacts from CALTRANS construction activities. CALTRANS will implement onsite marine mammal monitoring for 100% of all unattenuated impact pile driving of H-piles for 180- and 190-dB re 1 µPa exclusion zones and 160-dB re 1 µPa Level B harassment zone, attenuated impact pile driving (except pile proofing) and mechanical dismantling for 180- and 190-dB re 1 µPa exclusion zones. CALTRANS will also monitor 20% of the attenuated impact pile driving for the 160-dB re 1 µPa Level B harassment zone, and 20% of vibratory pile driving and mechanic dismantling for the 120-dB re 1 µPa Level B harassment zone.

Monitoring of the pinniped and cetacean exclusion zones shall be conducted by a minimum of three qualified NMFS-approved MMOs. Observations will be made using high-quality binoculars (*e.g.,* Zeiss, 10 × 42 power). MMOs will be equipped with radios or cell phones for maintaining contact with other observers and CALTRANS engineers, and range finders to determine distance to marine mammals, boats, buoys, and construction equipment.

Data on all observations will be recorded and will include the following information:

(1) Location of sighting;

(2) Species;

(3) Number of individuals;

(4) Number of calves present;

(5) Duration of sighting;

(6) Behavior of marine animals sighted;

(7) Direction of travel; and

(8) When in relation to construction activities did the sighting occur (*e.g.,* before, ''soft-start'', during, or after the pile driving or removal).

The reactions of marine mammals will be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, see 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction will be recorded, as well as the time when seals re-haul after a flush.

(2) Hydroacoustic Monitoring

The purpose of the underwater sound monitoring during dismantling of concrete foundations via mechanical means is to establish the exclusion zones of 180 dB re 1 µPa (rms) for cetaceans and 190 dB re 1 µPa (rms) for pinnipeds. Monitoring will occur during the initial use of concrete dismantling equipment with the potential to generate sound pressure levels in excess of 180 dB re 1 µPa (rms). Monitoring will likely be conducted from construction barges and/or boats. Measurements will be taken at various distances as needed to determine the distance to the 180 and 190 dB re 1 µPa (rms) contours.

The purpose of underwater sound monitoring during impact pile driving will be to verify sound level estimates and confirm that sound levels do not equal or exceed 180 dB re 1 µPa (rms).

Proposed Reporting Measure

CALTRANS will notify NMFS prior to the initiation of the pile driving and dismantling activities for the removal of the existing east span. NMFS will be informed of the initial sound pressure level measurements for both pile driving and foundation dismantling activities, including the final exclusion zone and Level B harassment zone radii established for impact and vibratory pile driving and marine foundation dismantling activities.

Monitoring reports will be posted on the SFOBB Project's biological mitigation Web site (*www.biomitigation.org*) on a weekly basis if in-water construction activities are conducted. Marine mammal monitoring reports will include species and numbers of marine mammals observed, time and location of observation and behavior of the animal. In addition, the reports will include an estimate of the number and species of marine mammals that may have been harassed as a result of activities.

In addition, CALTRANS will provide NMFS with a draft final report within 90 days after the expiration of the IHA. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

In addition, NMFS would require CALTRANS to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of the construction site. CALTRANS shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured or dead marine mammal is found by CALTRANS that is not in the vicinity of the SF–OBB construction site, CALTRANS would report the same information as listed above as soon as operationally feasible to NMFS.

Marine Mammal Monitoring Report From Previous IHA

The most recent marine mammal monitoring report describes the number of harbor seals and California sea lions that were observed within zones of influence (ZOIs) between January 8, 2014 and January 7, 2015 that could result in behavioral harassment. Most of the observations of harbor seals within the behavioral zones occurred within the Coast Guard Cove or Clipper Cove. Monitoring of the vibratory and demolition activity was only required for 20% of the time when those activities occurred but there was often a mix of impact and vibratory driving; therefore, monitoring was conducted from 20–100% of the time for some construction projects. Table 7 of the 2014 monitoring report (CALTRANS 2015) summarizes all observations and estimates the total exposures of marine mammals if there was 100% monitoring for each construction or demolition project as requested by NMFS. The estimated number of exposures is 144 harbor seals which is above the limit of 50 permitted under the Authorization. No sea lions, harbor porpoise or gray whales were observed.

Estimated Take by Incidental Harassment

Marine mammal take estimates are based on marine mammal monitoring reports and marine mammal observations made during pile driving

activities associated with the SF–OBB construction work authorized under prior IHAs. Pacific harbor seals are the most commonly observed marine mammal (90% of observations during monitoring) near the east span of the San Francisco-Oakland Bay Bridge (SF–OBB). A harbor seal haul-out site is located on the south side of Yerba Buena Island (YBI) approximately 500 meters from the SF–OBB's closest pier, pier E2, and seals are often observed foraging in Coast Guard Cove (just east of the U.S. Coast Guard Station on YBI), and within Clipper Cove between YBI and Treasure Island. A third foraging site that is used less frequently is approximately 250–500 meters southeast of YBI over a small trench running west to east along the bottom of the San Francisco Bay (Bay). In addition, harbor seals are regularly observed moving north or south under the original SFOBB between Piers E2 and E3, but infrequently east of Pier E4.

Harbor seal densities were calculated from 657 observations of harbor seals made during 210 days from 2000 to 2014 during monitoring for the East Span of the SFOBB. Two densities were calculated because of the higher density of seals observed foraging near YBI and Treasure Island. Foraging seals tended to remain in the area for several hours while transiting seals passing under the SFOBB were only observed 1–2 times. Therefore, densities east of Pier E3–E8 are much lower than the density than west of Pier E3.

The area of 2,000-meter threshold for the Level B behavioral harassment zone is 12.57 km^2 (12,570,000 m^2). Half of that area to the west of Piers E3–E8 (6.29 km^2) would have a higher density due to the harbor seals that are frequently observed in the three foraging areas. The range of seals observed within the foraging areas is 0–8 seals and the mean is 3.6 seals per day (combined for all three areas). The other half of the Level B harassment zone would have a lower density due to the infrequent observations of seals moving through the area. In addition the density of seals will vary with season therefore a density for the spring-summer season when seals spend more time onshore as they are pupping and molting and the fall/winter season. Table 2 shows estimated densities in the high and low density areas during the fall/winter and spring/summer seasons.

TABLE 2—EXPECTED HARBOR SEAL EXPOSURES FOR 2015 BASED ON THE AREA AND SEASONAL DENSITY ESTIMATES, AND NUMBER OF DAYS OF PILE DRIVING

Density estimates	Behavioral zone	Days of pile driving *	Harbor seal density **	Exposures
Fall/Winter High Density	6.29 km^2	64	0.77	311
Fall/Winter Low Density	6.29 km^2	64	0.5	20
Spring/Summer High Density	6.29 km^2	64	0.3	121
Spring/Summer Low Density	6.29 km^2	64	0.02	8
Total Exposures	460 seals			

* It is assumed half of the pile driving days (64 days) will occur in each season.
** The area of the Behavioral Zone 12.59 km^2 is divided in half for the high and low density areas for each season.

This estimate for harbor seals is above the number of seals that have been permitted for take in previous IHAs that have been issued related to this project. However, the estimate presented here represents a more complete picture of the marine mammal density in the project area and the potential for exposure to project activities.

California sea lions are based on CALTRANS observations over 15 years of monitoring on the Bay Bridge, 2000 to 2014, including baseline monitoring in 2003 before bridge construction began. It should be noted that monitoring was not year round and there was little monitoring required during the period of mid-2010 to mid-2013 due to no pile driving. During 2013 and 2014, there was a large increase in pile driving to construct temporary falsework and for mechanical dismantling so the current estimates of animals do include recent monitoring. California sea lion numbers fluctuate from year to year. For example, in 2014 no sea lions were observed in the harassment zone, while in 2004, 36 sea lions were recorded near the Bay Bridge construction areas during pile driving. The larger number of sea lions in 2004 was probably related to a run of herring that was near the Bay Bridge and sea lions were observed feeding on dense aggregations of herring in the area. Therefore, 50 sea lions is a conservative estimate.

Harbor porpoises were observed near the tower of the new Bay Bridge in 2013 and 2014. Each of those was a single animal and far out of their normal range for the Bay. If 1 or 2 pods of porpoises were to enter the construction area, then there might be up to 6 takes (pod size of 2–3 porpoises). Based on this NMFS believes that an allowed take of up to 10 harbor porpoises is conservative, but reasonable.

Gray whale take estimates were based on sighting reports collected by the Marine Mammal Center in Sausalito (the NMFS stranding facility for northern California). The Center collects whale sightings information from the general public, researchers, and the U.S. Coast Guard. For the gray whale, 5 permitted takes is likely to be a conservative, but reasonable, estimate as they have never been observed within any of the behavioral zones during monitoring. Additionally, there has only been one report of a gray whale swimming under the original East Span of the Bay Bridge a number of years ago.

Based on these results, and accounting for a certain level of uncertainty regarding the next phase of construction, NMFS concludes that at maximum 460 harbor seals, 50 California sea lions, 10 harbor porpoises, and 5 gray whales could be exposed to noise levels that could cause Level B harassment as a result of the CALTRAN' SF–OBB construction activities. These numbers represent 1.5%, <0.01%, <0.01% and 0.10% of the California stock harbor seal, the U.S. stock California sea lion, the Eastern North Pacific stock gray whale, and the San Francisco-Russian River stock harbor porpoise, respectively (Table 3).

TABLE 3—ESTIMATES OF THE POSSIBLE MAXIMUM NUMBERS OF MARINE MAMMALS TAKEN BY LEVEL B HARASSMENT AS A RESULT OF THE PROPOSED CALTRANS' SF–OBB CONSTRUCTION ACTIVITIES

Species	Stocks	Level B takes	Percent population (percent)
Pinnipeds			
Harbor seal	California	460	1.5
California sea lion	U.S.	50	<0.01
Cetaceans			
Gray whale	Eastern North Pacific	5	<0.01
Harbor porpoise	San Francisco-Russian River	10	0.10

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'', NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A and Level B harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, the following discussion applies to the affected stocks of harbor seals, California sea lions, gray whales, and harbor porpoises, given that the best available information indicates that effects of the specified activity on individuals of those stocks will be similar, and there is no information about the population size, status, structure, or habitat use of the areas to warrant separate discussion.

Pile driving activities associated with this project, as outlined previously, have the potential to disturb or displace marine mammals. Even when mitigation measures are employed, the specified activities may result in Level B harassment from underwater sounds generated from pile driving. Takes could occur if individuals of these species are present in the Level B harassment zone while pile driving is occurring.

These low intensity, localized, and short-term noise exposures (*i.e.,* 160 dB re 1 µPa (rms) from impulse sources and 120 dB re 1 µPa (rms) from non-impulse sources), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. The maximum estimated 160 dB isopleths from impact pile driving is 500 m from the pile, and the estimated 120 dB maximum isopleths from vibratory pile driving is approximately 2,000 m from the pile. There is no pinniped haul-out area in the vicinity of the pile driving sites. There is no critical habitat or other biologically important area for marine mammals in the vicinity of the proposed SF–OBB construction area.

The CALTRANS' specified activities have been described based on best estimates of the planned SF–OBB construction project within the proposed project area. Some of the noises that would be generated as a result of the proposed bridge construction and dismantling project, such as impact pile driving, are high intensity. However, the in-water pile driving for the piles would use small hammers and/or vibratory pile driving methods, coupled with noise attenuation mechanism such as air bubble curtains for impact pile driving. Therefore the resulting exclusion zones for potential TS are expected to be extremely small (< 35 m) from the hammer. In addition, the source levels from vibratory pile driving are expected to be below the TS onset threshold. Given sufficient ''notice'' through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. The high likelihood that marine mammal detection by trained observers under the environmental conditions described for the project area further enables the implementation of shutdowns to avoid injury, serious injury, or mortality. Therefore, NMFS does not expect that any animals would receive Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving associated with SF–OBB construction project.

The project is not expected to have significant adverse effects on affected marine mammals' habitat and would not significantly modify existing marine mammal habitat. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. In response to vibratory driving, several species of pinnipeds (which may become somewhat habituated to human activity in industrial or urban waterways) have been observed to orient towards and sometimes move towards the sound. The pile driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations, which have taken place with no reported injuries or mortality to

marine mammals, and no known long-term adverse consequences from behavioral harassment.

Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the affected stocks is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stocks as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment are relatively small and consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including rookeries, significant haul-outs, or known areas or features of special significance for foraging or reproduction; (4) the presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals and is not expected to impact annual rates of recruitment or survival.

Therefore, based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the CALTRAN'S SF–OBB construction project will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

Table 3 demonstrates the numbers of animals that could be exposed to receive noise levels that could cause Level B behavioral harassment for the proposed work associated with the CALTRANS SF–OBB construction project. These estimates represent 1.5% of the California stock of harbor seal population (estimated at 30,968; Carretta *et al.* 2014), <0.01% of the U.S. stock of California sea lion population (estimated at 296,750; Carretta *et al.* 2014), <0.01% of the Eastern North Pacific stock of gray whale population (estimated at 20,990; Carretta *et al.* 2014), and 0.10% of the San Francisco-Russian River stock of harbor porpoise population (estimated at 9,886; Carretta *et al.* 2014). These numbers constitute small percentages of the marine mammal stocks that may be taken.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, which are expected to reduce the numbers of marine mammals potentially affected by the proposed action, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Proposed Incidental Harassment Authorization

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

(1) This Authorization is valid from May 18, 2015, through May 17, 2016.

(2) This Authorization is valid only for activities involving the construction and dismantling of the East Span of SF–OBB, California.

(3) Species Impacted and Level of Takes

(a) The species authorized for takings by incidental Level B harassment are the California sea lion (*Zalophus californianus*), Pacific harbor seal (*Phoca vitulina richardsi*), harbor porpoise (*Phocoena phocoena*), and gray whale (*Eschrichtius robustus*).

(b) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the Director, West Coast Regional Office, National Marine Fisheries Service, Telephone (562) 980–4000 and the Director, Office of Protected Resources, National Marine Fisheries Service, Telephone (301) 427–8400.

(4) The holder of this Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agencies monitoring the impacts of the activity on marine mammals. The holder must notify Monica DeAngelis of the West Coast Regional Office (phone: (562) 980–3232) at least 24 hours prior to starting activities.

(5) Prohibitions

(a) The taking, by incidental Level B harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed (see Table 3 of this **Federal Register** notice). The taking by Level A harassment, injury, serious injury, or death of these species or the taking by harassment, injury, serious injury, or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(6) Mitigation Requirements

(a) Use of Noise Attenuation Devices

Pile driving energy attenuator (such as air bubble curtain system or dewatered cofferdam) shall be used for all impact pile driving of pipe piles, with the exception of pile proofing and H-piles.

(b) Establishment and Monitoring of Exclusion and Level B Harassment Zones

(i) For all in-water pile driving and mechanical dismantling activities, CALTRANS shall establish exclusion zones where received underwater sound pressure levels (SPLs) are higher than 180 dB (rms) and 190 dB (rms) re 1 μPa for cetaceans and pinnipeds, respectively, and Level B harassment zones where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 μPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving and mechanic dismantling), respectively.

(ii) The sizes of the initial exclusion and Level B harassment zones for different types of activities are provided [See Table 1 in this **Federal Register** notice]. Once hydroacoustic measurements of pile driving and mechanical dismantling activities have been conducted, CALTRANS shall revise the sizes of the zones based on actual measurements.

(iii) NMFS-approved MMOs shall conduct initial survey of the exclusion zone to ensure that no marine mammals are seen within the zone for 30 minutes before impact pile driving and mechanical dismantling of bridge foundation. If marine mammals are observed within the exclusion zones, impact pile driving and/or mechanical dismantling activity of the segment shall be delayed until they move out of the area. If a marine mammal is seen above

water and then dives below, CALTRANS must delay activities 15 minutes for pinnipeds and harbor porpoise and 30 minutes for gray whale. If no marine mammals are seen by the observer in that time it may be assumed that the animal has moved beyond the relevant exclusion zone.

(iv) If the time between pile-segment driving is less than 30 minutes, a new 30-minute survey is unnecessary provided the MMOs continue observations during the interruption. If pile driving ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone(s) prior to the commencement of pile-driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately (see condition 5(e)).

(v) For pile driving activities, if a marine mammal is sighted within the exclusion zone after pile-driving has begun, CALTRANS must have a qualified MMO record the species, numbers and behaviors of the animal(s) and report to Monica DeAngelis at the West Coast Regional Office, National Marine Fisheries Service, (phone: (562) 980–3232) within 24 hours of the incident.

(c) Soft Start

CALTRANS and its contractor shall implement soft start, *i.e.,* starting the pile driving hammer at the lowest power setting and gradually ramp up to full power, prior to operating pile driving hammers at full capacity for both impact and vibratory pile driving.

(d) Power Down and Shut-down

(i) For mechanical dismantling of bridge foundation, construction activities that generate underwater noise must be powered down or shutdown if a marine mammal is observed within the established 180 dB or 190 dB re 1 μPa exclusion zones for cetaceans or pinnipeds, respectively.

(7) Monitoring Requirements

(a) General.

(i) The holder of this Authorization must designate a minimum of three biologically-trained, on-site MMOs approved in advance by the National Marine Fisheries Service's West Coast Regional Office, to monitor the area for marine mammals before, during, and after pile driving activities; and before, during, and after mechanical dismantling of marine foundations.

(ii) The National Marine Fisheries Service must be informed immediately of any proposed changes or deletions to any portions of the monitoring plan.

(b) Visual Monitoring

(i) CALTRANS shall implement onsite marine mammal monitoring for 100% of all unattenuated impact pile driving of H-piles for 180- and 190-dB re 1 μPa exclusion zones and 160-dB re 1 μPa Level B harassment zone, attenuated impact pile driving of pipe piles (except pile proofing) and mechanical dismantling for 180- and 190-dB re 1 μPa exclusion zones.

(ii) CALTRANS shall also monitor 20% of the attenuated impact pile driving for the 160-dB re 1 μPa Level B harassment zone, and 20% of vibratory pile driving and mechanic dismantling for the 120 dB re 1 μPa Level B harassment zone.

(iii) Marine mammal monitoring shall begin at least 30 minutes prior to the start of the activities, continue for the duration of construction activities, and until 30 minutes after the construction activities.

(iv) Observations shall be made using high-quality binoculars (*e.g.,* Zeiss, 10 × 42 power). MMOs shall be equipped with radios or cell phones for maintaining contact with other observers and CALTRANS engineers, and range finders to determine distance to marine mammals, boats, buoys, and construction equipment.

(v) Data on all observations must be recorded and include the following information:

- Location of sighting;
- Species;
- Number of individuals;
- Number of calves present;
- Duration of sighting;
- Behavior of marine animals sighted;
- Direction of travel;
- When and where in relation to construction activities did the sighting occur (*e.g.,* before, ''soft-start'', during, or after the pile driving or removal; distance from sound source; in or out of exclusion zone or Level B zone); and
- Other human activities in the area.

(c) Hydroacoustic Measurements

At the beginning of pile driving and mechanical dismantling of bridge foundation, CALTRANS shall conduct hydroacoustic measurements to verify the exclusion and Level B harassment zones.

(7) Reporting Requirements

(a) CALTRANS shall notify NMFS of the initial sound pressure level measurements for both pile driving and foundation dismantling activities, including the final exclusion zone and Level B harassment zone radii established for impact and vibratory pile driving and marine foundation dismantling activities, within 72 hours after completion of the measurements.

(b) Monitoring reports shall be posted on the SFOBB Project's biological mitigation Web site (*www.biomitigation.org*) on a weekly basis if in-water construction activities are conducted. Marine mammal monitoring reports shall include species and numbers of marine mammals observed, time and location of observation and behavior of the animal. In addition, the reports shall include an estimate of the number and species of marine mammals that may have been harassed as a result of activities.

(c) CALTRANS shall provide NMFS with a draft final report within 90 days after the expiration of the IHA. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving and mechanical dismantling of bridge foundations. If no comments are received from NMFS within 30 days, the draft final report would be considered the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

(8) Notification of Injured or Dead Marine Mammals

(a) In the unanticipated event that CALTRANS' construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), CALTRANS shall immediately cease construction operations and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Robert.pauline@noaa.gov* and NMFS West Coast Regional Stranding Coordinator (*Justin.Viezbicke@noaa.gov*). The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Type of activity involved;

(iii) Description of the incident;

(iv) Status of all sound source use in the 24 hours preceding the incident;

(v) Water depth;

(vi) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(vii) Description of marine mammal observations in the 24 hours preceding preceding the incident;

(viii) Species identification or description of the animal(s) involved;

(ix) The fate of the animal(s); and

(x) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with CALTRANS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CALTRANS may not resume their activities until notified by NMFS via letter, email, or telephone.

(b) In the event that CALTRANS discovers an injured or dead marine mammal, and the lead MMO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), CALTRANS will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Rob.Pauline@noaa.gov* and NMFS West Coast Regional Stranding Coordinator (*Justin.Viezbicke@noaa.gov*). The report must include the same information identified in Condition 8(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with CALTRANS to determine whether modifications in the activities are appropriate.

(c) In the event that CALTRANS discovers an injured or dead marine mammal, and the lead MMO determines that the injury or death is not associated with or related to the activities authorized in Condition 3 of this Authorization (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CALTRANS shall report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Robert.pauline@noaa.gov* and NMFS West Coast Regional Stranding Coordinator (*Justin.Viezbicke@noaa.gov*) within 24 hours of the discovery. CALTRANS shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. CALTRANS can continue its operations under such a case.

(9) A copy of this Authorization must be in the possession of all contractors and marine mammal monitors operating under the authority of this Incidental Harassment Authorization.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SF–OBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS reviewed additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles without an air bubble curtain system and the use of vibratory pile driving. NMFS prepared a Supplemental Environmental Assessment (SEA) and analyzed the potential impacts to marine mammals that would result from the modification of the action. A Finding of No Significant Impact (FONSI) was signed on August 5, 2009. The proposed activity and expected impacts remain within what was previously analyzed in the EA and SEA. Therefore, no additional NEPA analysis is warranted. A copy of the SEA and FONSI is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

NMFS has determined that issuance of the IHA will have no effect on ESA-listed marine mammals, as none are known to occur in the action area.

Proposed Authorization

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of harbor seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals, California sea lions, harbor porpoises, and possibly gray whales and will have no more than a negligible impact on these marine mammal stocks.

Dated: April 23, 2015.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–09915 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: U.S. Caribbean Commercial Fishermen Census.

OMB Control Number: 0648-xxxx.

Form Number(s): None.

Type of Request: Regular (new information collection).

Number of Respondents: 1,522.

Average Hours Per Response: 30 minutes.

Burden Hours: 761.

Needs and Uses: This request is for a new information collection.

The National Marine Fisheries Service (NMFS) proposes to conduct a census of small scale fishermen operating in the United States (U.S.) Caribbean. The proposed socio-economic study will collect information on demographics, capital investment in fishing gear and vessels, fishing and marketing practices, economic performance, and miscellaneous attitudinal questions. The data gathered will be used for the development of amendments to fishery management plans which require descriptions of the human and economic environment and socio-economic analyses of regulatory proposals. The information collected will also be used to strengthen fishery management decision-making and satisfy various legal mandates under the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), Executive Order 12866, Regulatory Flexibility Act, Endangered Species Act, and National Environmental Policy Act, and other pertinent statues.

Affected Public: Business or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 24, 2015.

Sarah Brabson,

OAA PRA Clearance Officer.

[FR Doc. 2015–09979 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 1540414365–5365–01]

RIN 0660–XC019

Broadband Opportunity Council Notice and Request for Comment

AGENCY: Rural Utilities Service, U.S. Department of Agriculture, and National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: In furtherance of the Presidential Memorandum entitled *Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training,* which established the Broadband Opportunity Council (Council), the Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA) are requesting public comment to inform the deliberations of the Council.[1] The Council's objectives are to: (i) Engage with industry and other stakeholders to understand ways the government can better support the needs of communities seeking to expand broadband access and adoption; (ii) identify regulatory barriers unduly impeding broadband deployment, adoption, or competition; (iii) survey and report back on existing programs that currently support or could be modified to support broadband competition, deployment, or adoption; and (iv) take all necessary actions to remove these barriers and realign existing programs to increase broadband competition, deployment, and adoption.[2] We welcome input from all interested parties, including the stakeholder groups identified in the Presidential Memorandum.

DATES: Submit written comments on or before 5 p.m. Eastern time on June 10, 2015.

ADDRESSES: Written comments may be submitted by email to: *BOCrfc2015@ntia.doc.gov.* Include Broadband Opportunity Council in the subject line of the message. Comments submitted by email should be machine-readable and should not be copy-protected. Written comments may also be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4626, Attn: Broadband Opportunity Council, Washington, DC 20230. Responders should include the name of the person or organization filing the comment, as well as a page number on each page of their submissions. Paper submissions should also include a CD or DVD with an electronic version of the document, which should be labeled with the name and organization of the filer. Please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. All comments received are a part of the public record and will generally be posted to *http://www.ntia.doc.gov/federal-register-notice/2015/broadband-opportunity-council-comments* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Information obtained as a result of this notice may be used by the federal government for program planning on a non-attribution basis.

FOR FURTHER INFORMATION CONTACT: Karen Hanson, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4626, Washington, DC 20230; telephone: (202) 482–0213; email: *khanson@ntia.doc.gov*; or Denise Scott, Rural Development, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250; telephone: (202)720–1910; email: *Denise.Scott1@wdc.usda.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background

On January 13, 2015, President Obama announced new Administration efforts to help more people, in more communities around the country, gain access to fast and affordable broadband.[3] Communities across the country, including state, local, and tribal governments, are leveraging public and private investments to form new partnerships to bring world-class Internet to their businesses, institutions, and homes. To assist these communities and partnerships, support economic growth, and promote a level playing field for all competitors, President Obama called on the Executive Branch agencies to remove all unnecessary regulatory and policy barriers to broadband build-out, adoption, and competition.

On March 23, 2015, the White House released a Presidential Memorandum establishing a new Broadband Opportunity Council (Council), co-chaired by the U.S. Departments of Commerce and Agriculture. The Council comprises 25 federal agencies (Member Agencies) that can play a role in accelerating broadband deployment and promoting the technology's adoption across the country. To respond to this Presidential Memorandum, Member Agencies will provide a list of actions that they can take to identify and mitigate regulatory barriers, incentivize investment, promote best practices, align funding policies and decisions, and support broadband deployment and adoption. The Presidential Memorandum also directs the Council to consult with state, local, tribal, and territorial governments, as well as telecommunications companies, utilities, trade associations, philanthropic entities, policy experts, and other interested parties to identify and assess regulatory barriers and determine possible actions. This Notice seeks public comment to bolster the Council's work and to improve the number and quality of ideas under consideration.

II. Objectives of This Notice

This Notice offers an opportunity for all interested parties to share their perspectives and recommend actions the federal government can take to promote broadband deployment,

[1] Memorandum for the Heads of Executive Departments and Agencies, *Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training,* March 23, 2015, *available at https://www.whitehouse.gov/the-press-office/2015/03/23/presidential-memorandum-expanding-broadband-deployment-and-adoption-addr.*

[2] Fact Sheet: Next Steps in Delivering Fast, Affordable Broadband, March 23, 2015, available at *https://www.whitehouse.gov/the-press-office/2015/03/23/fact-sheet-next-steps-delivering-fast-affordable-broadband.*

[3] See FACT SHEET: Broadband That Works: Promoting Competition & Local Choice In Next-Generation Connectivity, White House, January 13, 2015, available at *http://www.whitehouse.gov/the-press-office/2015/01/13/fact-sheet-broadband-works-promoting-competition-local-choice-next-gener.*

adoption, and competition, including by identifying and removing regulatory barriers unduly impeding investments in broadband technology.[4]

This Notice seeks comment in several different areas: (i) Ways the federal government can promote best practices, modernize outdated regulations, promote coordination, and offer more services online; (ii) identification of regulatory barriers to broadband deployment, competition, and adoption; (iii) ways to promote public and private investment in broadband; (iv) ways to promote broadband adoption; (v) issues related to state, local, and tribal governments; (vi) issues related to vulnerable communities and communities with limited or no broadband; (vii) issues specific to rural areas; and (viii) ways to measure broadband availability, adoption, and speed.

III. Questions

Commenters are encouraged to address any or all of the following questions. Please note in the response the number corresponding to the question(s). For any response, commenters may wish to consider describing specific goals, actions the Administration might take to achieve those goals, the benefits and costs associated with the action, whether the proposal is inter-agency or agency-specific, the rationale and evidence to support it, and the roles of other stakeholders. Specific, actionable proposals for policy mechanisms directed to the Executive Branch agencies included in the Council are most useful. Please note that the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC) are independent regulatory agencies and not included in the Executive Branch. Independent agencies are not members of the Council, although the Presidential Memorandum strongly encourages them to comply with its requirements. As a result, commenters should focus on matters most within the control of the Executive Branch agencies serving on the Council.

RUS and NTIA seek public comment on the following questions:

A. Overarching Questions

1. How can the federal government promote best practices in broadband deployment and adoption? What resources are most useful to communities? What actions would be most helpful to communities seeking to improve broadband availability and use?

2. How can the federal government best promote the coordination and use of federally-funded broadband assets?

3. What federal regulations and/or statutes could be modernized or adapted to promote broadband deployment and adoption?

4. As the federal government transitions to delivering more services online, what should government do to provide information and training to those who have not adopted broadband? What should the federal government do to make reasonable accommodations to those without access to broadband?

5. How can the federal government best collaborate with stakeholders (state, local, and tribal governments, philanthropic entities, industry, trade associations, consumer organizations, etc.) to promote broadband adoption and deployment?

B. Addressing Regulatory Barriers to Broadband Deployment, Competition, and Adoption

6. What regulatory barriers exist within the agencies of the Executive Branch to the deployment of broadband infrastructure?

7. What federal programs should allow the use of funding for the deployment of broadband infrastructure or promotion of broadband adoption but do not do so now?

8. What inconsistences exist in federal interpretation and application of procedures, requirements, and policies by Executive Branch agencies related to broadband deployment and/or adoption, and how could these be reconciled? One example is the variance in broadband speed definitions.[5]

9. Are there specific regulations within the agencies of the Executive Branch that impede or restrict competition for broadband service, where residents have either no option or just one option? If so, what modifications could agencies make to promote competition in the broadband marketplace?

10. Are there federal policies or regulations within the Executive Branch that create barriers for communities or entities to share federally-funded broadband assets or networks with other non-federally funded networks?

11. Should the federal government promote the implementation of federally-funded broadband projects to coincide with other federally-funded infrastructure projects? For example, coordinating a broadband construction project funded by USDA with a road excavation funded by DOT?

C. Promoting Public and Private Investment in Broadband

12. How can communities/regions incentivize service providers to offer broadband services, either wired or wireless, in rural and remote areas? What can the federal government do to help encourage providers to serve rural areas?

13. What changes in Executive Branch agency regulations or program requirements could incentivize last mile investments in rural areas and sparsely populated, remote parts of the country?

14. What changes in Executive Branch agency regulations or program requirements would improve coordination of federal programs that help communities leverage the economic benefits offered by broadband?

15. How can Executive Branch agencies incentivize new entrants into the market by lowering regulatory or policy barriers?

D. Promoting Broadband Adoption

16. What federal programs within the Executive Branch should allow the use of funding for broadband adoption, but do not do so now?

17. Typical barriers to broadband adoption include cost, relevance, and training. How can these be addressed by regulatory changes by Executive Branch agencies?

E. Issues Related to State, Local, and Tribal Governments

18. What barriers exist at the state, local, and/or tribal level to broadband deployment and adoption? How can the federal government work with and incentivize state, local, and tribal governments to remove these barriers?

19. What federal barriers do state, local, and tribal governments confront as they seek to promote broadband

[4] NTIA defines ''broadband deployment'' as installing, building, provisioning, funding, or otherwise making available broadband infrastructure, even in cases of laying an empty duct when a trench is open, regardless of technology. This does not preclude satellite or inside wiring. Promoting ''broadband adoption'' includes providing public access, training, information, affordable devices, and/or affordable broadband service to underserved individuals or groups.

[5] The definition of what constitutes high-speed internet, *i.e.,* ''broadband,'' has evolved over time. The FCC currently defines broadband as 25 Mbps for download speeds and 3 Mbps for upload speeds. *See* FCC Finds US Broadband Deployment Not Keeping Pace, Updated Broadband Speed Benchmark to 25Mbps/3 Mbps to Reflect Consumer Demand, Advances in Technology, Public Notice, Federal Communications Commission, January 29, 2015, available at *http://www.fcc.gov/document/fcc-finds-us-broadband-deployment-not-keeping-pace.* USDA uses the 2014 Farm Bill's definition of broadband for rural service areas as 4 Mbps for download speeds and 1 Mbps for upload speeds.

deployment and adoption in their communities?

20. What can the federal government do to make it easier for state, local, and tribal governments or organizations to access funding for broadband?

21. How can the federal government support state, local, and tribal efforts to promote and/or invest in broadband networks and promote broadband adoption? For example, what type of capacity-building or technical assistance is needed?

F. Issues Related to Vulnerable Communities and Communities With Limited or No Broadband

22. How can specific regulatory policies within the Executive Branch agencies be altered to remove or reduce barriers that prevent vulnerable populations from accessing and using broadband technologies? Vulnerable populations might include, but are not limited to, veterans, seniors, minorities, people with disabilities, at-risk youth, low-income individuals and families, and the unemployed.

23. How can the federal government make broadband technologies more available and relevant for vulnerable populations?

G. Issues Specific to Rural Areas

24. What federal regulatory barriers can Executive Branch agencies alter to improve broadband access and adoption in rural areas?

25. Would spurring competition to offer broadband service in rural areas expand availability and, if so, what specific actions could Executive Branch agencies take in furtherance of this goal?

26. Because the predominant areas with limited or no broadband service tend to be rural, what specific provisions should Executive Branch agencies consider to facilitate broadband deployment and adoption in such rural areas?

H. Measuring Broadband Availability, Adoption, and Speeds

27. What information about existing broadband services should the Executive Branch collect to inform decisions about broadband investment, deployment, and adoption? How often should this information be updated?

28. Are there gaps in the level or reliability of broadband-related information gathered by other entities that need to be filled by Executive Branch data collection efforts?

29. What additional research should the government conduct to promote broadband deployment, adoption, and competition?

30. How might the federal government encourage innovation in broadband deployment, adoption, and competition?

Dated: April 24, 2105.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

Lisa Mensah,

Under Secretary for Rural Development.

[FR Doc. 2015–09996 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2015–0008]

Change to Internet Usage Policy To Permit Oral Authorization for Video Conferencing Tools by Patent Examiners

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) established an Internet usage policy in 1999, and this Internet usage policy permits patent examiners to communicate via the Internet only with individuals who have a written authorization in the application. This Internet usage policy also applies to USPTO video conferencing tools such as WebEx for use by patent examiners. The USPTO is updating its Internet usage policy by modifying the authorization requirements to now permit oral authorization for video conferencing tools, such as WebEx, to be provided by the patent applicant/practitioner to patent examiners before an interview is conducted.

DATES: *Effective:* The change to the Internet usage policy set forth in this notice is effective on April 29, 2015.

FOR FURTHER INFORMATION CONTACT: Mark Polutta, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy at (571) 272–7709.

SUPPLEMENTARY INFORMATION: The USPTO adopted an Internet usage policy in 1999. *See* Internet Usage Policy, 64 FR 33056 (June 21, 1999). The Patents portion of the Internet usage policy has been incorporated into section 502.03 of the Manual of Patent Examining Procedure (MPEP). The Trademarks portion of the Internet usage policy has been superseded by the Trademark Manual of Examining Procedure, which contains the relevant guidance on this subject matter for trademark examining attorneys, trademark applicants, and registration owners.

In accordance with the Internet usage policy as adopted in 1999, patent examiners may communicate via the Internet only with individuals who have a written authorization in the application. *See* MPEP 502.03 (9th ed. 2014). This Internet usage policy also applies to USPTO video conferencing tools, such as WebEx, used by patent examiners.

The USPTO is updating its Internet usage policy by modifying the authorization requirements for patent examination to now include oral authorization for video conferencing tools such as WebEx in view of the more prevalent and accepted use of electronic communications and improvements in internet security. The USPTO will now accept oral authorization by the patent applicant/practitioner (practitioner) to participate in a video conference. Practitioners may request a video conference just as they would request a telephone or in-person interview with the examiner. For applicants that are juristic entities, see MPEP 401, which explains that a juristic entity must be represented by a registered practitioner.

Under the updated Internet usage policy, patent examiners may now use USPTO video conferencing tools, *e.g.,* WebEx, to conduct examiner interviews in both published and unpublished applications without written authorization in the application. Authorization by the practitioner (which may be oral) to conduct a video conference is still required and must be obtained prior to sending a meeting invitation using email, calendar/scheduler applications, or USPTO video conferencing tools. Authorization is required to confirm that the practitioner is able to conduct a video conference and to confirm the email address to which the invitation will be sent. The patent examiner should note on the record the details of the authorization either in the interview summary or a separate communication. This authorization is limited to the video conference interview being arranged (including the meeting invitation) and does not extend to other communications regarding the application.

Although this change in Internet usage policy provides applicant's representative with an alternative to providing a written authorization to conduct an interview using USPTO video conferencing tools, the best practice is to have such written authorization of record in the file.

All Internet communications between UPSTO employees and practitioners must be made using USPTO tools. Video conferencing communications regarding a patent application must be hosted by USPTO personnel. No personal phones, non-USPTO email, PDAs, etc. may be used by USPTO employees for official communications.

In accordance with MPEP 502.03 and 713.04, all communications with regard to the merits of a patent application between USPTO employees and applicants must be made of record.

Dated: April 23, 2015.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2015–10051 Filed 4–28–15; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0097, Process for Review of Swaps for Mandatory Clearing

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on reporting and recordkeeping requirements relating to information management requirements for derivatives clearing organizations.

DATES: Comments must be submitted on or before June 29, 2015.

ADDRESSES: You may submit comments, identified by ''Process for Review of Swaps for Mandatory Clearing,'' by any of the following methods:

- *The Agency's Web site,* at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Eileen Chotiner, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418–5467; email: *echotiner@cftc.gov,* and refer to OMB Control No. 3038–0097.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed extension of the collection of information listed below.

Title: Process for Review of Swaps for Mandatory Clearing (OMB Control No. 3038–0097). This is a request for extension of a currently approved information collection.

Abstract: The Commodity Exchange Act and Commission regulations require a derivatives clearing organization (''DCO'') that wishes to accept a swap for clearing to be eligible to clear the swap and to submit the swap to the Commission for a determination as to whether the swap is required to be cleared. Commission Regulation 39.5 sets forth the process for these submissions. The Commission will use the information in this collection to determine whether a DCO that wishes to accept a swap for clearing is eligible to clear the swap and whether the swap should be required to be cleared.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be 40 hours per response.

Respondents/Affected Entities: Derivatives clearing organizations.

Estimated number of respondents: 14.

Estimated total annual burden on respondents: 560.

Frequency of collection: Daily, annual, and on occasion.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: April 24, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–09994 Filed 4–28–15; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this to notice to announce a Federal Advisory Committee meeting of the Defense Acquisition University Board of Visitors. This meeting will be open to the public.

DATES: Wednesday, May 20, 2015, from 9:00 a.m. to 1:30 p.m.

ADDRESSES: DAU Headquarters, 9820 Belvoir Road, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Caren Hergenroeder, Protocol Director, DAU. Phone: 703–805–5134. Fax: 703–805–5940. Email: *caren.hergenroeder@dau.mil*.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b, as amended), and 41 CFR § 102–3.150.

Purpose of the Meeting: The purpose of this meeting is to report back to the Board of Visitors on continuing items of interest.

Agenda

9:00 a.m. Welcome and Announcements
9:05 a.m. Recognition of Board members
9:20 a.m. DAU Update
10:20 a.m. Break
10:35 a.m. Acquisition Workforce Training Perceptions
11:30 a.m. Board of Visitors ''Way Ahead''
12:15 p.m. Ethics Training
1:30 p.m. Adjourn

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. § 552b and 41 CFR §§ 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Caren Hergenroeder at 703–805–5134.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Acquisition University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Acquisition University Board of Visitors.

All written statements shall be submitted to the Designated Federal Officer for the Defense Acquisition University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Defense Acquisition University Board of Visitors until its next meeting. Committee's Designated Federal Officer or Point of Contact: Ms. Christen Goulding, 703–805–5412, *christen.goulding@dau.mil*.

Dated: April 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–09936 Filed 4–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity Meeting

AGENCY: Office of Postsecondary Education, National Advisory Committee on Institutional Quality and Integrity (NACIQI), U.S. Department of Education.

ACTION: Announcement of the time and location of a meeting.

SUMMARY: This meeting notice is an update to the previous notice published in the **Federal Register** (59 FR 16369) on March 27, 2015, and sets forth the time and location for the June 25–26, 2015 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). The notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act of 1965 (HEA), as amended.

DATES: The NACIQI meeting will be held on June 25–26, 2015, from 8:00 a.m. to 5:30 p.m., at the Sheraton Pentagon City, 900 S. Orme Street, Arlington, VA 22204.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8072, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Patricia Howes, Committee Coordinator, NACIQI, U.S. Department of Education, 1990 K Street NW., Room 8061, Washington, DC 20006–8129, telephone: (202) 502–7769, fax: (202) 502–7874, or email: *Patricia.Howes@ed.gov.*

SUPPLEMENTARY INFORMATION:

NACIQI's Statutory Authority and Function: The NACIQI is established under Section 114 of the HEA of 1965, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, of the HEA, as amended.
- The recognition of specific accrediting agencies or associations or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, of the HEA, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary may prescribe.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI Web site 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street NW., Washington, DC, by emailing *aslrecordsmanager@ed.gov* or by calling (202) 219–7067 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

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.

Delegation of Authority: The Secretary of Education has delegated authority to Jamienne S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Authority: 20 U.S.C. 1011c.

Jamienne S. Studley,

Deputy Under Secretary.

[FR Doc. 2015–09978 Filed 4–28–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0018]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Middle Grades Longitudinal Study of 2016–2017 (MGLS: 2017) Recruitment for Item Validation and Operational Field Tests

AGENCY: Institute of Education Sciences/ National Center for Education Statistics (IES), 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 reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before May 29, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0018 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* 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, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–502–7411.

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: Middle Grades Longitudinal Study of 2016–2017 (MGLS: 2017) Recruitment for Item Validation and Operational Field Tests.

OMB Control Number: 1850–0911.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 8,128.

Total Estimated Number of Annual Burden Hours: 1,794.

Abstract: The Middle Grades Longitudinal Study of 2016–2017 (MGLS:2017) is the first study sponsored by the National Center for Education Statistics (NCES), within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), to follow a nationally-representative sample of students as they enter and move through the middle grades (grades 6–8). The data collected through repeated measures of key constructs will provide a rich descriptive picture of the academic experiences and development of students during these critical years and will allow researchers to examine associations between contextual factors and student outcomes. The study will focus on student achievement in mathematics and literacy along with measures of student socioemotional wellbeing and other outcomes. The study will also include a special sample of students with different types of disabilities that will provide descriptive information on their outcomes, educational experiences, and special education services. Baseline data for the MGLS:2017 will be collected from a nationally-representative sample of 6th grade students in winter of 2017 with annual follow-ups in winter 2018 and winter 2019 when most of the students in the sample will be in grades 7 and 8, respectively. This request is to contact and recruit public school districts and public and private schools to participate in the winter 2016 concurrent item validation and operational field tests for the MGLS: 2017. The primary purpose of the Item Validation Field Test is to determine the psychometric properties of items and the predictive potential of assessment and survey items so that valid, reliable, and useful assessment and survey instruments can be composed for the main study. The primary purposes of the Operational Field Test are to obtain information on recruiting, particularly for the targeted disability groups; on obtaining a tracking sample that can be used to study mobility patterns in subsequent years; and on administrative procedures.

Dated: April 23, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–09946 Filed 4–28–15; 8:45 am]

BILLING CODE 4000–01P

DEPARTMENT OF EDUCATION

National Assessment Governing Board Quarterly Board Meeting

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of open and closed meetings.

SUMMARY: This notice sets forth the agenda for the May 14–16, 2015 Quarterly Meeting of the National Assessment Governing Board (hereafter referred to as Governing Board). This notice provides information to members of the public who may be interested in attending the meeting or providing written comments on the meeting. The notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA).

DATES: The Quarterly Board meeting will be held on the following dates:

- May 14, 2015 from 11:30 a.m. to 5:45 p.m.
- May 15, 2015 from 8:30 a.m. to 5:00 p.m.
- May 16, 2015 from 7:30 a.m. to 11:00 a.m.

ADDRESSES:

May 14: Assessment Development Committee—Hotel Indigo: 400 Brown Street, Columbus, Indiana

May 14: Executive Committee—Columbus Visitor's Center, 501 5th Street, Columbus, Indiana

May 15: Full Board: The Commons, 300 Washington Street, Columbus, Indiana.

Committee Meetings:

May 15: Assessment Development Committee—The Commons

May 15: Committee on Standards, Design and Methodology: Zaharakos, 329 Washington Street, Columbus, Indiana.

May 15: Reporting and Dissemination Committee—Columbus Visitors Center

May 16: Nominations Committee—The Commons

May 16: Full Board—The Commons

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer, 800 North Capitol Street NW., Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945.

SUPPLEMENTARY INFORMATION: *Statutory Authority and Function:* The National Assessment Governing Board is established under Title III—National Assessment of Educational Progress Authorization Act, Public Law 107–279. Information on the Board and its work can be found at *www.nagb.gov.*

The Board is established to formulate policy for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

Detailed Meeting Agenda: May 14–16, 2015

May 14: Committee Meetings

Assessment Development Committee: Open Session: 11:30 a.m.–3:00 p.m.

Executive Committee: Open Session: 4:30 p.m.–5:00 p.m.; Closed Session: 5:00 p.m.–5:45 p.m.

May 15: Full Board and Committee Meetings

Full Board: Open Session: 8:30 a.m.–9:45 a.m.; Open Session 1:00 p.m.–5:00 p.m.

Committee Meetings

Assessment Development Committee (ADC): Open Session: 10:15 a.m.–12:30 p.m.

Reporting and Dissemination Committee (R&D): Open Session: 10:15 a.m.–12:30 p.m.

Committee on Standards, Design and Methodology (COSDAM): Open Session: 10:15 a.m.–11:30 a.m.; Closed Session: 11:30 a.m.–12:30 p.m.

May 16: Full Board and Committee Meetings

Nominations Committee: Closed Session: 7:30 a.m.–8:15 a.m.

Full Board: Closed Session: 8:30 a.m.–9:45 a.m. Open Session 10:00 a.m.–11:00 a.m.

On May 14, 2015, from 11:30 a.m. to 3:00 p.m., the Assessment Development Committee will meet in open session to review NAEP contextual variables. The Executive Committee will convene in open session on May 14, 2015 from 4:30 p.m. to 5:00 p.m. and thereafter in closed session from 5:00 p.m. to 5:45 p.m. During the closed session, the Executive Committee will receive and discuss cost estimates on various options for implementing NAEP's Assessment Schedule for 2014–2024 and will discuss NAEP's budgetary needs for the President's FY 2017 budget. The implications of the cost estimates and funds in support of the NAEP Assessment Schedule and future NAEP activities will also be discussed. This meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing confidential cost details and proprietary contract costs of current contractors to the public. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of § 552b of Title 5 U.S.C.

On May 15, 2015, the full Board will meet in open session from 8:30 a.m. to 9:45 a.m. The Board will review and approve the May 15–16, 2015 Board meeting agenda and meeting minutes from the March 2015 Quarterly Board meeting. This session will be followed by the Chairman's remarks and welcome remarks from Dale Nowlin, Governing Board member and Glenda Ritz, Indiana Superintendent of Public Instruction. Thereafter, the full Board will receive update reports from the Deputy Executive Director of the Governing Board, the Acting Director of the Institute of Education Sciences, and the Acting Commissioner of the National Center for Education Statistics. The Board will recess for Committee meetings from 10:15 a.m. to 12:30 p.m.

The Assessment Development Committee and the Reporting and Dissemination Committee will meet in open sessions from 10:15 a.m. to 12:30 p.m. The Committee on Standards, Design and Methodology (COSDAM) will meet in open session from 10:15 a.m. to 11:30 a.m. and thereafter in closed session from 11:30 a.m. to 12:30 p.m. During the closed session COSDAM will discuss information regarding analyses of the 2014 grade 8 Technology and Engineering Literacy (TEL) assessment, and discuss secure NAEP TEL data. This part of the meeting must be conducted in closed session because the analysis involves the use of secure data for the NAEP TEL assessment. Public disclosure of secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b of Title 5 U.S.C.

Following the Committee meetings, the Board will convene in open session from 1:00 p.m. to 2:15 p.m. to discuss the Governing Board's Strategic Planning Initiative. This session will be followed by discussions on the NAEP Assessment Literacy Initiative led by the Work Group Chair from 2:30 p.m. to 4:00 p.m. From 4:15 p.m. to 5:00 p.m. the Board will discuss a draft resolution on NAEP Trend Reporting.

The May 15, 2015 session of the Board meeting will adjourn at 5:00 p.m.

On May 16, 2015, the Nominations Committee will meet in closed session from 7:30 a.m. to 8:15 a.m. to discuss candidates for the eight Board vacancies for terms beginning on October 1, 2015 and begin discussion of the process for nominating candidates for terms beginning in October 2016. The Committee's discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

Thereafter, the Board will meet in closed session from 8:30 a.m. to 9:45 a.m. to review and discuss independent government costs estimates for subjects to be assessed under the NAEP Schedule of Assessments. During the closed session, the Board will receive and discuss cost estimates on various options for implementing NAEP's Assessment Schedule through the year 2024 and will discuss NAEP's budgetary needs for the President's FY 2017 budget request. The implications of the cost estimates and funds in support of the NAEP Assessment Schedule and future NAEP activities will also be discussed. This session will be an in-depth briefing and discussion to examine cost projections which will impact the NAEP schedule through 2024. This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing contractors attending the Board meeting an unfair advantage in procurement and contract negotiations for NAEP. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of § 552b of Title 5 U.S.C.

Following the closed session, from 10:00 a.m. to 10:15 a.m., the incoming Executive Director will provide remarks to the full Board in open session. The Board will then receive reports from the standing committees and take action on a recommendation from the Reporting and Dissemination Committee on NAEP Core Contextual Variables. The May 16, 2015 meeting is scheduled to adjourn at 11:00 a.m.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* on Friday, May 8, 2015 by 9:00 a.m. ET. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

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.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Dated: April 23, 2015.

Mary Crovo,

Deputy Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2015–09956 Filed 4–28–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0051]

Agency Information Collection Activities; Comment Request; U.S. Department of Education Pre-Authorized Debit Account Brochure and Application

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 29, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0051 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* 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, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed

information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: US Department of Education Pre-Authorized Debit Account Brochure and Application

OMB Control Number: 1845–0025

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households

Total Estimated Number of Annual Responses: 1,600

Total Estimated Number of Annual Burden Hours: 133

Abstract: The Preauthorized Debit Account Brochure and Application (PDA Application) serves as the means by which an individual with a defaulted federal education debt (student loan or grant overpayment) that is held by the U.S. Department of Education (ED) requests and authorizes the automatic debiting of payments toward satisfaction of the debt from the borrower's checking or savings account. The PDA Application explains the automatic debiting process and collects the individual's authorization for the automatic debiting and the bank account information needed by ED to debit the individual's account.

Dated: April 23, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–09947 Filed 4–28–15; 8:45 am]

BILLING CODE 4000–01–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: ER15–1556–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Notice of Cancellation of Interconnection Agreement with Allegany Limited Partnership of Niagara Mohawk Power Corporation.

Filed Date: 4/23/15.

Accession Number: 20150423–5182.

Comments Due: 5 p.m. ET 5/14/15.

Docket Numbers: ER15–1557–000.

Applicants: Entrust Energy East, Inc.

Description: Compliance filing per 35: Notice of Succession and Revised Market-Based Rate Tariff to be effective 4/22/2015.

Filed Date: 4/23/15.

Accession Number: 20150423–5200.

Comments Due: 5 p.m. ET 5/14/15.

Docket Numbers: ER15–1558–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): 2403R2 Sunflower-ITC Interconnection Agreement to be effective 12/31/9998.

Filed Date: 4/23/15.

Accession Number: 20150423–5229.

Comments Due: 5 p.m. ET 5/14/15.

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: April 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–09970 Filed 4–28–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–414–001.

Applicants: ISO New England Inc., Emera Energy Services Subsidiary No. 1 LLC, Central Maine Power Company, New England Power Company, Northeast Utilities Service Company (as, The United Illuminating Company, Vermont Transco, LLC, Unitil Energy Systems, Inc., New Hampshire Transmission, LLC.

Description: Compliance filing per 35: ER15–414 ROE Compliance Filing to be effective 10/16/2014.

Filed Date: 4/22/15.

Accession Number: 20150422–5315.

Comments Due: 5 p.m. ET 5/13/15.

Docket Numbers: ER15–1120–001.

Applicants: Nevada Power Company.

Description: Tariff Amendment per 35.17(b): Service Agreement No. 14–00081 NPC and Aiya LGIA Change in Effective Date to be effective 12/31/9998.

Filed Date: 4/22/15.

Accession Number: 20150422–5310.

Comments Due: 5 p.m. ET 5/13/15.

Docket Numbers: ER15–1121–001.

Applicants: Nevada Power Company.

Description: Tariff Amendment per 35.17(b): Service Agreement No. 12–00082 NPC and Moapa LGIA Change in Effective Date to be effective 12/31/9998.

Filed Date: 4/22/15.

Accession Number: 20150422–5318.

Comments Due: 5 p.m. ET 5/13/15.

Docket Numbers: ER15–1122–001.

Applicants: Nevada Power Company.

Description: Tariff Amendment per 35.17(b): Service Agreement No. 14–00076 NPC and Playa Change in Effective Date to be effective 12/31/9998.

Filed Date: 4/23/15.

Accession Number: 20150423–5001.

Comments Due: 5 p.m. ET 5/14/15.

Docket Numbers: ER15–1549–000.

Applicants: Central Maine Power Company.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Executed CSIA with Brookfield White Pine Hydro LLC to be effective 3/23/2015.

Filed Date: 4/22/15.

Accession Number: 20150422–5284.

Comments Due: 5 p.m. ET 5/13/15.

Docket Numbers: ER15–1550–000.

Applicants: PJM Interconnection, L.L.C., The Dayton Power and Light Company.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): DP&L submits Original Service Agreement No. 4133 to be effective 4/23/2015.

Filed Date: 4/22/15.

Accession Number: 20150422–5290.

Comments Due: 5 p.m. ET 5/13/15.

Docket Numbers: ER15–1551–000.

Applicants: Central Maine Power Company.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Executed CSIA with FPL Energy Cape LLC to be effective 4/14/2015.

Filed Date: 4/22/15.

Accession Number: 20150422–5292.

Comments Due: 5 p.m. ET 5/13/15.

Docket Numbers: ER15–1552–000.

Applicants: Central Maine Power Company.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Executed CSIA with FPL Energy Wyman LLC to be effective 4/14/2015.

Filed Date: 4/22/15.

Accession Number: 20150422–5300.

Comments Due: 5 p.m. ET 5/13/15.

Docket Numbers: ER15–1553–000.

Applicants: Central Maine Power Company.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Executed CSIA with FPL Energy Wyman IV LLC to be effective 4/14/2015.

Filed Date: 4/22/15.

Accession Number: 20150422–5305.

Comments Due: 5 p.m. ET 5/13/15.

Docket Numbers: ER15–1554–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–23_SA 2780 ATC-Minnesota Power OCSA to be effective 6/23/2015.

Filed Date: 4/23/15.

Accession Number: 20150423–5081.

Comments Due: 5 p.m. ET 5/14/15.

Docket Numbers: ER15–1555–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–23_SA 2781 ATC-Superior Water Light & Power OCSA to be effective 6/23/2015.

Filed Date: 4/23/15.

Accession Number: 20150423–5087.

Comments Due: 5 p.m. ET 5/14/15.

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: April 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–09969 Filed 4–28–15; 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: PR15–24–001.

Applicants: Centana Intrastate Pipeline, LLC.

Description: Submits tariff filing per 284.123(b), (e) + (g): CIPCO SOC Settlement Filing to be effective 3/1/2015; Filing Type: 1270.

Filed Date: 4/16/15.

Accession Number: 20150416–5082.

Comments Due: 5 p.m. ET 5/7/15.

284.123(g) Protests Due: 5 p.m. ET 5/7/15.

Docket Numbers: RP15–892–000.

Applicants: Equitrans, L.P.

Description: Section 4(d) rate filing per 154.204: Negotiated Capacity Release Agreement—4/17/2015 to be effective 4/17/2015.

Filed Date: 4/16/15.

Accession Number: 20150416–5129.

Comments Due: 5 p.m. ET 4/28/15.

Docket Numbers: RP15–893–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Section 4(d) rate filing per 154.204: Amendment to Neg Rate Agmt (FPL 41619–4) to be effective 4/16/2015.

Filed Date: 4/16/15.

Accession Number: 20150416–5170.

Comments Due: 5 p.m. ET 4/28/15.

Docket Numbers: RP15–894–000.

Applicants: Cheyenne Plains Gas Pipeline Company, L.

Description: Section 4(d) rate filing per 154.601: Negotiated Rate Agreements (Mieco) to be effective 4/17/2015.

Filed Date: 4/16/15.

Accession Number: 20150416–5232.

Comments Due: 5 p.m. ET 4/28/15.

Docket Numbers: RP15–895–000.

Applicants: Centra Pipelines Minnesota Inc.

Description: Section 4(d) rate filing per 154.204: Updated Index of Shippers April 2015 to be effective 6/1/2015.

Filed Date: 4/17/15.

Accession Number: 20150417–5082.

Comments Due: 5 p.m. ET 4/29/15.

Docket Numbers: RP15–896–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Section 4(d) rate filing per 154.403: SS–2 Inventory Adjustment Filing to be effective 5/1/2015.

Filed Date: 4/17/15.

Accession Number: 20150417–5086.

Comments Due: 5 p.m. ET 4/29/15.

Docket Numbers: RP15–897–000.

Applicants: Horizon Pipeline Company, L.L.C.

Description: Section 4(d) rate filing per 154.204: Filing to Substitute Published Index Prices to be effective 6/1/2015.

Filed Date: 4/17/15.

Accession Number: 20150417–5299.

Comments Due: 5 p.m. ET 4/29/15.

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 date(s). 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: April 20, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–09968 Filed 4–28–15; 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: RP15–898–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Section 4(d) rate filing per 154.204: Nicor Gas Negotiated Rate to be effective 5/14/2015.

Filed Date: 4/20/15.
Accession Number: 20150420–5188.
Comments Due: 5 p.m. ET 5/4/15.
Docket Numbers: RP15–899–000.
Applicants: Equitrans, L.P.
Description: Section 4(d) rate filing per 154.204: Negotiated Capacity Release Agreement—4/18/2015 to be effective 4/18/2015.
Filed Date: 4/20/15.
Accession Number: 20150420–5236.
Comments Due: 5 p.m. ET 5/4/15.
Docket Numbers: RP15–900–000.
Applicants: Horizon Pipeline Company, L.L.C.
Description: Section 4(d) rate filing per 154.204: Negotiated Rate—Nicor Gas to be effective 5/14/2015.
Filed Date: 4/20/15.
Accession Number: 20150420–5254.
Comments Due: 5 p.m. ET 5/4/15.
Docket Numbers: RP15–901–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Section 4(d) rate filing per 154.204: Negotiated Rate—Quicksilver to be effective 4/1/2015.
Filed Date: 4/20/15.
Accession Number: 20150420–5269.
Comments Due: 5 p.m. ET 5/4/15.

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: April 21, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–09971 Filed 4–28–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0086; FRL–9925–72]

Full SFIREG; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Issues Research and Evaluation Group (SFIREG), Full Committee will hold a 2-day meeting, beginning on June 1, 2015, and ending June 2, 2015. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, June 1, 2015, from 8:00 a.m. to 5:00 p.m. and 8:30 a.m. to noon on Tuesday, June 2, 2015.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA. One Potomac Yard (South Bldg.) 2777 Crystal Dr., Arlington, VA., First Floor, South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5561; fax number: (703) 305–5884; email address: *kendall.ron@epa.gov.* or Amy Bamber, SFIREG Executive Secretary, at *aapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are interested in pesticide regulation issues affecting states and any discussion between EPA and SFIREG on FIFRA field implementation issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or FIFRA and those who sell, distribute or use pesticides, as well as any nongovernment organization. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0086, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Tentative Agenda Topics

1. OPP/OECA Program Updates
2. Update on SmartLabel and the E-Enterprise project
3. Design for the Environment (DfE) logos on pesticide labels
4. SFIREG Guidance on State Managed Pollinator Plans
5. Report on first OPP/OECA Project Officer Training Session
6. Federal Credentials update on any revisions to the state/tribal guidance to clarify regional flexibility in determining inspector experience
7. Discuss adjustments to inspection time allocations (Results of SLA survey)
8. EPA Spanish Labeling Workgroup
9. Discussion on Office of Inspector General (OIG) Quick Action Report on Region 8
10. Review of FY 2016–17 NPM Guidance

III. How can I request to participate in this meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 14, 2015.

Jacqueline E. Mosby,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2015–09887 Filed 4–28–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10318, Paramount Bank Farmington Hills, Michigan

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Paramount Bank, Farmington Hills, Michigan (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Paramount Bank on December 10, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: April 23, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–09895 Filed 4–28–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011426–057.

Title: West Coast of South America Discussion Agreement.

Parties: CMA CGM S.A.; Compania Chilena de Navigacion Interoceanica, S.A; Frontier Liner Services, Inc.; Hamburg-Süd; Hapag-Lloyd AG and Norasia Container Lines Limited (acting as a single party); King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment deletes Compania Sudamericana de Vapores, S. A. as a party to the agreement.

Agreement No.: 012328.

Title: CSCL/CMA CGM/UASC/HSD Vessel Sharing Agreement.

Parties: China Shipping Container Lines Co. Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (collectively known as China Shipping); United Arab Shipping Company S.A.G.; CMA CGM S.A.; and Hamburg Sud.

Filing Party: Brett M. Esber, Esquire; Blank Rome LLP; 600 New Hampshire Avenue NW.; Washington, DC 20037.

Synopsis: The agreement authorizes the parties to share vessels on a new weekly service in the trade between China and Panama, on the one hand, and the East Coast of the U.S. on the other hand.

Agreement No.: 201175–005.

Title: Port of NY/NJ Sustainable Services Agreement.

Parties: APM Terminals Elizabeth, LLC; GCT Bayonne LP; GCT New York LP; Maher Terminals LLC; and Port Newark Container Terminal LLC.

Filing Party: Carol N. Lambos, Esq.; The Lambos Firm, LLP; 303 South Broadway, Suite 410; Tarrytown, NY 10591.

Synopsis: The amendment changes the name of APM Terminals North America, Inc. to APM Terminals Elizabeth, LLC.

Agreement No.: 201210–002.

Title: Port of NY/NJ Port Authority/Marine Terminal Operators Agreement.

Parties: APM Terminals Elizabeth, LLC; GCT Bayonne LP; GCT New York LP; Maher Terminals LLC; and Port Newark Container Terminal LLC.

Filing Party: Carol N. Lambos, Esq.; The Lambos Firm, LLP; 303 South Broadway Suite 410; Tarrytown, NY 10591.

Synopsis: The amendment changes the name of APM Terminals North America, Inc. to APM Terminals Elizabeth, LLC.

By Order of the Federal Maritime Commission.

Dated: April 24, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015–10011 Filed 4–28–15; 8:45 am]

BILLING CODE 6730–AA–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0079; Docket 2015–0076; Sequence 12]

Information Collection; Corporate Aircraft Costs

AGENCY: 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 corporate aircraft costs.

DATES: Submit comments on or before June 29, 2015.

ADDRESSES: Submit comments identified by Information Collection 9000–0079, Corporate Aircraft Costs, 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 9000–0079, Corporate Aircraft Costs''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0079, Corporate Aircraft Costs'' on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0079, Corporate Aircraft Costs.

Instructions: Please submit comments only and cite Information Collection

9000–0079, Corporate Aircraft Costs, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Hopkins, Federal Acquisition Policy Division, GSA, 202–969–7226 or via email *kathy.hopkins@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

Government contractors that use company aircraft must maintain logs of flights containing specified information (*e.g.,* destination, passenger name, purpose of trip, etc.). This information, as required by FAR 31.205–46, Travel Costs, is used to ensure that costs of owned, leased or chartered aircraft are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to such contracts.

B. Annual Reporting Burden

Number of Respondents: 3,000.

Responses per Respondent: 1.

Total Responses: 3,000.

Average Burden per Response: 6 hours.

Total Burden Hours: 18,000.

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. 9000–0079, Corporate Aircraft Costs, in all correspondence.

Dated: April 23, 2015.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2015–09983 Filed 4–28–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 1, 2015, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm.1503), Silver Spring, MD 20993–0002. For those unable to attend in person, the meeting will also be available via Webcast. The Webcast will be available at the following link: *https://collaboration.fda.gov/cbertseac/.* When accessing the Webcast please enter as a guest. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Bryan Emery or Rosanna Harvey, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6132, Silver Spring, MD 20993–0002, 240–402–8054 or 240–402–8072; or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On June 1, 2015, the Transmissible Spongiform Encephalopathies Advisory Committee will meet in open session to hear update presentations on the following topics: (1) The variant Creutzfeldt-Jakob Disease (vCJD) situation worldwide and an update on the United Kingdom's Transfusion Medicine Epidemiological Review; (2) vCJD in the United States; and, (3) the bovine spongiform encephalopathy (BSE) situation worldwide and the United States Department of Agriculture's regulatory approaches to reduce the risk of food-borne exposure of BSE. Following the update presentations, in open session, the committee will hear presentations from FDA on current measures to reduce risk of vCJD from transfusion in the U.S., and a mathematical model of the risk reduction achievable under the current and alternative geographically based donor deferral policies when implemented in conjunction with the use of leukocyte reduction of blood components. The committee will then discuss FDA's geographically based donor deferral policies and other strategies, including leukocyte reduction of blood components, to reduce the risk of transfusion-transmitted vCJD. FDA will seek advice from the committee in developing future recommendations to reduce this risk.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 25, 2015. Oral presentations from the public will be

scheduled between approximately 2:30 p.m. and 3:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 15, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 18, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Bryan Emery at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 24, 2015.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2015–10026 Filed 4–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0090]

Retrospective Review of Premarket Approval Application Devices; Striking the Balance Between Premarket and Postmarket Data Collection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the progress of the Center for Devices and Radiological Health (CDRH) on its 2014–2015 Strategic Priority ''Strike the Right Balance Between Premarket and Postmarket Data Collection.'' To achieve this priority, CDRH established a goal to assure the appropriate balance between premarket and postmarket data collection to facilitate and expedite the development and review of medical devices, in particular high-risk devices of public health importance, and established a target date of December 31, 2014, by which to review 50 percent of product codes subject to a premarket approval application (PMA) that are legally marketed to determine whether or not, based on our current understanding of the technology, to rely on postmarket controls to reduce premarket data collection, to shift some premarket data collection to the postmarket setting, or to pursue down-classification. CDRH has taken such actions periodically in the past consistent with the medical device statutory framework but typically has done so on an ad hoc basis. CDRH also will require more data or up-classify a device, if warranted, based on the current state of the science; however, up-classification is not warranted for the devices subject to this retrospective review because they are already in the highest risk classification. In this document, CDRH is providing its current thinking on reviewed product types to solicit comments on the product codes that have been identified as candidates for reclassification, for reliance on postmarket controls to reduce premarket data collection, or a shift in premarket data collection to the postmarket setting.

DATES: Submit either electronic or written comments by June 29, 2015. See section IV for more information on how to submit comments to this document and properly identify the device(s) the comment concerns.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document and with the product code(s) for the device(s) the comment concerns.

FOR FURTHER INFORMATION CONTACT: Nancy Braier, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5454, Silver Spring, MD 20993–0002, 301–796–5676.

SUPPLEMENTARY INFORMATION:

I. Background

One of three Strategic Priorities for 2014–2015 in CDRH is to ''Strike the Right Balance Between Premarket and Postmarket Data Collection'' (Ref. 1).[1] CDRH's vision is for patients in the United States to have first in the world access to high-quality, safe, and effective medical devices of public health importance. A key determinant of early U.S. patient access to high-quality, safe, and effective devices is the extent of premarket data that device developers provide to FDA. Once a device developer decides to seek U.S. marketing approval or clearance, the extent of data that is collected premarket has an impact upon the length of time needed to complete a premarket submission—the more data to be collected premarket, the longer it may take to acquire the data and make the submission. Consequently, such data collection issues affect when U.S. patients have access to a medical device. On the other hand, it is also important that there is sufficient data to demonstrate a reasonable assurance of safety and effectiveness before a device subject to a premarket approval application (PMA) is approved for marketing in the United States. For this reason, it is important that CDRH strike the right balance between premarket and postmarket data collection. If CDRH can shift—when appropriate—some premarket data collection to the postmarket setting, CDRH could improve patient access to high-quality, safe, and effective medical devices of public health importance. However, patient safety could be undermined if CDRH shifted some data collection from the premarket to the postmarket setting without adequate assurances that necessary and timely data collection will occur. For this reason, CDRH strives to balance the premarket data and postmarket collection, in accordance with section 513(a)(3)(C) (21 U.S.C. 360c(a)(3)(C)) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), which directs CDRH to consider whether the extent of data that otherwise would be required for approval of a PMA with respect to effectiveness can be reduced through reliance on postmarket controls.

[1] CDRH's 2014–2015 Strategic Priorities include ''Strengthen the Clinical Trial Enterprise'' and ''Provide Excellent Customer Service,'' in addition to ''Strike the Right Balance Between Premarket and Postmarket Data Collection'' (Ref. 1).

In order to achieve the proper balance between premarket and postmarket data collection, CDRH resolved in its Strategic Priorities for 2014–2015 to take several actions. CDRH committed to developing and seeking public comment on a framework for when it would be appropriate to shift premarket data collection to the postmarket setting. Pursuant to this commitment, CDRH and the Center for Biologics Evaluation and Research (CBER) issued the draft guidance, ''Balancing Premarket and Postmarket Data Collection for Devices Subject to Premarket Approval'' on April 23, 2014 (78 FR 22690). This draft guidance proposed an FDA policy of balancing premarket and postmarket data collection during the Agency's review of PMAs. This guidance outlined how FDA would consider the role of postmarket information in determining the appropriate type and amount of data that should be collected in the premarket setting to support premarket approval, while still meeting the statutory standard of a reasonable assurance of safety and effectiveness. Comments on this draft guidance were collected through July 22, 2014, and the guidance was finalized on April 13, 2015 (Ref. 2). Furthermore, under existing authorities, CDRH and CBER issued a draft guidance document on April 23, 2014 (78 FR 22691), entitled ''Expedited Access for Premarket Approval Medical Devices Intended for Unmet Medical Need for Life Threatening or Irreversibly Debilitating Diseases or Conditions.'' This draft guidance described FDA's proposal for a new, voluntary expedited access PMA program for certain medical devices to facilitate patient access to these devices by expediting the development, assessment, and review of certain devices that demonstrate the potential to address unmet medical needs for life threatening or irreversibly debilitating diseases or conditions. To expedite access for devices addressing unmet needs, this pathway to market would shift appropriate premarket data collection to the postmarket setting while maintaining the statutory standard of a reasonable assurance of safety and effectiveness. Comments on this draft guidance were collected through July 22, 2014, and the guidance was finalized and issued on April 13, 2015 (Ref. 3). In addition, CDRH is currently developing a mechanism to prospectively assure the appropriate balance of premarket and postmarket data collection for new devices subject to a PMA.

Another action in pursuit of the goal to strike the right balance between premarket and postmarket data collection is to commit to conducting a retrospective review of all PMA product codes (procodes) with active PMAs approved prior to 2010 to determine whether data typically collected premarket could be shifted to the postmarket setting, premarket data collection could be reduced through reliance on postmarket controls, or devices could be reclassified (down-classified) in light of our current understanding of the technology (Ref. 1). In general, some premarket data collections for class III devices that are currently marketed may be reduced through reliance on postmarket controls, or shifted to the postmarket setting if warranted based on CDRH's review experience as well as the postmarket performance and the current body of evidence regarding the benefit-risk profile of these devices. CDRH currently receives PMA submissions on the majority of these class III devices, and a change in premarket data collection is expected to expedite the approval of future PMA submissions. CDRH has periodically taken such actions consistent with the medical device statutory framework but has typically done so on an ad hoc basis. On the other hand, CDRH routinely requires more data when warranted based on our current understanding of that type of technology or based on issued raised by the data submitted by a sponsor for their device. CDRH will also up-classify a device, if warranted, based on the current state of the science. For example, in May 2014, CDRH proposed to up-classify surgical mesh when intended for use for pelvic organ prolapse (79 FR 24634), and in June 2014, CDRH issued a final order up-classifying sunlamps and sunlamp products (tanning beds/booths) (79 FR 31205). However, up-classification is not warranted for the devices subject to this retrospective review, because they are already in the highest risk classification.

During this retrospective review, the devices are analyzed according to procode. CDRH targeted the date of December 31, 2014, to review 50 percent of procodes subject to a PMA that are legally marketed to determine whether or not to change premarket data collection by shifting to the postmarket setting, reducing premarket data collection through reliance on postmarket controls, or pursuing reclassification (Ref. 1). This target extends to have 75 percent completed by June 30, 2015, and 100 percent completed by December 31, 2015.

The purpose of this **Federal Register** notice is to solicit comments on the procodes that have been identified as candidates for reclassification, a reduction in premarket data collection through reliance on postmarket controls, or a shift in premarket data collection to postmarket for those procodes reviewed through December 31, 2014. Efforts to reclassify and to communicate changes to data collections with stakeholders will be prioritized based on both the public health impact and Center resources.

II. Progress Toward Goal Targets

Retrospective analysis of the class III medical device procodes is intended to determine if current classifications and data collections remain appropriate for determining a reasonable assurance of safety and effectiveness. As our understanding of the technology associated with individual medical devices has increased and we have a better understanding of the risks associated with the technology of each device, the type and amount of data that is needed to demonstrate a reasonable assurance of safety and effectiveness evolve. This evolution to require the least burdensome amount of data to evaluate device effectiveness follows the least burdensome provisions of the FD&C Act (section 513(a)(3)(D)(ii)). Under section 513 of the FD&C Act, a device is a class III device and requires premarket approval if general controls and special controls are insufficient to provide reasonable assurance of the safety and effectiveness of the device, and if the device is to be used for supporting or sustaining human life or of substantial importance in preventing impairment of human health or if the device presents a potential unreasonable risk of illness or injury. In order to reclassify a class III device into class II, the device must meet the statutory criteria for class II: A device which cannot be classified as a class I device, because general controls are insufficient to provide reasonable assurance of the safety and effectiveness of the device, and for which there is sufficient information to establish special controls to provide such assurance. As new information becomes available over time, the accumulated information available for a device may be sufficient to establish special controls to provide a reasonable assurance of safety and effectiveness; therefore, the classification of the device may be changed either up or down.

In February 2014, CDRH began its retrospective review with procodes associated with active PMAs approved prior to 2010. PMA procodes created since 2010 were not included in this retrospective review because these

recently created procodes do not yet have sufficient new information for a change in FDA's current understanding of the device's postmarket performance profile. As of December 31, 2014, CDRH reviewed 69 percent of the procodes included in this retrospective review, exceeding its 50 percent review target.

The results of this analysis include recommendations for procodes that are candidates for reclassification, a reduction in premarket data collection through reliance on postmarket controls, or a shift in premarket data collection to postmarket collection. These results are published online at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHVisionandMission/default.htm.* As discussed in further detail, for the purposes of this retrospective review, we evaluated each procode on a balance of factors to determine the current benefit-risk profile and if our review indicates special controls could be established to provide a reasonable assurance of safety and effectiveness. If so, the corresponding procode was listed in the category ''Candidates for Reclassification to Class II'' (Table 1). If it was determined that special controls would not be sufficient to provide reasonable assurance of the safety and effectiveness of the device, then the procode was evaluated to determine if some premarket data collection for PMA submission could be shifted to postmarket collection, or if premarket data collection could be reduced through reliance on postmarket controls. If it was determined that a change of data collection could continue to provide reasonable assurance of the safety and effectiveness of the device, then the procode was listed in the category ''Candidates for reduction of data collection through reliance on postmarket controls or shift of data collection from premarket to postmarket'' (Table 2). This category includes procodes for which premarket data collection could be shifted to postmarket data collection, premarket data collection could be decreased through reliance on postmarket controls, or postmarket data could no longer be needed. Finally, Table 3 includes procodes for which a reduction in data collection through reliance on postmarket controls or shift in data collection from premarket to postmarket and/or reclassification occurred in 2014, during FDA's retrospective review of PMAs.

In this retrospective review, postmarket performance data, technology and performance considerations, and other relevant considerations were evaluated for each procode. These factors were used to evaluate the current benefit-risk profile to determine if the devices are good candidates for a reduction in premarket data collection through reliance on postmarket controls, a shift of premarket data collection to postmarket, or reclassification. Postmarket performance data (including recent PMA Annual Reports, literature reviews, total product lifecycle reports, medical device reporting analysis, market penetration, and recall analysis) were investigated for any performance concerns or problems that outpace any increases in device use or acceptance. In evaluating the technology and performance considerations for the procodes, performance concerns or problems that were uncovered in the review of postmarket data were considered unfavorable factors for a change in data collection or reclassification. Favorable factors to indicate a device is a good candidate for a change in data collection or reclassification included if risks are now well understood and determined to be moderate to low, technology uncertainties have been alleviated, performance standards or non-clinical tests have been developed that could be surrogates for some clinical testing, the need for a controlled study could be eliminated due to defined objective performance criteria, the device has been shown to have good short-term performance, or concerns are limited to long-term performance or rare adverse events.

Finally, several relevant considerations were evaluated for each procode. Unfavorable factors for devices to be considered candidates for a change in data collection or reclassification included if there have been significant changes implemented to address safety or effectiveness since the devices have been on the market or if the review of annual reports and manufacturing changes has been important to maintain safety of the devices. Furthermore, if there were a limited number of approvals or limited clinical use of the devices, this was considered an additional unfavorable factor for the devices to be considered candidates for a change in data collection or reclassification, due to inadequate data needed to conduct this scientific assessment.

After completion of this retrospective review, FDA will prioritize the procodes identified as candidates for reclassification (Table 1) according to public health impact and Center resources, in order to determine the top priority procodes for which reclassification would have the greatest impact. The procodes identified as top priority candidates for reclassification will proceed through the reclassification procedures according to 21 CFR part 860. FDA will also prioritize the procodes identified as candidates for a change in data collection (Table 2) according to public health impact and Center resources, in order to determine which reductions of or shifts to data collection would have the greatest impact. The FDA encourages firms to submit a presubmission to get feedback on their data collection plan or contact the appropriate review branch for additional information if they are in the process of developing a device in one of these categories.

III. Paperwork Reduction Act of 1995

This document 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.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document and the product code(s) for the device(s) the comment concerns. Citizen petitions and petitions for reclassification should not be submitted to the docket. Rather, for instructions on how to appropriately submit citizen petitions and petitions for reclassification, please see 21 CFR 10.30 and 860.123, respectively. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, ''CDRH 2014–2015 Strategic Priorities,'' 2014, available at *http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHVisionandMission/UCM384576.pdf.*

2. ''Guidance for Industry and FDA Staff: Balancing Premarket and Postmarket Data Collection for Devices Subject to Premarket Approval,'' April 2015, available at *http://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm393994.pdf.*

3. ''Guidance for Industry and FDA Staff: Expedited Access for Premarket Approval and De Novo Medical Devices Intended for Unmet Medical Need for Life Threatening or Irreversibly Debilitating Diseases or Conditions,'' April 2015, available at *http://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm393978.pdf.*

Dated: April 22, 2015.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2015–09884 Filed 4–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–0102]

Determination of Regulatory Review Period for Purposes of Patent Extension; Xience Xpedition Everolimus Eluting Coronary Stent System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Xience Xpedition Everolimus Eluting Coronary Stent System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993–0002, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device, Xience Xpedition Everolimus Eluting Coronary Stent System. Xience Xpedition Everolimus Eluting Coronary Stent System is indicated for improving coronary luminal diameter in subjects with symptomatic heart disease due to de novo native coronary artery lesions (length ≤32 millimeters (mm)) with reference vessel diameter of ≥2.25 mm and ≤4.25 mm. Subsequent to this approval, the USPTO received a patent term restoration application for Xience Xpedition Everolimus Eluting Coronary Stent System (U.S. Patent No. 7,828,766) from Abbott Cardiovascular Systems Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 22, 2014, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of Xience Xpedition Everolimus Eluting Coronary Stent System represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Xience Xpedition Everolimus Eluting Coronary Stent System is 178 days. Of this time, zero (0) days occurred during the testing phase of the regulatory review period, while 178 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* Not Applicable. Applicant did not perform clinical investigations utilizing the patented device, but, rather, sought and was granted marketing approval based on a supplemental filing to a previously approved premarket approval application (PMA).

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* June 27, 2012. FDA has verified the applicant's claim that the PMA for Xience Xpedition Everolimus Eluting Coronary Stent System (PMA P110019S025) was initially submitted June 27, 2012.

3. *The date the application was approved:* December 21, 2012. FDA has verified the applicant's claim that PMA P110019S025 was approved on December 21, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 178 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 29, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 26, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 23, 2015.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2015–09902 Filed 4–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1213]

Environmental Assessment: Questions and Answers Regarding Drugs With Estrogenic, Androgenic, or Thyroid Activity; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Environmental Assessment: Questions and Answers Regarding Drugs With Estrogenic, Androgenic, or Thyroid Activity.'' This guidance is intended to supplement CDER's guidance for industry on ''Environmental Assessment of Human Drug and Biologics Applications,'' issued July 1998, by addressing specific considerations for drugs that have potential estrogenic, androgenic, or thyroid pathway activity (E, A, or T activity) in environmental organisms. It is intended to help sponsors of such drugs determine whether they should submit environmental assessments (EA) for new drug applications (NDAs) and certain NDA supplements, and to clarify what information such sponsors should include if they submit a claim of categorical exclusion instead of an EA.

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 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 June 29, 2015.

ADDRESSES: 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.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Raanan A. Bloom, Environmental Assessment Team, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–2185, *CDER.EA.Team@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Environmental Assessment: Questions and Answers Regarding Drugs With Estrogenic, Androgenic, or Thyroid Activity.'' The National Environmental Policy Act of 1969 (Pub. L. 91–190) requires all Federal agencies to assess the environmental impact of their actions and to ensure that the interested and affected public is informed of the environmental analyses. FDA regulations at 21 CFR part 25 specify that EAs must be submitted as part of certain NDAs, abbreviated new drug applications (ANDAs), biologic license applications (BLAs), supplements to such applications, and investigational new drug applications (INDs), and for various other actions, unless the action qualifies for a categorical exclusion. Failure to submit either an EA or a claim of categorical exclusion is sufficient grounds for FDA to refuse to file or approve an application (§ 25.15(a), 21 CFR 314.101(d)(4), and 601.2(a) and (c)).

Categorical exclusions for actions related to human drugs and biologics are listed at § 25.31. This draft guidance focuses on the categorical exclusion for actions on NDAs and NDA supplements that would increase the use of an active moiety, but the estimated concentration of the substance at the point of entry into the aquatic environment would be below 1 part per billion (1 ppb) (§ 25.31(b)). Although an action that qualifies for this exclusion ordinarily does not require an EA, FDA will require ''at least an EA'' if ''extraordinary circumstances'' indicate that the specific proposed action (*e.g.,* the approval of the NDA) may significantly affect the quality of the human environment (§ 25.21). Research indicates that drugs with endocrine-related activity and, more specifically, drugs with E, A, or T activity have the potential to cause developmental or reproductive effects when present in the aquatic environment at concentrations below 1 ppb.[1]

FDA has, on a case-by-case basis, requested additional information from sponsors of NDAs and NDA supplements for drugs with E, A, or T activity to help it determine whether extraordinary circumstances exist. However, late cycle requests for additional environmental information have the potential to delay approval of applications. Accordingly, this guidance is intended to clarify that sponsors of drugs with potential E, A, or T activity should consult with the Agency early in product development concerning the information FDA may need to determine whether an EA will be required or whether a claim of categorical exclusion will be acceptable, and what information should be included in the EA or claim of categorical exclusion.

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 this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

[1] For example, see Section II.C (pp. 7–13) of USFDA, 2013, ''Response to Citizen Petition to the FDA Commissioner under the National Environmental Policy Act and Administrative Procedure Act Requesting an Amendment to an FDA Rule Regarding Human Drugs and Biologics,'' Docket No. FDA–2010–P–0377; U.S. Environmental Protection Agency (USEPA), Endocrine Disruptor Screening Program (EDSP), last accessed February 17, 2015, at *http://www.epa.gov/endo;* and Organisation for Economic Co-operation and Development (OECD), OECD Work Related to Endocrine Disrupters, last accessed February 17, 2015, at *http://www.oecd.org/env/ehs/testing/oecdworkrelatedtoendocrinedisrupters.htm.*

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 25 have been approved under OMB control number 0910–0322 and the collections of information in part 314 have been approved under OMB control number 0910–0001.

IV. 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: April 23, 2015.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2015–09869 Filed 4–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Addressing Inadequate Information on Important Health Factors in Pharmacoepidemiology Studies Relying on Healthcare Databases; Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice entitled ''Addressing Inadequate Information on Important Health Factors in Pharmacoepidemiology Studies Relying on Healthcare Databases; Public Workshop'' that appeared in the **Federal Register** of April 17, 2015 (80 FR 21248). The document announced a public workshop. The document was published with the incorrect title. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Leslie Wheelock, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4345, Silver Spring, MD, 301–796–8450, FAX: 301–847–8106, *leslie.wheelock@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 17, 2015, in FR Doc. 2015–08846, on page 21248 the following correction(s) is/are made:

1. On page 21248, in the second column, starting at the sixth sentence of the first paragraph, the title ''Methodological Considerations to Address Unmeasured Information About Important Health Factors in Pharmacoepidemiology Studies that Rely on Electronic Healthcare Databases to Evaluate the Safety of Regulated Pharmaceutical Products in the Postapproval Setting'' is corrected to read ''Inadequate Information on Important Health Factors in Pharmacoepidemiology Studies Relying on Healthcare Databases.''

Dated: April 23, 2015.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2015–09966 Filed 4–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0280]

Agency Information Collection Activities; Proposed Collection; Comment Request; Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection on financial disclosure by clinical investigators.

DATES: Submit either electronic or written comments on the collection of information by June 29, 2015.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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. ''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 (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Financial Disclosure by Clinical Investigators

(OMB Control Number 0910–0396)—Extension

Respondents to this collection are sponsors of marketing applications that contain clinical data from studies covered by the regulations. These sponsors represent pharmaceutical, biologic, and medical device firms. Respondents are also clinical investigators who provide financial information to the sponsors of marketing applications.

Under § 54.4(a) (21 CFR 54.4(a)), applicants submitting an application that relies on clinical studies must submit a complete list of clinical investigators who participated in a covered clinical study, and must either certify to the absence of certain financial arrangements with clinical investigators (Form FDA 3454) or, under § 54.4(a)(3), disclose to FDA the nature of those arrangements and the steps taken by the applicant or sponsor to minimize the potential for bias (Form FDA 3455).

Under § 54.6, the sponsors of covered studies must maintain complete records of compensation agreements with any compensation paid to nonemployee clinical investigators, including information showing any financial interests held by the clinical investigator, for a time period of 2 years after the date of approval of the applications. Sponsors of covered studies maintain many records with regard to clinical investigators, including protocol agreements and investigator resumes or curriculum vitae. FDA estimates than an average of 15 minutes will be required for each recordkeeper to add this record to the clinical investigators' file.

Under § 54.4(b), clinical investigators supply to the sponsor of a covered study financial information sufficient to allow the sponsor to submit complete and accurate certification or disclosure statements. Clinical investigators are accustomed to supplying such information when applying for research grants. Also, most people know the financial holdings of their immediate family and records of such interests are generally accessible because they are needed for preparing tax records. For these reasons, FDA estimates that it will take clinical investigators 15 minutes to submit such records to the sponsor.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Certification—54.4(a)(1) and (a)(2)—Form FDA 3454	1,000	1	1,000	1	1,000
Disclosure—54.4(a)(3)—Form FDA 3455	100	1	100	5	500
Total					1,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Recordkeeping—54.6	1,000	1	1,000	0.25 (15 minutes)	250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
54.4(b)—Clinical Investigators	7,106	1	7,106	0.17 (10 minutes)	1,208

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 23, 2015.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2015–09908 Filed 4–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, April 22, 2015, 08:00 a.m. to April 23, 2015, 06:00 p.m., Lorien Hotel & Spa, 1600 King Street, Alexandria, VA, 22314 which was published in the **Federal Register** on April 3, 2015, 80FRN18241.

The meeting notice is amended to change the location of the meeting from the Lorien Hotel & Spa to the Hotel Monaco Alexandria. The date and time remain the same. The meeting is closed to the public.

Dated: April 23, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–09877 Filed 4–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Prevent ToxPharm.

Date: May 19, 2015.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2W914, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Thomas M. Vollberg, Ph.D., Chief, Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W102, Rockville, MD 20850, 240–276–6341, *vollbert@mail.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: National Cancer Institute Special Emphasis Panel; Novel Imaging Agents to Expand the Clinical Toolkit for Cancer Diagnosis, Staging and Treatment.

Date: May 20, 2015.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 1E030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20850, 240–276–6373, *bielatk@mail.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: National Cancer Institute Special Emphasis Panel; Prevent Bioefficacy/Intermediate Endpoints.

Date: May 28, 2015.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2W914, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Thomas M. Vollberg, Ph.D., Chief, Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W102, Rockville, MD 20850, 240–276–6341, *vollbert@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Tumor Tissue Culture Systems.

Date: June 23, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposal.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 6W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Nicholas J. Kenney, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, MD 20850, 240–276–6374, *nicholas.kenney@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Omnibus SEP–16.

Date: July 15, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 6W032, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., MBA, Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, MD 20850, 240–276–6457, *mh101v@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 23, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–09875 Filed 4–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; Contract Grant Review.

Date: May 5, 2015.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ernest Lyons, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056,*lyonse@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 23, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–09876 Filed 4–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, April 23, 2015, 01:00 p.m. to April 23, 2015, 04:00 p.m., National Institutes of Health, 5601 Fishers Lane, Rockville, MD, 20852 which was published in the **Federal Register** on March 25, 2015, 80 FR 15798–15799.

The meeting notice is amended to change the date of the meeting from 4/23/2015 to 5/22/2015. The meeting is closed to the public.

Dated: April 22, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–09879 Filed 4–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Mental Health Council.

Date: May 29, 2015.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Boulevard, Rockville, MD 20852.

Open: 11:00 a.m. to 5:00 p.m.

Agenda: Presentation of the NIMH Director's Report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Tracy Waldeck, Ph.D., Chief, Extramural Policy Branch, DEA, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6160, MSC 9607, Bethesda, MD 20892–9607, 301–443–5047, *waldeckt@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: April 23, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–09878 Filed 4–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0244]

Lower Mississippi River Waterway Safety Advisory Committee; Vacancies

AGENCY: United States Coast Guard, DHS.

ACTION: Request for Applicants; Extension of application.

SUMMARY: The Coast Guard extends the deadline for accepting applications for membership on the Lower Mississippi River Waterway Safety Advisory Committee. This Committee advises and makes recommendations to the Coast Guard on matters relating to safe transit of vessels and products to and from the ports on the Lower Mississippi River and related waterways.

DATES: Completed applications should reach the Coast Guard May 11, 2015.

ADDRESSES: Send your cover letter and resume indicating the position you wish to fill via one of the following methods:

- *By mail:* Lieutenant Junior Grade Colin Marquis, Lower Mississippi River Waterway Safety Advisory Committee, Alternate Designated Federal Officer, 200 Hendee Street, New Orleans, Louisiana 70114; or
- *By fax:* 504–365–2287, Attention: Lieutenant Junior Grade Colin Marquis, Lower Mississippi River Waterway Safety Advisory Committee, Alternate Designated Federal Officer; or
- *By email: Colin.L.Marquis@uscg.mil,* Subject line: The Lower Mississippi River Waterway Safety Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Colin Marquis, Alternate Designated Federal Officer of Lower Mississippi River Waterway Safety Advisory Committee; telephone (504) 365–2280 or email at *Colin.L.Marquis@uscg.mil.*

SUPPLEMENTARY INFORMATION: On January 20, 2015, the Coast Guard published a request in the **Federal Register** Volume 80 Number 12 for applications for membership in the Lower Mississippi River Waterway Safety Advisory Committee. The deadline for applications in that notice is being extended until May 11, 2015. Applicants who responded to the initial notice do not need to reapply.

The Lower Mississippi River Waterway Safety Advisory Committee is a Federal advisory committee under the authority found in section 19 of the *Coast Guard Authorization Act* of 1991, (Pub. L. 102–241) as amended by

section 621 of the *Coast Guard Authorization Act* of 2010, Public Law 111–281. This Committee is established in accordance with and operates under the provisions of the *Federal Advisory Committee Act,* (Title 5, United States Code, Appendix). The Lower Mississippi River Waterway Safety Advisory Committee advises the U.S. Coast Guard on matters relating to communications, surveillance, traffic management, anchorages, development, and operation of the New Orleans Vessel Traffic Service, and other related topics dealing with navigation safety on the Lower Mississippi River as required by the U.S. Coast Guard.

The Committee expects to meet at least two times annually. It may also meet for extraordinary purposes with the approval of the Designated Federal Officer.

We will consider applications for 25 positions that expire or become vacant August 27, 2015. To be eligible, you should have experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels on the Lower Mississippi River and its connecting navigable waterways, including the Gulf of Mexico. The 25 positions available for application are broken down as follows:

1. Five members representing River Port authorities between Baton Rouge, Louisiana, and the Head of Passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines.

2. Two members representing vessel owners domiciled in the state of Louisiana.

3. Two members representing organizations which operate harbor tugs or barge fleets in the geographical area covered by the Committee.

4. Two members representing companies which transport cargo or passengers on the navigable waterways in the geographical area covered by the Committee.

5. Three members representing State Commissioned Pilot organizations, with one member each representing New Orleans-Baton Rouge Steamship Pilots Association, the Crescent River Port Pilots Association, and the Associated Branch Pilots Association.

6. Two at-large members who utilize water transportation facilities located in the geographical area covered by the Committee.

7. Three members each one representing one of three categories: consumers, shippers, and importers-exporters that utilize vessels which utilize the navigable waterways covered by the Committee.

8. Two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on those vessels which utilize navigable waterways covered by the Committee.

9. One member representing an organization that serves in a consulting or advisory capacity to the maritime industry.

10. One member representing an environmental organization.

11. One member drawn from the general public.

12. One member representing the Associated Federal Pilots and Docking Masters of Louisiana.

Each member serves for a term of 2 years. Members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government. If you are selected as a member from the general public and from at-large members who utilize water transportation facilities in the geographical area covered by the Committee, you will be appointed and serve as a Special Government Employee as defined in section 202(a) of Title 18, United States Code. As a candidate for appointment as a Special Government Employee, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 United States Code 552a). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*www.oge.gov*), or by contacting the individual listed above. Applications for Special Government Employee which are not accompanied by a completed OGE Form 450 will not be considered.

Registered lobbyists are not eligible to serve on Federal advisory committees in an individual capacity. See ''Revised Guidance on Appointment of Lobbyist to Federal Advisory Committees, Boards and Commissions'' (79 FR 47482, August 13, 2014). Positions we list for members from the general public and from at-large members who utilize water transportation facilities in the geographical area covered by the Committee would be someone appointed in an individual capacity and would be designated as a Special Government Employee as defined in 202(a) of Title 18, United States Code. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Pub. L.104–65, as amended by Title II of Pub. L. 110–81).

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employment organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

To visit our online docket, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2015–0244) in the Search box, and click ''Search''. Please do not post your resume on this site.

Note that during the vetting process applicants may be asked to provide date of birth and social security number. All email submittals will receive receipt confirmation.

Dated: April 24, 2015.

Rajiv Khandpur,

U.S. Coast Guard (CG–WWM), Chief, Office of Waterways and Ocean Policy.

[FR Doc. 2015–10016 Filed 4–28–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0127]

Agency Information Collection Activities: E-Verify Program Data Collections: 2015 Survey of E-Verify Employers; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on February 11, 2015, at 80 FR 7625, allowing for a 60-day public comment period. USCIS did not receive any comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 29, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0127.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you need a copy of the information collection instrument with instructions, or additional information, please contact us at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377. Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments: Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) 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;

(2) 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;

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

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Reinstatement, With Change, of a Previously Approved Collection For Which Approval Has Expired; Existing Collection In Use Without an OMB Control Number.

(2) *Title of the Form/Collection:* E-Verify Program Data Collections: 2015 Survey of E-Verify Employers.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. E-Verify Program Data Collections: 2015 Survey of E-Verify Employers is necessary in order for U.S. Citizenship and Immigration Services (USCIS) to obtain data from E-Verify employers in anticipation of the enactment of mandatory state and/or national eligibility verification programs for all or a substantial number of employers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection E-Verify Program Data Collections: 2015 Survey of E-Verify Employers is 2,800 and the estimated hour burden per response is 30 minutes (.5 hours).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,400 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: April 22, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–09953 Filed 4–28–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5735–N–05]

Home Equity Conversion Mortgage (HECM) Program: Mortgagee Optional Election Assignment for Home Equity Conversion Mortgages (HECMs) With FHA Case Numbers Assigned Prior to August 4, 2014—Response to Comments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice; response to comments.

SUMMARY: On February 6, 2015, at 80 FR 6743, the Federal Housing Administration (FHA) published a notice to solicit public comment on the alternative path to claim payment—the Mortgagee Optional Election Assignment—for certain HECMs announced in Mortgagee Letter 2015–03. The public comment period on the February 6, 2015, notice closed on March 9, 2015. FHA received 7 public comments on the notice. In this notice, FHA responds to questions and comments raised by commenters.

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9172, Washington, DC 20410; telephone number 202–708–1672 (this is not a toll-free number). Persons with hearing or speech impairments may access this number by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

FHA has a statutory obligation to ensure the fiscal soundness of the FHA insurance funds. FHA also has the ability, pursuant to the Reverse Mortgage Stabilization Act of 2013 (Pub. L. 113–29), to establish, by notice or mortgagee letter, any additional or alternative requirements that the Secretary, in the Secretary's discretion, determines are necessary to improve the fiscal safety and soundness of the HECM program, which requirements shall take effect upon issuance.

Pursuant to this authority, FHA established Mortgagee Letter 2015–03 on January 29, 2015, for immediate effect. In Mortgagee Letter 2015–03, FHA set out the Mortgagee Optional Election (MOE) Assignment path to claim payment for existing HECMs with FHA Case Numbers issued prior to August 4, 2014. FHA alerted mortgagees

that aside from the present procedures for either the sale of the home or foreclosure of the HECM in accordance with the mortgage insurance contract terms as originally endorsed, or the MOE Assignment alternative, no other path to claim payment exists for HECMs with FHA Case Numbers issued prior to August 4, 2014.

II. Discussion of the Public Comments Received on the February 6, 2015, Notice

On February 6, 2015, at 80 FR 6743, FHA published a notice in the **Federal Register** to solicit public comment on the HECM program changes announced in Mortgagee Letter 2015–03. FHA received 7 public comments on the notice. Comments were submitted by a HECM servicer, a national reverse mortgage association, legal aid and advocacy organizations, and other interested parties. In general, some commenters applaud and support FHA's efforts to preserve the integrity of the insurance funds in order to ensure the continued viability of the HECM program, while providing protections to Non-Borrowing Spouses of deceased HECM borrowers. However, commenters seek clarification on many policy and systems issues, and ask FHA to consider alternative options. In this notice, FHA takes the opportunity to respond to the public comments and provide clarifications to facilitate implementation.

A. Technical Comments and Clarifications Necessary for Implementation

Comment: Extend the implementation period and foreclosure timeframe or institute a moratorium until FHA has addressed industry comments and provided systems support for the policy changes.

HUD Response: HUD does not believe that a delay in implementation is needed or advisable at this time, nor is there a need for any moratorium. System changes are in progress and will be available before June 1, 2015, which is the date that assignments made pursuant to Mortgagee Letter 2015–03 will begin to be accepted by HUD. Additionally, HUD believes that any further delay in implementation has the potential to negatively impact Non-Borrowing Spouses because interest will continue to accrue during such delays, resulting in an increase in the outstanding principal balances and the potential for such balances to exceed the amount permissible in connection with MOE Assignments.

Comment: Clarification needed regarding notification to HUD. Commenter questions whether the notification to HUD is only required if the mortgagee is opting to utilize the MOE Assignment, or the mortgagee must notify HUD of their election or non-election of the MOE Assignment in all instances when the HECM has been called due and payable as a result of the death of the last remaining borrower.

HUD Response: The mortgagee must notify the Secretary in HERMIT: (1) When it elects to proceed to foreclosure instead of utilizing the MOE Assignment made available by Mortgagee Letter 2015–03; (2) when it elects to utilize the MOE Assignment made available by the mortgagee letter; and (3) when, after it elects to proceed with the MOE Assignment, it determines that a HECM or a surviving Non-Borrowing Spouse is ineligible.

Comment: Clarification needed regarding the availability of extensions and the process for obtaining them. Commenter questions whether or not HUD will offer extensions of additional time beyond the 90 days from the HECM borrower's death in order for the Non-Borrowing Spouse to obtain good, marketable title to the property, or otherwise establish a right to occupy the property. If so, commenter asks HUD to clarify how a servicer requests an extension, and suggests that HERMIT is the appropriate manner to request an extension.

HUD Response: HUD would like to confirm that Mortgagee Letter 2015–03 does not require a surviving Non-Borrowing Spouse to obtain legal title to the mortgaged property in order to qualify as an Eligible Surviving Non-Borrowing Spouse. A surviving Non-Borrowing Spouse must obtain either legal title to the mortgaged property or some other legal right to remain within 90 days of the death of the last surviving borrower. Where a surviving Non-Borrowing Spouse is unable to obtain legal title, the surviving Non-Borrowing Spouse must be able to establish some other legal right to remain in the mortgaged property. Any extensions to any of the timeframes stated in Mortgagee Letter 2015–03 are at the sole discretion of the Secretary. Any extension request must be made in writing, before the expiration of the initial timeframe, and must show good cause.

Comment: Clarification needed regarding the effect of extensions on curtailment. Commenter asks HUD to clarify whether or not an extension, provided that HUD allows for extensions in order to afford a Non-Borrowing Spouse an extension of time to obtain good, marketable title to the property, will cause curtailment to a mortgage insurance claim.

HUD Response: HUD would like to again confirm that Mortgagee Letter 2015–03 does not require a surviving Non-Borrowing Spouse to obtain legal title to the mortgaged property in order to qualify as an Eligible Surviving Non-Borrowing Spouse. A surviving Non-Borrowing Spouse must obtain either legal title to the mortgaged property or some other legal right to remain within 90 days of the death of the last surviving borrower. Where a surviving Non-Borrowing Spouse is unable to obtain legal title, the surviving Non-Borrowing Spouse must be able to establish some other legal right to remain in the mortgaged property.

Additionally, Mortgagee Letter 2015–03 implements an alternative Due Date for HECMs eligible under Mortgagee Letter 2015–03. Any extensions to any of the timeframes stated in Mortgagee Letter 2015–03 are at the sole discretion of the Secretary. Any extension request must be made in writing, before the expiration of the initial timeframe, and must show good cause. Where an extension request is received and granted in writing, it will operate in the same manner as approved extensions currently operate.

Comment: Clarification needed regarding who is responsible for the costs of any title searches. Commenter asks HUD to clarify who is responsible for the cost of the title search to verify good, marketable title has been obtained by the Non-Borrowing Spouse. Commenter asks whether or not this expense can be charged to the loan and thus be reimbursed to the mortgagee through the claims process. Commenter asserts that HERMIT will not allow an assignment of a loan to HUD that contains post due and payable expenses.

HUD Response: HUD appreciates the opportunity to provide this clarification. HECM proceeds are not available after the death of the last surviving borrower. As such, HECM proceeds may not be used to cover any additional expense that may be incurred during the MOE Assignment process. Any costs or expenses must be paid outside of the HECM loan and will not be reimbursed in HUD claims.

Mortgagee Letter 2015–03 does not place any restrictions or requirements on the source of funds to pay for any additional expenses that may be incurred. Similarly, Mortgagee Letter 2015–03 places no restrictions or requirements on the manner in which an outstanding loan balance may be brought into compliance with the Principal Limit Test.

Comment: Documentation of a common law marriage should be established by the Non-Borrowing Spouse through a letter from legal counsel or an affidavit of the Non-Borrowing Spouse, and the servicing mortgagee should be able to rely on that documentation.

HUD Response: HUD appreciates the comment; however, HUD has determined not to make changes to the documentation requirements of Mortgagee Letter 2015–03. Mortgagee Letter 2015–03 requires the mortgagee to provide either a Marriage Certificate, a legal opinion certifying the validity of the marriage, or other evidence sufficient to establish the legal validity of the marriage. An affidavit from a Non-Borrowing Spouse is sufficient evidence of cohabitation or other purely factual circumstances but is not sufficient to demonstrate the legal effect of that cohabitation or those other circumstances to create a common law marriage under applicable law. Where an affidavit is used, a mortgagee would also need to provide documentation that applicable state law recognizes common law marriage and that the facts recited in the affidavit sufficiently establish a valid marriage meeting all of the requirements of Mortgagee Letter 2015–03. Again, Mortgagee Letter 2015–03 places no restrictions on the source of funds used to obtain any requisite legal opinion.

Comment: Clarification needed regarding the availability of the 95% payoff to a Non-Borrowing Spouse on title to the property at the time of the death of the borrower. Commenter notes that the Eligible Surviving Non-Borrowing Spouse may elect to satisfy the HECM loan and retain the property for the lesser of the unpaid principal balance of the loan or 95% of the property's appraised value, and asks whether or not that 95% payoff is available to the Non-Borrowing Spouse even if the Non-Borrowing Spouse is on title to the property at the time of the death of the borrower.

HUD Response: HUD confirms that, as provided in Mortgagee Letter 2015–03, any heir including a Non-Borrowing Spouse who is on title to the property may satisfy the HECM and retain the property for the lesser of the outstanding loan balance or 95% of the property's appraised value. In the case of purchases financed in part by a new HECM, 24 CFR 206.53 will apply.

Comment: Clarification needed regarding whether or not HUD will provide mortgagees an extension to the time period in which they must make and notify HUD of the MOE Assignment election.

HUD Response: HUD appreciates the opportunity to provide certain clarifications through this **Federal Register** notice. As a result, HUD is providing mortgagees with an extension following the publication of this notice of the timeframe in which mortgagees must notify HUD of their election where the borrower had already died as of the date of publication of this notice. Thus, mortgagees must make their election within the later of 120 days of the issuance of Mortgagee Letter 2015–03 or 30 days after the servicer receives notice of the last surviving borrower's death. Any additional extension to this timeframe is at the sole discretion of HUD. Any additional extension request must be made in writing, before the expiration of the initial timeframe or within ten days of the mortgagee's discovery of the surviving Non-Borrowing Spouse, and must show good cause. The good cause shown for any such request must include a cogent explanation of why the surviving Non-Borrowing Spouse was not discovered sooner and could not have been discovered sooner with the exercise of reasonable diligence.

Comment: Clarification needed regarding how loan documents could be modified when the person(s) who executed those documents are deceased. Commenters note that the person(s) who executed the loan documents would be deceased and it is unclear how such a loan contract could be modified after a party to the contract is deceased. One commenter requests that HUD not use the term ''modification'' since it has a precise legal meaning. Commenters request clarification from HUD as to how the loan documents may be modified and documented, and seek other options to achieve HUD's intention in this section, suggesting the possibility of a loan assumption or tolling agreement. Finally, the commenter asks, where the requirements may result in additional third party expenses, whether those expenses may be reimbursable through either the assignment claim or other claim type if it is determined that the loan is not eligible for a MOE Assignment.

HUD Response: HUD would like to confirm that Mortgagee Letter 2015–03 does not require a mortgagee to modify the loan documents. However, as stated in Mortgagee Letter 2015–03, in order to perfect an assignment claim, a mortgagee must be able to certify that it is, in fact, assigning a valid, legally enforceable first lien. The mortgagee must take whatever steps it deems necessary to ensure that its certification is truthful, which may or may not include modifying the loan documents, depending on the circumstances and on state law. Once again, Mortgagee Letter 2015–03 places no restrictions on the source of funds used to obtain any requisite documentation or to fulfill any requisite conditions.

Comment: Clarification needed regarding the timing of the HERMIT system upgrades.

HUD Response: The HERMIT release to accommodate the requirements of Mortgagee Letter 2015–03 will occur prior to the June 1, 2015, date indicated in the mortgagee letter.

Comment: Clarification needed regarding whether the HERMIT system upgrades will include functionality to accept a MOE Assignment of the case if the last remaining borrower passes away prior to the case reaching 98% of the Maximum Claim Amount (MCA).

HUD Response: The HERMIT system updates will include functionality necessary to accept a MOE Assignment of the case if the last remaining borrower passes away prior to the case reaching 98% of the MCA. Any assignment under the MOE Assignment must be initiated within 90 days from the MOE Assignment election or within 180 days of the publication date of Mortgagee Letter 2015–03, whichever is later.

Comment: Clarification needed regarding whether or not MOE Assignments can be made when the unpaid principal balance exceeds 100% of the MCA.

HUD Response: HUD would like to confirm that, as stated in Mortgagee Letter 2015–03, in order for a HECM to be eligible for a MOE Assignment, the outstanding loan balance may not exceed the MCA. A HECM with an outstanding loan balance greater than the MCA may become eligible, provided that the outstanding loan balance at the time of assignment does not exceed the MCA and all other conditions and requirements for a MOE Assignment are met.

Comment: FHA's servicing contractor, NOVAD, should be equipped and trained to approve requests for assignment quickly when the MOE Assignment election is utilized, as servicers are only given 90 days to determine eligibility, gather additional documents, potentially modify the loan, and assign the claim to HUD.

HUD Response: HUD appreciates the comment. HUD's loan servicing contractor is receiving the necessary information in order to review assignment requests pursuant to Mortgagee Letter 2015–03. This review will include an examination of the applicable timeframes, the initiation

process, and all required documentation.

Comment: Clarification needed regarding the calculation of the current principal limit for the Non-Borrowing Spouse. Commenters ask whether or not the calculation of the current principal limit for the Non-Borrowing Spouse should include the calculated growth to the principal limit and seek clarification as to how mortgagees should apply funds in cases where a payment may be used to reduce the unpaid principal balance. Commenters seek examples of such ''pay down'' scenarios and the specific transaction code in HERMIT that should be used.

HUD Response: As stated in Mortgagee Letter 2015–03, there are two different tests that are applicable and only one of the tests must be satisfied in order for a HECM to be eligible for a MOE Assignment. The two tests are the Factor Test and the Principal Limit Test. The Factor Test compares what the principal limit factor (PLF) [1] would have been at origination had the Eligible Surviving Non-Borrowing Spouse been a borrower. If the Eligible Surviving Non-Borrowing Spouse's PLF would have been greater than or equal to the deceased borrower's PLF at origination, the test is satisfied. The Factor Test does not take into consideration the growth of the principal limit.

The Principal Limit Test does take into account the calculated growth. The growth must be calculated by using what the PLF, in addition to the initial principal limit, would have been had the Eligible Surviving Non-Borrowing Spouse been a borrower at origination. In order to satisfy the Principal Limit Test, the outstanding loan balance must be equal to or less than what the principal limit would have been for the Eligible Surviving Non-Borrowing Spouse at the time the loan became due and payable due to the death of the last surviving borrower. Mortgagee Letter 2015–03 does not place restrictions or requirements on the source of funds that may be used to bring the outstanding loan balance in compliance with the Principal Limit Test. Additionally, Mortgagee Letter 2015–03 places no restrictions or requirements on the manner in which an outstanding loan balance may be brought into compliance with the Principal Limit Test. There will, however, be no new transaction codes in HERMIT.

Comment: Clarification needed regarding whether or not a mortgagee may pay down the balance of a HECM loan in order to allow a Non-Borrowing Spouse to meet the Principal Limit Test. Commenter notes that under current practice, HUD will not accept a 98% Assignment if the mortgagee has paid taxes or insurance on behalf of the borrower, and seeks clarification regarding whether these restrictions will apply under Mortgagee Letter 2015–03. Commenter asks HUD to confirm whether or not they will accept MOE Assignments when (1) the mortgagee has contributed amounts toward the PLF Pay Down; (2) the mortgagee has contributed amounts to satisfy taxes, insurance, Home Owners Association fees and condominium assessments due and paid at any time prior to completing a MOE Assignment; and (3) the mortgagee has contributed amounts to satisfy attorney fees, court costs, appraisal fees, inspection fees, etc., incurred by the mortgagee prior to completing the MOE Assignment.

HUD Response: Mortgagee Letter 2015–03 does not place restrictions or requirements on the source of funds that may be used to bring the outstanding loan balance in compliance with the Principal Limit Test. Additionally, Mortgagee Letter 2015–03 places no restrictions or requirements on the manner in which an outstanding loan balance may be brought into compliance with the Principal Limit Test. The mortgagee letter does, however, require that the outstanding loan balance be less than the MCA and that either the Factor Test or Principal Limit Test is satisfied.

Comment: Because all states generally have a statute of limitations for mortgage foreclosures or collecting or realizing on a mortgage loan, the use of a document by a mortgagee with a Non-Borrowing Spouse, such as a tolling agreement, should be a qualifying attribute for the Non-Borrowing Spouse to make a HECM loan eligible for a MOE Assignment.

HUD Response: In order to perfect a MOE Assignment claim, a mortgagee must be able to certify that it is, in fact, assigning a valid, legally enforceable first lien that will remain valid and legally enforceable throughout the lifetime of the Eligible Surviving Non-Borrowing Spouse. The mortgagee must take whatever steps it deems necessary under the laws of the jurisdiction in which the property is situated to ensure that its certification is truthful, which may include obtaining a tolling agreement.

Comment: Clarification needed regarding meaning of ''judicially resolved''. Commenter asks if the judgment must be entered in the mortgagee's favor, or if a dismissal with prejudice would be sufficient. Commenter also requests clarity regarding whether HUD is requiring or expecting that the Non-Borrowing Spouse will sign a release or waiver for these instances.

HUD Response: HUD appreciates the opportunity to address this concern. Mortgagee Letter 2015–03 requires a mortgagee to provide documentation that supports an affirmation that no allegations that would invalidate the HECM mortgage exist *or* if there were such allegations, evidence of their judicial resolution in favor of the mortgagee. A dismissal with prejudice would suffice for evidence of a judicial resolution in favor of the mortgagee. A judicially approved settlement of all claims against the mortgagee would also suffice. Mortgagee Letter 2015–03 does not require a surviving Non-Borrowing Spouse to sign a release or a waiver. However, a mortgagee is required to certify that it is, in fact, assigning a valid, legally enforceable first lien. The mortgagee must take whatever steps it deems necessary to ensure that its certification is truthful.

Comment: Clarification needed regarding reinstatement of a MOE Assignment Deferral Period.

HUD Response: Where an obligation under the terms of the mortgage has not been met prior to completion of a MOE Assignment, the MOE Assignment Deferral Period ceases and the HECM is not eligible for a MOE Assignment unless and until the MOE Assignment Deferral Period is reinstated. Thus, where a missed obligation is subsequently cured, the MOE Assignment Deferral Period may be reinstated and the MOE Assignment process may proceed.

Comment: HUD should provide examples of the required certifications and other timeframes.

HUD Response: HUD confirms that model language for the required certifications was provided in the text of Mortgagee Letter 2015–03 and remains valid for use in connection with a MOE Assignment.

Comment: Clarification needed regarding First Legal Due Date.

(a) Commenter seeks clarification as to whether or not a mortgagee's reporting requirements of the election to take a MOE Assignment extend all of the current HECM servicing reporting timelines that impact claim curtailment, including but not limited to undertaking and reporting first legal action or ordering a due and payable appraisal. Commenter also requests that these adjusted timelines be automatically captured in HERMIT, thus avoiding an auto-curtailment in HERMIT which

[1] Principal Limit Factor tables are available here: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hecm.*

would further necessitate retrieving the curtailment on a supplemental claim.

Commenter asks HUD to clarify that that the ''Due Date'' for purposes of payment of claim means the date when a mortgagee notifies HUD under Mortgagee Letter 2015–03 that it has determined not to utilize the MOE Assignment, or, if applicable, that it has elected the MOE Assignment but then determined that the mortgage is not eligible for assignment because all established conditions and requirements for the MOE Assignment are not met, and that this timeline applies to all curtailable events.

HUD Response: The Due Date for purposes of payment of claim means the date when a mortgagee notifies HUD that it has determined not to utilize the MOE Assignment, or, if applicable, that it has elected the MOE Assignment but then determined that the mortgage is not eligible for assignment because all established conditions and requirements for the MOE Assignment are not met. All subsequent required timeframes are determined in relation to this Due Date. HUD would like to reiterate mortgagees that any election made pursuant to Mortgagee Letter 2015–03 must be made within the later of 120 days of the issuance of Mortgagee Letter 2015–03 or 30 days after the servicer receives notice of the last surviving borrower's death. As such, where a mortgagee does not elect to utilize the MOE Assignment, and instead elects to proceed in accordance with the HECM documents, the Due Date may not exceed the later of 120 days of the issuance of Mortgagee Letter 2015–03 or 30 days after the servicer receives notice of the last surviving borrower's death, as provided in that mortgagee letter.

(b) Commenter asks HUD to clarify that, following the election of the MOE Assignment and the assessment and determination that a Non-Borrowing Spouse is ineligible for a MOE Assignment Deferral Period, the timeline for First Legal Action is automatically extended, in addition to any additional time that may be allowed by the Secretary, beyond this automatically extended time period. Commenter requests that HUD clarify the manner in which a servicing mortgagee should update HERMIT with this information to avoid a claim being automatically curtailed to the date six months from the death of the last surviving borrower. Commenter also requests that HUD clarify which dates should be provided for the date the servicing mortgagee notified HUD of the death (Block 29) and the expiration of the extension (Block 19) in such cases in order to avoid curtailment.

HUD Response: Under Mortgagee Letter 2015–03, where a mortgagee elects the MOE Assignment and subsequently determines that either the HECM or the surviving Non-Borrowing Spouse is not eligible for a MOE Assignment, the Due Date for claim purposes is considered to be the date that such a determination was made. All subsequently required timeframes, including the timeframes regarding First Legal Action, are determined in relation to the Due Date.

The User Assistance Test (UAT) for the HERMIT changes will occur in Spring 2015, as the scheduled release date is targeted for April 25, 2015. The process expected to be in effect at that time is as follows: To change the ''Due Date'' in HERMIT, the User will access the ''Contact Tab'' and un-check the ''Eligible NBS'' box, causing the *Due & Payable without HUD Approval Timeline* to be created, with a reason of ''Death''. The loan status will be updated to ''Due & Payable'' and the date the box is un-checked will become the new ''Due Date''.

(c) Commenter requests clarification regarding the time period for commencement of First Legal Action for loans which previously had extensions but are now under the time periods provided in Mortgagee Letter 2015–03. Commenter notes that there are many cases that have been on a Non-Borrowing Spouse extension and questions whether First Legal Action for these loans restarts as of Mortgagee Letter 2015–03. When must First Legal Action be completed to avoid interest curtailment?

HUD Response: As provided in Mortgagee Letter 2015–03, all extensions provided by FHA Info 14–34 have expired. No further extensions are permissible under FHA Info 14–34. Mortgagees must proceed in accordance with the timeframes established in Mortgagee Letter 2015–03.

Comment: Clarification needed regarding whether or not a HECM loan will be eligible for a MOE Assignment Deferral Period if the Non-Borrowing Spouse files for bankruptcy protection. Commenter also seeks clarification as to whether the MOE Assignment eligibility will be delayed until after the bankruptcy petition or procedure is dismissed (similar to the requirement to complete First Legal Action in 24 CFR 206.125(d)(2)) or whether a Non-Borrowing Spouse that files for bankruptcy is ineligible for the MOE Assignment unless the bankruptcy is dismissed within the stated guidelines.

HUD Response: HUD would like to clarify that the outstanding loan balance of a HECM is not a debt owed by a non-borrower. Only a borrower is obligated to satisfy a HECM. Further, a HECM is a non-recourse loan and as such, no borrower, or borrower's estate, is personally liable for any amounts that may exceed the proceeds received from the subsequent sale of the mortgaged property. Further, any amount that may be required to bring the outstanding loan balance of a HECM in compliance with the Principal Limit Test, in order to be eligible for a MOE Assignment, is similarly not a debt owed by a non-borrower. Thus, any such amount cannot be included as a debt owed by a Non-Borrowing Spouse filing for bankruptcy. To the extent a mortgagee believes that the automatic stay provision may apply, the mortgagee may take whatever steps it deems necessary to ensure that communication with the Non-Borrowing Spouse would not violate the automatic stay. Regardless, a mortgagee must make its election within the later of 120 days of the issuance of Mortgagee Letter 2015–03 or 30 days after the servicer receives notice of the last surviving borrower's death, whichever is later. As also stated in Mortgagee Letter 2015–03, any extension to this timeframe is at the sole discretion of HUD.

Comment: FHA should consider initiation of the assignment to occur when the loan is uploaded for selection in HERMIT.

HUD Response: HUD considers assignment initiated when a complete assignment request is uploaded in HERMIT. A complete assignment request includes all of the required documents identified in Mortgagee Letter 2015–03.

B. Additional Options and Other Comments

Comment: Voluntary nature of the MOE Assignment is problematic. Commenters note that the MOE Assignment election is left to the discretion of the mortgagee, and mortgagees are unlikely to select that option. One commenter specifically notes that the lack of guidance and clarity, coupled with the fact that lenders must indemnify HUD for any errors, make lenders unlikely to exercise the MOE Assignment option.

HUD Response: As stated in Mortgagee Letter 2015–03, HUD cannot interfere with the private contractual rights retained by the mortgagees. Further, as the mortgagee is the party to the contract of insurance, it is solely within the discretion of the mortgagee whether to elect to amend its contract of mortgage insurance under the MOE Assignment or to proceed in accordance with the loan documents as endorsed.

Currently, for any claim for insurance benefits filed by a mortgagee, mortgagees are subject to unwinding of a filed claim where the conditions for that claim have not been met. This typical requirement is extended to the MOE Assignment just as it would be on an ordinary assignment or claim.

Comment: MOE Assignment is not an adequate alternative to foreclosure and HUD should provide alternative relief. Commenters state that by requiring the Non-Borrowing Spouse to meet the Principal Limit Test in order to qualify for assignment of the loan, HUD is putting forth an option that the majority of surviving Non-Borrowing Spouses cannot benefit from. Commenters identify the uncertainty with calculating the PLF and growth rate, the cost of reducing the principal balance, and the short deadline by which the Non-Borrowing Spouse must meet the Principal Limit Test as obstacles.

Commenters urge HUD to provide alternative options to protect Non-Borrowing Spouses, such as the Hold Election. One commenter suggests that HUD could satisfy the HECM by paying the lesser of the unpaid principal balance or 95% of the property's appraised value on behalf of the deceased borrower and then take a new mortgage interest due upon the Non-Borrowing Spouse's death. Another commenter recommends that HUD allow Non-Borrowing Spouses to remain in the home and pay a portion of the interest accruing on the loan based on their ability to pay; HUD would accept early assignment of the loan and defer the due and payable status of the loan so long as the Non-Borrowing Spouse pays a portion of the interest accruing on the loan and fulfills the obligations under the mortgage. Commenter also recommends that HUD allow surviving Non-Borrowing Spouses to pay money to reduce the unpaid principal balance to meet the requirements of the Principal Limit Test over time, rather than in one large, lump-sum payment; HUD would accept early assignment of the loan, defer the due and payable status of the loan and allow the surviving spouse to pay the necessary amount over a period of years.

HUD Response: As previously stated, HUD cannot interfere in private mortgage contracts. HUD also has a statutory obligation to ensure the fiscal soundness of the FHA insurance funds, and as such, cannot ignore its fiduciary duty to the fund. HUD has provided what it believes permissible, while recognizing the sanctity of private contractual relationships and upholding its statutory obligation to ensure the fiscal soundness of the FHA insurance funds.

Additionally, as stated previously, Mortgagee Letter 2015–03 does not place restrictions or requirements on the source of funds that may be used to bring the outstanding loan balance in compliance with the Principal Limit Test, or the manner in which an outstanding loan balance may be brought into compliance with the Principal Limit Test. However, the mortgagee letter does require that the outstanding loan balance not exceed the MCA and that either the Factor Test or the Principal Limit Test is satisfied at the time of assignment.

Finally, as noted above, HECM loans are non-recourse and cannot result in a deficiency judgment against any party. A HECM foreclosure that may occur as a result of the last surviving borrower's death should not constitute a reportable event in the credit file of either the borrower's estate or the surviving Non-Borrowing Spouse.

Comment: Additional procedural protections are needed for Non-Borrowing Spouses. Commenter asserts that 90 days to obtain good, marketable title is not enough time and the proof of title that is required should be reasonable. Commenter urges HUD to make clear that marketable title is not the same thing as probate, and an opinion letter from a Title Company or a licensed attorney practicing probate law in the jurisdiction should suffice to establish ''marketable'' title.

HUD Response: HUD would like to confirm that Mortgagee Letter 2015–03 does not require a surviving Non-Borrowing Spouse to obtain legal title to the mortgaged property in order to qualify as an Eligible Surviving Non-Borrowing Spouse. A surviving Non-Borrowing Spouse must obtain either legal title to the mortgaged property or some other legal right to remain within 90 days of the death of the last surviving borrower. Where a surviving Non-Borrowing Spouse is unable to obtain legal title, the surviving Non-Borrowing Spouse must be able to establish some other legal right to remain in the mortgaged property.

Comment: HUD should instruct servicers about how to communicate with surviving Non-Borrowing Spouses. Commenter notes that servicers need to improve communications with surviving Non-Borrowing Spouses, and that HUD should provide explicit instructions to servicers about how to adequately communicate with surviving Non-Borrowing Spouses.

HUD Response: HUD does not instruct servicers how to communicate. HUD would expect servicers to communicate with the representatives of deceased borrowers. HUD further expects that servicers would comply with all Federal and state laws and requirements regarding mortgage servicing, including those of the Consumer Financial Protection Bureau.

Comment: Data has not been provided to support HUD's assertion that providing the Hold Election to all surviving Non-Borrowing Spouses would be too costly. Commenters assert that HUD should provide all data, assumptions, calculations, conclusions and alternatives explored that relate to the cost of providing the Hold Election to all surviving Non-Borrowing Spouses.

HUD Response: HUD's risk analysis indicates that the Hold Election, if broadly applied to all pre-August 4, 2014, HECMs where a Non-Borrowing Spouse remains in residence after the borrower's death, would produce much more substantial losses for the insurance funds than would likely be generated by the extension of the MOE Assignment to all such HECMs. Using data from the 2010 Survey of Consumer Finances, HUD estimated that about 20% of HECM borrowers are married to non-borrowing spouses.[2] On the basis of the correct data regarding HECM borrowers with non-borrowing spouses, along with data from the Centers for Disease Control to estimate life expectancies of the borrowing and non-borrowing spouses, and assuming no further cash draws after the borrowing spouse exits the home and other reasonable assumptions, HUD estimated the potential cost of the Hold Election to the insurance funds to be $1.769 billion if it were made broadly available to all surviving, non-borrowing spouses and accepted by them. Using the same assumptions, consistently applied, HUD estimated the potential cost of the MOE Assignment to the funds to be $439 million if it were made broadly available to all surviving, non-borrowing spouses and accepted by them. While both figures are estimates, HUD is highly confident of the order of magnitude of the difference between the two figures.

Comment: Provide notice and information to HECM borrowers and their spouses regarding the risk of displacement and their rights under the HECM statute.

[2] The February 2015 Determination on Remand submitted to the District Court in the *Plunkett* case incorrectly stated this as ''20% of the married seniors in the HECM program'' being married to non-borrowing spouses; however, this was a drafting error which played no part in HUD's actual cost calculation. That calculation was based on the assumption that 20% of all borrowers in the HECM program had non-borrowing spouses.

HUD Response: HUD appreciates the opportunity to address this concern. All mortgagee letters, including Mortgagee Letters 2015–03, 2015–02, and 2014–07, are public documents and are available to the public on HUD's Web site. HUD also published notices soliciting public comment on MLs 2015–03 and 2014–07 in the **Federal Register**, which provided additional notice of HUD's HECM policy changes related to Non-Borrowing Spouses. Finally, HUD notes that prospective HECM borrowers must receive housing counseling to be eligible for a HECM, and would like to remind current HECM borrowers and their spouses that they may speak with housing counselors at any time.

Dated: April 24, 2015.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2015–10019 Filed 4–28–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2014–N251; FXRS126309WHHC0–FF09R81000–156]

Wildlife and Hunting Heritage Conservation Council; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Wildlife and Hunting Heritage Conservation Council (Council). The Council provides advice about wildlife and habitat conservation endeavors that benefit wildlife resources; encourage partnership among the public, the sporting conservation organizations, the States, Native American tribes, and the Federal Government; and benefit recreational hunting.

DATES: *Meeting:* Tuesday June 9, 2015, from 8 a.m. to 4:30 p.m., and Wednesday June 10, 2015, from 8 a.m. to 1 p.m. (Alaska daylight time). For deadlines and directions on registering to attend, requesting reasonable accommodations, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held in the Kenai National Wildlife Refuge Visitor's Center, Ski Hill Road, Soldotna, Alaska 99669.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Designated Federal Officer, U.S. Fish and Wildlife Service, National Wildlife Refuge System, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone (703) 358–2639; or email *joshua_winchell@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a meeting.

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit wildlife resources;

2. Encourage partnership among the public, the sporting conservation organizations, the states, Native American tribes, and the Federal Government; and

3. Benefit recreational hunting.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Director, National Park Service (NPS); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;

2. Increasing public awareness of and support for the Wildlife Restoration Program;

3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;

4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;

5. Fostering communication and coordination among State, tribal, and Federal governments; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;

6. Providing appropriate access to Federal lands for recreational shooting and hunting;

7. Providing recommendations to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and

8. When requested by the Designated Federal Officer in consultation with the Council Chairperson, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

Meeting Agenda

The Council will convene to consider issues including:

1. Public access on federal conservation easements;

2. recent changes to the Federal Migratory Bird Hunting and Conservation Stamp program; and

3. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

PUBLIC INPUT

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Attend the meeting	May 27, 2015.
Submit written information or questions before the meeting for the council to consider during the meeting.	May 27, 2015.
Give an oral presentation during the meeting.	May 27, 2015.

Attendance

To attend this meeting, register by close of business on the dates listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**. Please submit your name, time of arrival, email address, and phone number to the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. Written statements must be received by the date above, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation at the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Nonregistered public speakers will not be considered during the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the meeting.

Meeting Minutes

Summary minutes of the conference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**). They will be available for public inspection within 90 days of the meeting, and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

Dated: April 20, 2015.

Stephen Guertin,

Acting Director.

[FR Doc. 2015–09972 Filed 4–28–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/A0A501010.999900 253G]

Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Tribal Code (CLUSITC)—Liquor Control

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the amendment to the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Title 5—Regulatory Provisions, Chapter 5–1, Liquor Control (Chapter). This Chapter amends the existing Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Tribal (Confederated Tribes of the Coos) Liquor Code, enacted by the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Tribal Council, which was published in the **Federal Register** on February 23, 2006 (71 FR 9369).

DATES: *Effective Date:* This code shall become effective 30 days after *April 29, 2015.*

FOR FURTHER INFORMATION CONTACT: Gregory Norton, Division of Tribal Government Services Officer, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232–4169, Telephone: (503) 231–6723, Fax: (503) 231–2201; or Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Tribal Council duly adopted amendments to the CLUSTIC Chapter 5–1 (Liquor Control) by Ordinance #031B on August 10, 2014. This **Federal Register** notice amends and supersedes the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Tribal (Confederated Tribes of the Coos) Liquor Code, enacted by the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Tribal Council, published in the **Federal Register** on February 23, 2006 (71 FR 9369).

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Tribal Council duly adopted amendments to the CLUSTIC Chapter 5–1 (Liquor Control) by Ordinance #031B on August 10, 2014.

Dated: April 23, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

The Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Title 5—Regulatory Provisions, Chapter 5–1, Liquor Control (Chapter), as amended, shall read as follows:

Title 5—Regulatory Provisions

Chapter 5–1 Liquor Control

Authority and Purpose

(a) The authority for this Chapter 5–1 and its adoption by Tribal Council is found in the CLUSI Const. Art. I, section 1 and Art. VI, section 2. This Chapter 5–1 is intended, and shall be construed, to conform to the requirements of state law as required by 18 U.S.C. 1161.

(b) This Chapter 5–1 is for the purpose of regulating the sale, possession and use of alcoholic liquor on Tribal Land of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians (Tribes).

5–1–2 *Definitions*

The following definitions shall apply to this Chapter 5–1:

(a) *Alcoholic Beverages and Alcoholic Liquor (Liquor)*—any liquid or solid containing more than one half of one percent (0.5%) alcohol by volume and capable of being consumed by a human being.

(b) *Tribal Land*—all lands within the exterior boundaries of the reservation and trust lands of the Tribes.

(c) *Licensee*—any person or entity that holds a valid and current license pursuant to the provisions of this Chapter 5–1.

(d) *Sale and Sell*

(1) To provide alcoholic liquor in exchange for any value, consideration, or promise, or in any way other than purely gratuitously.

(2) To solicit or receive an order for alcoholic liquor.

(3) To keep or expose alcoholic liquor for sale or with the intent to sell.

(4) To peddle or traffic in alcoholic liquor.

5–1–3 *Prohibited Activity*

(a) It shall be unlawful for any person or business establishment on Tribal Land to sell liquor without a liquor sales license from the Tribes.

(b) It shall be unlawful for any person or business establishment on Tribal Land to possess, transport or keep with intent to sell any liquor, except for those licensed business establishments on Tribal Land, provided, however, that a person may transport liquor from a licensed business establishment on Tribal Land consistent with the terms of the license.

(c) It shall be unlawful for any person to consume alcoholic liquor on a public highway.

(d) It shall be unlawful for any person to publicly consume any alcoholic liquor at any community function, or at or near any place of business, Indian celebration grounds, recreational areas, including ballparks and public camping areas, the Tribal Headquarters area and any other area where minors gather for meetings or recreation, except within a licensed business establishment on Tribal Land where liquor is sold.

(e) It shall be unlawful for any person under the age of twenty-one (21) years

to buy, attempt to buy or to misrepresent their age in attempting to buy, alcoholic liquor. It shall be unlawful for any person under the age of twenty-one (21) years to transport, possess or consume any alcoholic liquor on Tribal Land, or to be under the influence of alcohol or to be at liquor business establishment on Tribal Land, except as authorized under CLUSITC 5–1–11 No person shall sell or furnish alcoholic liquor to any minor.

(f) Alcoholic liquor may not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

(g) Without limiting the foregoing paragraphs in this chapter, any other prohibition relating to liquor under the state law of Oregon shall apply on Tribal Lands.

5–1–4 *Application for Liquor Sales License*

An application for a liquor sales license under this Chapter 5–1 must be submitted at least thirty (30) days prior to the requested effective date on a form provided by the Tribal Council (available from the office of the Tribal Administrator). The application must be made by a person who is at least twenty-one (21) years of age and shall be submitted to the office of the Tribal Administrator with the required license fee. A license will not become effective unless the applicant delivers to the office of the Tribal Administrator:

(a) valid copy of applicant's state liquor license from the Oregon Liquor Control Commission; and

(b) proof of insurance sufficient to meet the requirements for a state liquor license from the Oregon Liquor Control Commission.

Renewal Application for Liquor Sales License

A Licensee may apply for renewal of a liquor sales license by filing, not less than thirty (30) days prior to the license expiration date, a renewal application on a form provided by the Tribal Council (available from the office of the Tribal Administrator). The renewal application shall be submitted to the office of the Tribal Administrator with the required license fee. A license renewal will not become effective unless the applicant delivers to the office of the Tribal Administrator:

(a) a valid copy of applicant's state liquor license from the Oregon Liquor Control Commission; and

(b) proof of insurance sufficient to meet the requirements for a state liquor license from the Oregon Liquor Control Commission.

5–1–6 *Processing of a License Application or Renewal*

The Tribal Administrator shall cause notice of the receipt of any completed application or renewal application for a liquor sales license to be posted for a period of fourteen (14) days in the Administrative Building, Tribal Hall, Outreach Offices, on the Tribes' Web site, in the office of the Gaming Commission and at the business establishment on Tribal Land requesting the license prior to Tribal Council consideration of the application or renewal. The notice shall include a statement that any comments on the application or renewal may be directed to the Tribal Council by delivery to the office of the Tribal Administrator.

(b) The Tribal Administrator shall deliver a copy of a completed application or renewal application to the Tribal Police Department for performance of a background check on the applicant. The Tribal Police Department, or its designee, will conduct a background check of the applicant and provide a report of its findings to the Tribal Administrator within ten (10) days of receipt of a copy of the completed application or renewal application.

(c) The Tribal Administrator shall forward to the Tribal Council any complete application or renewal application for a liquor sales license submitted with the required fee, along with a copy of the Tribal Police Department background check and certification of the date notice was posted pursuant to CLUSITC 5–1–6(a).

(d) Tribal Council action on a license application or renewal must be taken at a regular or special meeting. The Tribal Council shall deny an application for or renewal of a license if it determines that the applicant does not have a valid and current liquor license from the Oregon Liquor Control Commission. The Tribal Council may deny an application for or renewal of a license if it determines that sale of alcoholic liquor is not appropriate at that location.

5–1–7 *Conditions on a Liquor Sales License*

(a) The following conditions apply to all liquor sales licenses:

(1) The holder of a Tribal liquor license must also maintain a state liquor license from the Oregon Liquor Control Commission to the extent required under state law.

(2) Except as provided in CLUSITC 5–1–7(d), a liquor sales license shall be valid for one (1) year from the date of its issuance.

(3) A liquor sales license shall not be transferable.

(4) The holder of the Tribal liquor license must maintain compliance with this Chapter 5–1 and Oregon Revised Statutes Chapter 471, including without limitation compliance with laws regarding the sale, service and handling of liquor.

(b) The Tribal Council may impose any other conditions it deems necessary to safeguard and promote the safety, health and general welfare of members of the Tribes.

(c) Unless otherwise specified, a renewed license will be subject to the same conditions as an original license and any additional conditions the Tribal Council deems appropriate.

(b) A liquor sales license issued to a business establishment on Tribal Land operated by the Tribes, including without limitation Three Rivers Casino & Hotel and Ocean Dunes Golf Course, shall be valid so long as the Tribal business establishment on Tribal Land maintains a valid state liquor license from the Oregon Liquor Control Commission unless earlier revoked or suspended pursuant to CLUSITC 5–1–10 or surrendered by the Licensee. A business establishment on Tribal Land operated by the Tribes remains subject to all other applicable provisions of this Chapter, including all provisions applicable to a Licensee.

5–1–8 *Special Event Liquor License*

An individual may request a special event liquor license for a special event or occasion of limited duration by submitting a request to the office of the Tribal Administrator for consideration by the Tribal Council. The Tribal Council may take action on a request for a special event liquor license, including imposing specific conditions on the license, at any regular or special meeting. Notwithstanding the foregoing, an individual requesting a special event liquor license under this section must also hold a state liquor license from the Oregon Liquor Control Commission, to the extent required under state law.

5–1–9 *Appeal of a Licensing Application Decision*

(a) Should an applicant or Licensee disagree with a Tribal Council decision on an application for or renewal of a liquor sales license, the applicant or Licensee may request a hearing before the Tribal Council by submitting a written request for a hearing to the office of the Tribal Administrator not later than seven (7) days after receipt of the Tribal Council's decision. If an applicant or Licensee so submits a timely request, the Tribal Council shall provide reasonable notice to the applicant of a hearing date, time and

location, as well as the procedures to be followed at the hearing.

(b) Following such hearing, the Tribal Council shall affirm, modify or reverse its initial licensing decision.

Any denial of a liquor sales license or renewal of a liquor sales license is final. There is no further right of appeal.

5–1–10 *Revocation or Suspension of License*

(a) Failure of a Licensee to abide by any provision of this Chapter 5–1 and any conditions set forth herein or imposed by Tribal Council may result in revocation or suspension of the Licensee's liquor sales license by the Tribal Council, as well as the assessment of civil penalties in accordance with CLUSITC 5–1–13.

(b) Prior to suspension or revocation of a liquor sales license, the Licensee shall have the right to a hearing before the Tribal Council. The Tribal Council shall provide reasonable notice to the Licensee of the hearing date, time and location, as well as the procedures to be followed. If the Tribal Council decides to revoke or suspend a liquor sales license, they will issue a decision in writing.

(c) The decision of the Tribal Council on the revocation or suspension of a liquor sales license is final. There is no further right of appeal.

5–1–11 *Sale or Service of Liquor by Licensee's Minor Employees*

(a) The holder of a license issued under this Chapter 5–1 or Oregon Revised Statutes Chapter 471 may employ persons eighteen (18), nineteen (19) and twenty (20) years of age who may take orders for, serve and sell alcoholic liquor in any part of the licensed premises when that activity is incidental to the serving of food except in those areas classified by the Oregon Liquor Control Commission as being prohibited to the use of minors. However, no person who is eighteen (18), nineteen (19) or twenty (20) years of age shall be permitted to mix, pour or draw alcoholic liquor except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors.

(b) Except as stated in this section, it shall be unlawful to hire any person to work in connection with the sale and service of alcoholic beverages in a licensed business establishment on Tribal Land if such person is under the age of twenty-one (21) years.

5–1–12 *Warning Signs Required*

Any person or business in possession of a liquor sales license, which sells liquor by the drink for consumption on the premises or sells for consumption off the premises, shall post a sign consistent with Oregon law informing the public of the effects and risks of alcohol consumption during pregnancy.

5–1–13 *Civil Penalties & Forfeitures*

(a) The Tribal Council may assess a penalty against any person who violates this Chapter 5–1, in an amount not to exceed one thousand dollars ($1,000) for each violation, provided, however, that a penalty assessed against a minor shall not exceed five thousand dollars ($5,000).

(b) Upon the assessment of a penalty, the person against whom the penalty was assessed may request a hearing before the Tribal Council by submitting a written request to the Tribal Council not later than seven (7) days after receipt of assessment. If the person against whom the penalty was assessed so submits a timely request, the Tribal Council shall provide reasonable notice to the person against whom the penalty was assessed of the hearing date, time and location, as well as the procedures to be followed.

(c) If the Tribal Council upholds its decision to assess a penalty, the person against whom the penalty was assessed may appeal the decision to the Tribal Court, but only on the grounds that the decision was arbitrary and capricious or a violation of Tribal Constitutional rights. Such appeal must be filed with the Tribal Court in writing within fourteen (14) days following receipt of the Tribal Council's decision. The Tribal Court shall review without jury the decision of the Tribal Council. The person against whom the penalty was assessed has the burden of persuading the Tribal Court that the Tribal Council's decision is arbitrary or capricious or a violation of Tribal Constitutional rights.

(9) In addition to assessing a penalty against any person who violates this Chapter 5–1, the Tribal Council may direct the confiscation of any alcoholic liquor sold or possessed by a person in violation of this Chapter 5–1. Confiscation will be treated the same as the assessment of a civil penalty in this section for appeal purposes. The confiscated alcoholic liquor shall be stored in a secure manner until the completion of any appeal. If the person does not appeal within the time provided, or if forfeiture is upheld by the Tribal Court on appeal, then the Tribal Council may sell the confiscated liquor for the benefit of the Tribes or may dispose of the liquor in any other manner they deem appropriate.

(e) The Tribal Council hereby specifically finds that the penalties under this section are reasonably necessary and are related to the expense of governmental administration necessary in maintaining law and order and public safety on Tribal Land. All violations of this Chapter, whether committed by tribal members, non-member Indians, or non-Indians, are civil in nature rather than criminal.

5–1–14 *Tribal Sovereign Immunity/ Liability*

Nothing in this Chapter 5–1 shall be construed to have waived the sovereign immunity of the Tribes, any tribal entity, department or program, or any tribal official or employee, except as specifically and explicitly described herein.

5–1–15 *Severability*

If a court of competent jurisdiction finds any provision of this Chapter 5–1 to be invalid or illegal under applicable Federal or Tribal law, such provision shall be severed from this Chapter 5–1 and the remainder of this Chapter 5–1 shall remain in full force and effect.

5–1–16 *Consistency With State Law*

The Tribes will comply with Oregon liquor laws to the extent required by 18 U.S.C. 1161.

5–1–17 *Effective Date*

(a) This Chapter 5–1 shall be effective upon publication in the **Federal Register** after approval by the Secretary of the Interior or his designee.

(b) Tribal Council may adopt amendments to this Chapter 5–1 and those amendments shall be effective upon publication in the **Federal Register** after approval by the Secretary of the Interior or his designee.

[FR Doc. 2015–09954 Filed 4–28–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF00000–PO0000–L19900000]

Notice of Meeting, Front Range Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of

Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Front Range RAC has scheduled a meeting June 11, 2015, from 9 a.m. to 4 p.m., with a public comment period regarding matters on the agenda at 9:30 a.m. A specific agenda for each meeting will be available prior to the meetings at *http://www.blm.gov/co/st/en/BLM_Resources/racs/frrac.html.*

ADDRESSES: The meeting will be held at the BLM Cañon City Field Office, 3028 E. Main St., Cañon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Kyle Sullivan, Public Affairs Specialist, Front Range District Office, 3028 E. Main St., Cañon City, CO 81212. Phone: (719) 269–8553. Email: *ksullivan@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM Front Range District, which includes the Royal Gorge Field Office (RGFO) and the San Luis Valley Field Office (SLVFO), Colorado. Planned topics of discussion include: introductions of new members, an update from field managers and updates on the Guffey Gorge Management Plan and the Royal Gorge Field Office Resource Management Plan revision status. The public is encouraged to make oral comments to the Council at 9:30 a.m. or submit written comments for the Council's consideration. Summary minutes for the RAC meetings will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Previous meeting minutes and agendas are available at *www.blm.gov/co/st/en/BLM_Resources/racs/frrac/co_rac_minutes_front.html.*

Ruth Welch,

Colorado State Director.

[FR Doc. 2015–09974 Filed 4–28–15; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA 104000]

Outer Continental Shelf (OCS), Gulf of Mexico (GOM), Oil and Gas Lease Sales for 2017–2022

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement and notice of public scoping meetings.

SUMMARY: Consistent with the regulations implementing the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), BOEM is announcing its intent to prepare an Environmental Impact Statement (2017–2022 Gulf of Mexico Multisale EIS) on the Gulf of Mexico (GOM) oil and gas lease sales tentatively proposed in the 2017–2022 Outer Continental Shelf (OCS) Oil and Gas Leasing Draft Proposed Program (2017–2022 Draft Proposed Program). This Notice of Intent (NOI) serves to announce the EIS scoping process and scoping meetings for the 2017–2022 Gulf of Mexico Multisale EIS. Due to the lead time to prepare an EIS, BOEM will begin preparation of the 2017–2022 Gulf of Mexico Multisale EIS prior to the 2017–2022 OCS Oil and Gas Leasing Program being finalized. Should the GOM lease sales ultimately included in the 2017–2022 OCS Oil and Gas Leasing Program differ substantially from those proposed in the 2017–2022 Draft Proposed Program, BOEM will incorporate those changes into the 2017–2022 Gulf of Mexico Multisale EIS, as appropriate.

Section 18 of the OCS Lands Act (43 U.S.C. 1344) requires the development of an OCS oil and gas leasing program every five years, setting forth a five-year schedule of lease sales designed to best meet the Nation's energy needs. The lease sales proposed in the GOM in the 2017–2022 Draft Proposed Program are region-wide sales comprised of the Western, Central, and a small portion of the Eastern Planning Areas in the GOM not subject to Congressional moratorium. These planning areas are located offshore the States of Texas, Louisiana, Mississippi, Alabama, and Florida. Should the 2017–2022 OCS Oil and Gas Leasing Program include GOM-wide sales, any individual lease sale could still be scaled back during the pre-lease sale process to offer a smaller area should circumstances warrant. For example, an individual lease sale could offer an area that conforms more closely to the separate planning area model used in the 2012–2017 OCS Oil and Gas Leasing Program.

SUPPLEMENTARY INFORMATION: Regulations implementing NEPA encourage agencies to analyze similar or related proposals in one EIS (40 CFR 1508.25). Since each lease sale and ensuing OCS activities are similar each year in each sale area, BOEM is preparing a single 2017–2022 Gulf of Mexico Multisale EIS for the lease sales proposed to be held in the GOM during the program. The 2017–2022 Gulf of Mexico Multisale EIS will eliminate the repetition of annual draft and final EISs for each proposed lease sale. The Multisale EIS approach allows for subsequent NEPA analysis to focus on changes in the proposed sales and on new issues and information. The resource estimates and scenario information for the 2017–2022 Multisale EIS will include a range that encompasses the resources and activities estimated for any of the proposed lease sales. At the completion of this Multisale EIS process, a decision will be made for the first lease sale in the GOM. Thereafter, BOEM will conduct a NEPA review for each of the remaining proposed lease sales in the 2017–2022 OCS Oil and Gas Leasing Program.

The 2017–2022 Gulf of Mexico Multisale EIS analysis will focus on the potential environmental effects from oil and natural gas leasing, exploration, development, and production on all available acreage in the GOM, including the Western and Central Planning Areas and the portion of the Eastern Planning Area not subject to Congressional moratorium. In addition to the no action alternative (*i.e.,* cancel the sale), other alternatives will be considered for each proposed lease sale, such as offering individual or multiple planning areas for lease (rather than GOM-wide) and potentially deferring certain areas from the proposed lease sales in addition to those considered in the 2017–2022 OCS Oil and Gas Leasing Program.

Pursuant to OCSLA, BOEM will separately publish a Call for Information and Nominations (Call) to request and gather information to determine the Area Identification (ID) for each sale. The Call will invite potential bidders to nominate areas of interest within the program area(s) included in the 2017–2022 OCS Oil and Gas Leasing Program. The Call is also an opportunity for the public to provide information on environmental, socioeconomic, and other considerations relevant to determining the Area ID. Using information provided in response to the Call and from scoping comments

resulting from this NOI, BOEM will then develop an Area ID Memorandum and identify the area for environmental analysis and consideration for leasing. All of this information will be used to develop a range of alternatives for the 2017–2022 Gulf of Mexico Multisale EIS.

Scoping Process: This NOI serves to announce the scoping process for identifying issues and potential alternatives for consideration in the 2017–2022 Gulf of Mexico Multisale EIS. Throughout the scoping process, Federal, State, Tribal, and local governments and the general public have the opportunity to help BOEM determine significant resources and issues, impacting factors, reasonable alternatives, and potential mitigating measures to be analyzed in the EIS and to provide additional information. BOEM will also use the NEPA commenting process to initiate the Section 106 consultation process of the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*), as provided in 36 CFR 800.2(d)(3).

BOEM typically prepares technical reports that allow for detailed technical information to be incorporated by reference into EISs (40 CFR 1502.21). BOEM proposes to develop technical reports for this purpose, which will be publicly available and may replace and update appendices used in previous lease sale EISs (*e.g.,* the 2012–2017 Western Planning Area/Central Planning Area Multisale EIS and the 2014–2016 Eastern Planning Area Multisale EIS), such as the ''Catastrophic Spill Event Analysis,'' ''BOEM–OSRA Catastrophic Run,'' and ''Essential Fish Habitat Assessment.'' BOEM proposes to incorporate by reference other technical information from air quality modeling, the Gulfwide Offshore Activity Data System (an air emissions inventory system), and a methodology paper related to the exploration and development scenario. These reports will be summarized and incorporated by reference in the 2017–2022 GOM Multisale EIS and will be made publicly available on BOEM's Web site *http://www.boem.gov/Gulf-of-Mexico-Region/.* BOEM is soliciting input on these examples and other topics that would be conducive to reducing the size of the 2017–2022 Gulf of Mexico Multisale EIS and future NEPA documents.

BOEM is also soliciting comments to identify significant environmental issues deserving study, but also to deemphasize insignificant issues, thus streamlining the analyses and narrowing the scope of the EIS process accordingly (40 CFR 1501.7). BOEM has reviewed the environmental and socioeconomic resources analyzed in the 2012–2017 Western Planning Area/Central Planning Area Multisale EIS, 2014–2016 Eastern Planning Area Multisale EIS, and the resulting Supplemental EISs and is therefore proposing the following list of resources to be analyzed in the 2017–2022 Gulf of Mexico Multisale EIS:

- Air Quality
- Water Quality
  - Coastal
  - Offshore
- Coastal Habitats
  - Wetlands
  - Dunes and Beaches
- Deepwater Habitats
  - Chemosynthetic Communities
  - Deepwater Corals
  - *Sargassum*
- Live Bottom Habitats
  - Topographic Features
  - Pinnacles (Low Relief)
  - Inshore Reefs
  - Seagrass
- Fishes and Invertebrate Resources
- Coastal and Migratory Bird Resources
- Protected Species
  - ESA Species' List (Protected Birds and Protected Fish)
  - Sea Turtles
  - Diamondback Terrapins
  - Beach Mice
  - Marine Mammals
- Archaeological Resources
  - Historic
  - Prehistoric
- Commercial Fisheries
- Recreational Fishing
- Recreational Resources
- Human Resources and Land Use
  - Land Use and Coastal Infrastructure
  - Demographics
  - Economic Factors
  - Environmental Justice

Pursuant to the regulations implementing the procedural provisions of NEPA (42 U.S.C. 1501.7), BOEM will hold public scoping meetings in Texas, Louisiana, Mississippi, Alabama, and Florida. BOEM's scoping meetings will be held at the following places and times:

- *New Orleans, Louisiana:* Tuesday, May 12, 2015, BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123, one meeting beginning at 1:00 p.m. CDT.
- *Houston, Texas:* Thursday, May 14, 2015, Hilton Garden Inn Houston/Bush Intercontinental Airport, 15400 John F. Kennedy Boulevard, Houston, Texas 77032, one meeting beginning at 1:00 p.m. CDT.
- *Panama City, Florida:* Tuesday, May 19, 2015, Hilton Garden Inn Panama City, 1101 US Highway 231, Panama City, Florida 32405, one meeting beginning at 6:00 p.m. CDT.
- *Mobile, Alabama:* Wednesday, May 20, 2015, Hilton Garden Inn Mobile West, 828 West I–65 Service Road South, Mobile, Alabama 36609, one meeting beginning at 3:00 p.m. CDT.
- *Gulfport, Mississippi:* Thursday, May 21, 2015, Courtyard by Marriott, Gulfport Beachfront MS Hotel, 1600 East Beach Boulevard, Gulfport, Mississippi 39501, one meeting beginning at 3:00 p.m. CDT.

Cooperating Agencies: BOEM invites other Federal, State, Tribal, and local governments to consider becoming cooperating agencies in the preparation of the 2017–2022 Gulf of Mexico Multisale EIS. We invite qualified government entities to inquire about cooperating agency status for this EIS. Following the guidelines from the Council on Environmental Quality (CEQ), qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and should remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision making authority of any other agency involved in the NEPA process. Upon request, BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of predecisional information. BOEM anticipates this summary will form the basis for a Memorandum of Agreement between BOEM and any cooperating agency. Agencies should also consider the ''Factors for Determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: *Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act.* This document is available on the Internet at *http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf.*

BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEM during the normal public input stages of the NEPA process.

Comments: Federal agencies; Tribal, State, and local governments; and other interested parties are requested to send their written comments on the scope of the 2017–2022 Gulf of Mexico Multisale EIS, significant issues that should be addressed, and alternatives that should be considered one of the following ways:

1. In written form enclosed in an envelope labeled ''Comments on the 2017–2022 GOM Multisale EIS'' and mailed (or hand carried) to Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Office of Environment (GM 623E), BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394;

2. Through the regulations.gov web portal: Navigate to *http://www.regulations.gov* and search for ''Oil and Gas Lease Sales: Gulf of Mexico, Outer Continental Shelf; 2017–2022 GOM Multisale EIS'' (Note: It is important to include the quotation marks in your search terms.) Click on the ''Comment Now!'' button to the right of the document link. Enter your information and comment, then click ''Submit''; or

3. BOEM email address: *multisaleeis 2017-2022@boem.gov.*

It is BOEM's practice to make comments, including the names and addresses of respondents, available for public review. BOEM does not consider anonymous comments. Please include your name and address as part of your submittal. Individual respondents may request that BOEM withhold their names and/or addresses from the public record, but BOEM cannot guarantee that it will be able to do so. If you wish your name and/or address to be withheld, you must state your preference prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

DATES: Comments should be submitted no later than May 29, 2015 to the address specified above.

FOR FURTHER INFORMATION CONTACT: For information on the 2017–2022 Gulf of Mexico Multisale EIS, the submission of comments, or BOEM's policies associated with this notice, please contact Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Office of Environment (GM 623E), BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone 504–736–3233.

Authority: This NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of NEPA.

Dated: April 16, 2015.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–10035 Filed 4–28–15; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0007]

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of renewal of the MACOSH charter.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), and after consultation with the General Services Administration, the Secretary of Labor is renewing the charter for the Maritime Advisory Committee for Occupational Safety and Health. The Committee will better enable OSHA to perform its duties under the Occupational Safety and Health Act (the OSH Act) of 1970. The Committee is diverse and balanced, both in terms of segments of the maritime industry represented, (*e.g.,* shipyard employment, longshoring, commercial fishing, and marine terminal industries), and in the views and interests represented by the members.

FOR FURTHER INFORMATION CONTACT: Amy Wangdahl, Director, Office of Maritime and Agriculture, Directorate of Standards and Guidance, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2066; email: *wangdahl.amy@dol.gov.*

SUPPLEMENTARY INFORMATION: The Committee will advise OSHA on matters relevant to the safety and health of employees in the maritime industry. This includes advice on maritime issues that will result in more effective enforcement, training, and outreach programs, and streamlined regulatory efforts. The maritime industry includes shipyard employment, longshoring, marine terminal, and other related industries, *e.g.,* commercial fishing and shipbreaking. The Committee will function solely as an advisory body in compliance with the provisions of FACA and OSHA's regulations covering advisory committees (29 CFR part 1912).

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice pursuant to Sections 6(b)(1), and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)(1), 656(b)), the Federal Advisory Committee Act (5 U.S.C. App. 2), Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR part 1912.

Signed at Washington, DC, on April 23, 2015.

David Michaels,

Assistant Secretary of Labor, for Occupational Safety and Health.

[FR Doc. 2015–09893 Filed 4–28–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0017]

Reports of Injuries to Employees Operating Mechanical Power Presses; Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirement contained in the Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

DATES: Comments must be submitted (postmarked, sent, or received) by June 29, 2015.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer

than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0017, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2012–0017) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

In the event that a worker is injured while operating a mechanical power press, 29 CFR 1910.217(g) requires the employer to provide information to OSHA regarding the incident within 30 days of the injury. This information includes the employer's and worker's name(s), workplace address and location; injury sustained; task being performed when the injury occurred; number of operators required for the operation and the number of operators provided with controls and safeguards; cause of the incident; type of clutch, safeguard(s), and feeding method(s) used; and means used to actuate the press stroke. OSHA's Directorate of Standards and Guidance, or the State agency administering a plan approved by the Assistant Secretary of Labor for Occupational Safety and Health, collects the information. These reports are a source of up-to-date information on power press machines. Specifically, this information identifies the equipment used and conditions associated with these injuries.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirement contained in the Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)). OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirement specified in the standard from 453 hours to 400 hours, for a total decrease of 53 hours. This adjustment is a result of a decline in the number of reports of such injuries received by OSHA annually.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

OMB Control Number: 1218–0070.

Affected Public: Business or other for-profits.

Number of Respondents: 1,210.

Frequency of Responses: On occasion.

Average Time per Response: Five minutes (.08 hour) for a secretary to submit the report to OSHA and 15 minutes (.25 hour) for a supervisor to obtain the information regarding the incident and to prepare the written report.

Estimated Total Burden Hours: 400.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0017). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as their social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPD, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 24, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–09986 Filed 4–28–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0012]

Temporary Labor Camps; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142).

DATES: Comments must be submitted (postmarked, sent, or received) by June 29, 2015.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0012, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2012–0012) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

OSHA is requesting approval from the Office of Management and Budget (OMB) for certain information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142). The main purpose of these provisions is to eliminate the incidence of communicable disease among temporary labor camp residents. The Standard requires camp superintendents to report immediately to the local health officer the name and address of any individual in the camp known to have, or suspected of having, a communicable disease (29 CFR 1910.142)(l)(1). Whenever there is a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting or jaundice is a prominent symptom, the standard requires the camp superintendent to report that immediately to the health authority (29 CFR 1910.142)(l)(2). In addition, the Standard requires that where the toilet rooms are shared, separate toilet rooms must be provided for each sex. These rooms must be marked ''for men'' and ''for women'' by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols (29 CFR 1910.142(d)(4)).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142). OSHA is proposing to increase its existing burden hour estimate from 54 hours to 155 hours, for a total increase of 101 hours. Based on new data from the National Agricultural Statistics Service, the number of migrant workers has increased from 109,760 to 270,000 workers. Additionally, based upon this new data, the number of ''incidents of notifiable diseases'' has increased from 673 cases to 1,933 cases.

The Agency will summarize any comments submitted in response to this notice and will include this summary in its request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Temporary Labor Camps (29 CFR 1910.142).

OMB Control Number: 1218–0096.

Affected Public: Businesses or other for-profits.

Number of Respondents: 1,933.

Frequency of Responses: On occasion.

Total Number of Responses: 270,000.

Average Time per Response: Time per response is 5 minutes (.08 hour) to report each incident to local public health authorities.

Estimated Total Burden Hours: 155 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0012). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as their social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 24, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–09987 Filed 4–28–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Rehabilitation Maintenance Certificate (OWCP–17). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 29, 2015.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone/fax (202) 354–9647, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) and the Longshore and Harbor Workers' Compensation Act (LHWCA). These acts provide vocational rehabilitation services to eligible workers with disabilities. 5 U.S.C. 8111(b) of the FECA provides that OWCP may pay an individual undergoing vocational rehabilitation a maintenance allowance, not to exceed $200 a month. 33 U.S.C. 908(g) of the LHWCA provide that person(s) undergoing such vocational rehabilitation shall receive maintenance allowances as additional compensation. Form OWCP–17 is used to collect information necessary to determine the

amount of any maintenance allowance to be paid. This information collection is currently approved for use through August 31, 2015.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to assure payment of compensation benefits to injured workers at the proper rate.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Rehabilitation Maintenance Certificate.

OMB Number: 1240–0012.

Agency Number: OWCP–17.

Affected Public: Individuals or households.

Total Respondents: 370.

Total Annual Responses: 3,752.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 625.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,951.

Comments submitted in response to this notice will be summarized and/or 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.

Dated: April 24, 2015.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2015–09982 Filed 4–28–15; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: The National Museum and Library Services Board, which advises the Director of the Institute of Museum and Library Services on general policies with respect to the duties, powers, and authority of the Institute relating to museum, library and information services, will meet on May 19, 2015.

DATE AND TIME: Tuesday, May 19, 2015, from 9:00 a.m. to 12:00 p.m. EST.

PLACE: The meeting will be held at the Institute of Museum and Library Services, 1800 M Street NW., Suite 900, Washington, DC, 20036. Telephone: (202) 653–4798.

STATUS: This meeting will be open to the public.

AGENDA: Thirty-First Meeting of the National Museum and Library Service Board Meeting:

I. Welcome
II. Financial Update
III. Partnership Update
IV. Office of Museum Services Update and Program
V. Office of Library Services Update and Program
VI. Office of Planning, Research, and Evaluation Update

FOR FURTHER INFORMATION CONTACT: Katherine Maas, Program Specialist, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676. Please provide advance notice of any special needs or accommodations.

Dated: April 27, 2015.

Andrew Christopher,

Associate General Counsel.

[FR Doc. 2015–10114 Filed 4–27–15; 4:15 pm]

BILLING CODE 7036–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–48 and CP2015–60; Order No. 2458]

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 & First-Class Package Service Contract 4 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:* April 30, 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

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 & First-Class Package Service Contract 4 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. Notice, 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. MC2015–48 and CP2015–60 to consider the Request pertaining to the proposed Priority Mail & First-Class Package Service Contract 4 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent

[1] Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 4 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, April 22, 2015 (Request).

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 April 30, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–48 and CP2015–60 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than April 30, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–09944 Filed 4–28–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–1; Order No. 2459]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Express & Priority Mail Contract 11. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 30, 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

On April 22, 2015, the Postal Service filed notice that it has agreed to an Amendment to the existing Priority Mail Express & Priority Mail Contract 11 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment and states that the supporting financial documentation and financial certification initially provided in this docket (required for compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5) remain applicable. Notice at 1.

The Postal Service also filed the unredacted Amendment. The Postal Service incorporates by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.*

The Amendment changes the terms of Priority Mail Express & Priority Mail Contract 11 as contemplated by the contract's terms.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. *Id.*

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than April 30, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2013–1 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Cassie D'Souza to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than April 30, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–09945 Filed 4–28–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Amendment to Priority Mail Express & Priority Mail Contract 11, with Portions Filed Under Seal, April 22, 2015 (Notice).

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–82; Order No. 2457]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 64 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 30, 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

On April 22, 2015, the Postal Service filed notice that it has agreed to an Amendment to the existing Priority Mail Contract 64 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment.

The Postal Service also filed the unredacted Amendment under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1.

The Amendment revises the prices to be paid by the contract partner but

[1] Notice of United States Postal Service of Amendment to Priority Mail Contract 64, with Portions Filed Under Seal, April 22, 2015 (Notice).

remains structured as a percentage discount on Priority Mail packages based on the previous year's total packages shipped. *Id.* Attachment A at 1.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. *Id.*

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than April 30, 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 represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2013–82 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints James F. Callow to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than April 30, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–09943 Filed 4–28–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* April 29, 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 April 22, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 4 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–48, CP2015–60.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2015–09960 Filed 4–28–15; 8:45 am]

BILLING CODE 7710–12–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice–PCLOB–2015–03; Docket No. 2015–0002, Sequence No. 1]

Public Meeting on Executive Order 12333 at the National Constitution Center

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Notice of Public Meeting.

SUMMARY: The Privacy and Civil Liberties Oversight Board will hold a public meeting to examine the historical background, constitutional implications, and oversight of counterterrorism activities conducted under the Executive Order on United States Intelligence Activities (Executive Order 12333). The public meeting will inform the Privacy and Civil Liberties Oversight Board's oversight of and advice pertinent to such activities. Visit *www.pclob.gov* for a list of panelists.

DATES: The public meeting will be held on Wednesday, May 13, 2015 from 10:15 a.m. until 4:45 p.m. Eastern Standard Time (EST).

ADDRESSES: The National Constitution Center, Kirby Auditorium, 525 Arch Street, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Sharon Bradford Franklin, Executive Director, 202–331–1986.

SUPPLEMENTARY INFORMATION:

Agenda

10:15 a.m. Doors Open.
10:30 a.m. Opening Remarks.
10:45 a.m. Session 1: Separation of Powers and the History of E.O. 12333.
12:15 p.m. Lunch on your own.
1:15 p.m. Session 2: First and Fourth Amendment Implications of E.O. 12333 Activities: The Impact of New Technologies.
2:45 p.m. Break.
3:00 p.m. Session 3: E.O. 12333 in Practice.
4:30 p.m. Closing remarks.

Procedures for Public Observation

The public meeting is free and open to the public. Pre-registration is not required. Individuals who plan to attend and require special assistance should contact Sharon Bradford Franklin, Executive Director, 202–331–1986, at least seventy-two (72) hours prior to the meeting date.

Dated: April 23, 2015.

Eric Broxmeyer,

General Counsel, Privacy and Civil Liberties Oversight Board.

[FR Doc. 2015–09988 Filed 4–28–15; 8:45 am]

BILLING CODE 6820–B3–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74725; File No. SR–NASDAQ–2015–032]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rules 7014 and 7018

April 14, 2015.

Correction

In notice document 2015–08941, appearing on pages 21778–21782 in the Issue of Monday, April 20, 2015, make the following correction:

On page 21781, in the third column, on the last line, ''May 8, 2015.'' should read ''May 11, 2015.''

[FR Doc. C1–2015–08941 Filed 4–28–15; 8:45 am]

BILLING CODE 1505–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC—31577; 812–14448]

Deutsche Bank AG, et al.; Notice of Application and Temporary Order

April 23, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under

section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY: Applicants have received a temporary order (the ''Temporary Order'') exempting them from section 9(a) of the Act, with respect to a guilty plea entered April 23, 2015, by DB Group Services (UK) Ltd. (the ''Settling Firm'') in the U.S. District Court for the District of Connecticut (the ''District Court'') in connection with a plea agreement between the Settling Firm and the U.S. Department of Justice (''DOJ''), until the Commission takes final action on an application for a permanent order. Applicants have also requested a permanent order (the ''Permanent Order,'' and with the Temporary Order, the ''Orders'').

APPLICANTS: Deutsche Investment Management Americas, Inc. (''DIMA''), Deutsche Asset & Wealth Management International GmbH (''DeAWMI''), Deutsche Investments Australia Limited (''DIAL''), RREEF America L.L.C. (''RREEF''), Deutsche Alternative Asset Management (Global) Limited (''DAAM Global''), DBX Advisors LLC (''DBX Advisors''), DBX Strategic Advisors LLC (''DBX Strategic Advisors''), DeAWM Distributors, Inc. (''DDI''), Harvest Global Investments Limited (''Harvest'') (each, a ''Fund Servicing Applicant''); and the Settling Firm (with the Fund Servicing Applicants, the ''Applicants''), and Deutsche Bank AG (''DB AG'').

FILING DATE: The application was filed on April 23, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 18, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: DB AG, Taunusanlage 12, 60325 Frankfurt am Main, Germany; DIMA, DBX Advisors, and DBX Strategic Advisors, 345 Park Avenue, New York, NY 10154; DeAWMI, Mainzer Landstrasse 178–190, Frankfurt am Main, 60327, Germany; DIAL, Deutsche Bank Place, Level 16, CNR Hunter and Phillip Streets, Sydney, NSW 2000, Australia; RREEF and DDI, 222 South Riverside Plaza, Chicago, IL 60606; DAAM Global, Winchester House, 1 Great Winchester Street, London, United Kingdom EC2N 2DB; Harvest, 31/F One Exchange Square, 8 Connaught Place, Central Hong Kong, Hong Kong; and the Settling Firm, 23 Great Winchester Street, London, EC2P 2AX, United Kingdom.

FOR FURTHER INFORMATION CONTACT: David J. Marcinkus, Senior Counsel, at 202–551–6882 or David P. Bartels, Branch Chief, at 202–551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a temporary order and summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. DB AG, a stock corporation under the laws of Germany, is a financial services firm. Each of the Applicants, except Harvest, is either a direct or indirect wholly-owned subsidiary of DB AG. DIMA, a corporation organized under the laws of Delaware, is an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). DeAWMI, a corporation organized under the laws of Germany, is an investment adviser registered under the Advisers Act. DIAL, a corporation organized under the laws of Australia, is an investment adviser registered under the Advisers Act. RREEF, a Delaware limited liability company, is an investment adviser registered under the Advisers Act. DAAM Global, a UK limited company, is an investment adviser registered under the Advisers Act. DBX Advisors, a Delaware limited liability company, is an investment adviser registered under the Advisers Act. DBX Strategic Advisors, a Delaware limited liability company, is an investment adviser registered under the Advisers Act. DDI, a corporation organized under the laws of Delaware, is a broker-dealer registered under the Securities Exchange Act of 1934. Harvest, a Hong Kong limited company by shares, is the wholly owned subsidiary of a joint venture in which DB AG has an indirect minority interest.

2. The Settling Firm, a UK limited company, is an indirect wholly owned subsidiary of DB AG. The Settling Firm employs London-based employees across DB AG's businesses. Applicants state that the Settling Firm is a service company that does not serve as an investment adviser, principal underwriter, or depositor for any Fund (defined below). Applicants represent that the Settling Firm does not engage, has not engaged, and will not engage in Fund Servicing Activities (defined below).

3. Each of the Fund Servicing Applicants serves either as investment adviser (as defined in section 2(a)(20) of the Act) to investment companies registered under the Act or series of such companies (''Funds'') or as principal underwriter (as defined in section 2(a)(29) of the Act) to open-end management investment companies registered under the Act (''Open-End Funds''). While the Settling Firm does not serve, and no existing company of which the Settling Firm is an ''affiliated person'' within the meaning of section 2(a)(3) of the Act (''Affiliated Person''), other than the Fund Servicing Applicants, currently serves as an investment adviser or depositor of any Fund or employees' securities company (''ESC'') or investment company that has elected to be treated as a business development company under the Act, or principal underwriter for any Open-End Fund, unit investment trust registered under the Act, or face-amount certificate company registered under the Act (such activities, collectively, (''Fund Servicing Activities''), Applicants request that any relief granted also apply to any existing company of which the Settling Firm is an Affiliated Person and to any other company of which the Settling Firm may become an Affiliated Person in the future (together with the Fund Servicing Applicants, the ''Covered Persons'').

4. On April 23, 2015, the DOJ filed a one-count criminal information (the ''Information'') in the District Court charging the Settling Firm with one count of wire fraud, in violation of Title 18, United States Code, Section 1343.[1] The Information charges that between approximately 2003 and at least 2010 the Settling Firm engaged in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf by manipulating certain benchmark interest rates to which the profitability of those trades was tied. The Information charges that, in furtherance

[1] Information, *United States* v. *DB Group (UK) Ltd.,* No. 3:15–cr–62 (D. Conn.).

of this scheme, on or about July 20, 2006, the Settling Firm transmitted, or caused the transmission of (i) an electronic chat between a submitter for the London Interbank Offered Rate for U.S. Dollar (''USD LIBOR'') employed by the Settling Firm and a derivatives trader employed by Deutsche Bank AG who was located in the United States at the time of the chat, (ii) a subsequent USD LIBOR submission from the Settling Firm to Thomson Reuters and (iii) a subsequent publication of a USD LIBOR rate through international and interstate wires.

5. Pursuant to a plea agreement (the ''Plea Agreement''), the Settling Firm entered a plea of guilty in the District Court. In the Plea Agreement, the Settling Firm agreed to, among other things, a monetary fine and to full cooperation with law enforcement. On April 23, 2015, the District Court entered a judgment against the Settling Firm (the ''Judgment'').

6. In addition to the Plea Agreement, DOJ also filed a two-count criminal information (the ''DB AG Information'') in the District Court charging DB AG with one count of wire fraud and one count of price-fixing. The DB AG Information charges that, between 2003 and 2010, DB AG engaged in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf by manipulating certain benchmark interest rates to which the profitability of those trades was tied. In connection with the DB AG Information, DB AG entered into a deferred prosecution agreement with DOJ on April 23, 2015 (the ''Deferred Prosecution Agreement''). In the Deferred Prosecution Agreement, DB AG agrees, among other things, to (i) full cooperation with law enforcement, (ii) installation of an independent compliance monitor, (iii) strengthening its internal controls as recommended by the monitor and as required by certain other U.S. and non-U.S. regulatory agencies that have addressed the relevant misconduct, and (iv) payment of a monetary fine.

7. In connection with the same misconduct described above, on April 23, 2015 the U.S. Commodity Futures Trading Commission entered an order (the ''CFTC Order'') on consent, finding that DB AG made false reports regarding, attempted to manipulate, and in some cases successfully manipulated, certain benchmark interest rates. The CFTC Order requires DB AG to cease and desist from certain violations of the Commodity Exchange Act, to pay a monetary fine, and to agree to certain remedial undertakings.

8. In connection with the same misconduct described above, on April 23, 2015, the U.K. Financial Conduct Authority entered a final notice (the ''FCA Final Notice'') finding that DB AG violated Principles 3, 5 and 11 of the FCA's Principles for Business and imposing a monetary fine.

9. On April 23, 2015, the New York State Department of Financial Services entered a consent order against DB AG (the ''DFS Order'') relating to the same misconduct described above and imposing a civil monetary fine and certain undertakings, including engaging an independent compliance monitor.

10. In response to the misconduct described above, Applicants represent that they have engaged in various remedial measures. Applicants state that this has included implementing a ''three lines of defense'' model for benchmark submissions. According to Applicants, this restructuring involved segregating benchmark submission activities from other bank activities to reduce conflicts, creating an independent control group that monitors benchmark submissions and engaging in regular internal and external audits. Applicants state that DB AG has also formed a governance body to oversee these lines of defense and resolve material issues. Applicants further state that they have adopted specific standards, guidelines, policies and training for benchmark submissions, which did not exist during the period of misconduct. Applicants assert that they have been careful to ensure that the new control framework meets the requirements of regulatory undertakings required in previously announced settlements concerning similar misconduct.

Applicants' Legal Analysis

1. Section 9(a)(1) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company or registered unit investment trust, if such person within ten years has been convicted of any felony or misdemeanor arising out of such person's conduct, as, among other things, an investment adviser, a broker or dealer, or a bank. Section 2(a)(10) of the Act defines the term ''convicted'' to include a plea of guilty. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(1) to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(1). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Settling Firm is an Affiliated Person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that the guilty plea would, upon entry of the Judgment, result in a disqualification of each Applicant for ten years under section 9(a) of the Act because the Settling Firm would become the subject of a conviction described in section 9(a)(1).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting the Applicants and other Covered Persons from the disqualification provisions of section 9(a) of the Act. The Fund Servicing Applicants and other Covered Persons (but not the Settling Firm) may, if the relief is granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the conditions of the Temporary Order and the Permanent Order.

3. Applicants believe they meet the standard for exemption specified in section 9(c) of the Act. Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of the Fund Servicing Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants assert that the conduct underlying the Plea Agreement (the ''Conduct'') did not involve any of Applicants acting as an investment adviser or depositor of any Fund, ESC or business development company or principal underwriter for any Open-End Fund, unit investment trust registered under the Act, or face amount certificate company registered under the Act. Applicants state that the Conduct similarly did not involve any Fund, ESC or business development company with respect to which Applicants engaged in Fund Servicing Activities.

5. Applicants further represent that (a) none of the current or former directors, officers or employees of the Fund Servicing Applicants had any knowledge of, or had any involvement in, the Conduct; (b) except as discussed

below, no current or former employee of the Settling Firm or of any Covered Person who previously has been or who subsequently may be identified by the Settling Firm, DB AG or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Applicant or of any other Covered Person; (iii) no employee of the Settling Firm or of any Covered Person who was involved in the Conduct had any, or will have any future, involvement in the Covered Persons' activities in any capacity described in section 9(a) of the Act; and (iv) because the personnel of the Fund Serving Applicants did not have any involvement in the Conduct, shareholders of the Funds were not affected any differently than if the Funds had received services from any other non-affiliated investment adviser or principal underwriter.

6. Applicants represent that they have taken all possible steps, consistent with German and other relevant foreign employment law, to terminate the employment of all individuals responsible for the Conduct. However, as a consequence of proceedings under German labor law, four individuals who were identified as being responsible for the Conduct and were terminated are currently employed in non-risk-taking positions. Applicants state that DB AG has entered into court-mediated settlements with these individuals. Pursuant to the settlements, the two more senior employees will remain on paid leave through the end of 2015 and then will have no association with DB AG. Applicants represent that, although the two more junior employees have returned to DB AG, these employees (a) will not serve in risk-taking roles or the roles in which they served during the Conduct; (b) will not be employed by the Covered Persons relying on the relief or otherwise involved in the Fund Servicing Activities; and (c) will not be in a compliance monitoring role or have any influence over policy-making concerning the Fund Servicing Activities. DB AG states that it will take action to terminate any additional employee who is determined to have been responsible for the Conduct.

7. Except as discussed above, Applicants have agreed that neither they nor any of the other Covered Persons will employ any of the current or former employees of the Settling Firm or any Covered Person who previously have been or who subsequently may be identified by the Settling Firm, DB AG or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c). Applicants also have agreed that each Applicant (and any Covered Person that acts in any capacity described in section 9(a) of the Act) will adopt and implement policies and procedures reasonably designed to ensure compliance with the terms and conditions of the order granted under section 9(c). In addition, the Settling Firm has agreed to comply in all material respects with the material terms and conditions of the Plea Agreement, and DB AG has agreed to comply in all material respects with the material terms and conditions of the Deferred Prosecution Agreement, CFTC Order, FCA Final Notice and DFS Order.

8. Applicants state that (a) inability of the Fund Servicing Applicants to continue providing investment advisory services to Funds would result in the Funds and their shareholders facing potential hardship and (b) the inability of DDI to continue to serve as principal underwriters to the Open-End Funds would similarly result in potential hardship to the Open-End Funds and their shareholders. Applicants represent that they will distribute to the board of trustees/directors of the Funds (the ''Boards'') written materials describing the circumstances that led to the Plea Agreement, any impact on the Funds, and the application. The written materials will include an offer to discuss the materials at an in-person meeting with each Board for which Applicants provide Fund Servicing Activities, including the directors who are not ''interested persons'' of the Fund as defined in section 2(a)(19) of the Act, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act. Applicants state that they will provide the Boards with the information concerning the Plea Agreement and the application that is necessary for those Funds to fulfill their disclosure and other obligations under the federal securities laws and will provide them a copy of the Judgment as entered by the District Court.

9. Applicants state that if the Fund Servicing Applicants were barred under section 9(a) of the Act from engaging in Fund Servicing Activities and were unable to obtain the requested exemption, the effect on their businesses and employees would be severe because they have committed substantial resources to establishing an expertise in the provision of Fund Servicing Activities. Applicants further state that prohibiting them from providing Fund Servicing Activities would not only adversely affect their business, but would also adversely affect their employees who are involved in those activities.

10. Applicants argue that section 9(a) should not operate to bar them from serving the Funds and their shareholders in the absence of improper activities relating to their Fund Servicing Activities. Applicants state that the section 9(a) disqualification would disrupt the operations of the Funds as they sought to engage new advisers and distributors. Applicants assert that these effects would be unduly severe and disproportionately harsh given the Fund Servicing Applicants' lack of involvement in the Conduct. Moreover, Applicants state that the Settling Firm and DB AG have taken remedial actions to address the Conduct, as outlined in the application. Applicants also assert that the Conduct did not constitute conduct that would make it against the public interest or protection of investors to issue the Orders.

11. Applicants state that certain of the Applicants and their affiliates have received exemptive orders under section 9(c), as described in greater detail in the application.

Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from Section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. Except as set out in Section IV.E of the application, neither the Applicants nor any of the other Covered Persons will employ any of the current or former employees of the Settling Firm or any Covered Person who previously has been or who subsequently may be identified by the Settling Firm, DB AG, or any U.S. or non-U.S. regulatory or enforcement agency as having been responsible for the Conduct, without first making a further application to the Commission pursuant to section 9(c).

3. Each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders

within 60 days of the date of the Permanent Order or, with respect to condition 4, such later date as may be contemplated by the Plea Agreement, the Deferred Prosecution Agreement, the CFTC Order, the FCA Final Notice, and the DFS Order.

4. The Settling Firm will comply in all material respects with the material terms and conditions of the Plea Agreement, and DB AG will comply in all material respects with the material terms and undertakings of the Deferred Prosecution Agreement, the CFTC Order, the FCA Final Notice, and the DFS Order.

5. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders within 30 days of discovery of the material violation.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Judgment, subject to the representations and conditions in the application, from April 23, 2015, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2015–09965 Filed 4–28–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31575; 812–14438]

Gabelli ETMF Trust, et al.; Notice of Application

April 23, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: Gabelli ETMF Trust (the ''Trust''), Gabelli Funds, LLC (the ''Adviser'') and G.distributors, LLC (the ''Distributor'').

Summary of Application: Applicants request an order (''Order'') that permits: (a) Actively managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at the next-determined net asset value plus or minus a market-determined premium or discount that may vary during the trading day; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to create and redeem Shares in kind in a master-feeder structure. The Order would incorporate by reference terms and conditions of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

Filing Dates: The application was filed on March 30, 2015.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 18, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: One Corporate Center, Rye, NY 10580–1422.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants

1. The Trust will be registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. Applicants seek relief with respect to seven Funds (as defined below, and those Funds, the ''Initial Funds''). The portfolio positions of each Fund will consist of securities and other assets selected and managed by its Adviser or Subadviser (as defined below) to pursue the Fund's investment objective.

2. The Adviser, a New York limited liability company, will be the investment adviser to the Initial Funds. An Adviser (as defined below) will serve as investment adviser to each Fund. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may retain one or more subadvisers (each a ''Subadviser'') to manage the portfolios of the Funds. Any Subadviser will be registered, or not subject to registration, under the Advisers Act.

3. The Distributor is a Delaware limited liability company and a broker-dealer registered under the Securities Exchange Act of 1934 and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser (included in the term ''Distributor''). Any Distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for

[1] Eaton Vance Management, *et al.,* Investment Company Act Rel. Nos. 31333 (Nov. 6, 2014) (notice) and 31361 (Dec. 2, 2014) (order).

an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act. The requested Order would permit applicants to offer exchange-traded managed funds. Because the relief requested is the same as the relief granted by the Commission under the Reference Order and because the Adviser has entered into, or anticipates entering into, a licensing agreement with Eaton Vance Management, or an affiliate thereof in order to offer exchange-traded managed funds,[2] the Order would incorporate by reference the terms and conditions of the Reference Order.

5. Applicants request that the Order apply to the Initial Funds and to any other existing or future open-end management investment company or series thereof that: (a) is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (any such entity included in the term ''Adviser''); and (b) operates as an exchange-traded managed fund as described in the Reference Order; and (c) complies with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein (each such company or series and Initial Fund, a ''Fund'').[3]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

7. Applicants submit that for the reasons stated in the Reference Order: (1) With respect to the relief requested pursuant to section 6(c) of the Act, the relief is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; (2) with respect to the relief request pursuant to section 17(b) of the Act, the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of each registered investment company concerned and consistent with the general purposes of the Act; and (3) with respect to the relief requested pursuant to section 12(d)(1)(J) of the Act, the relief is consistent with the public interest and the protection of investors.

By the Division of Investment Management, pursuant to delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2015–09963 Filed 4–28–15; 8:45 am]

BILLING CODE 8011–01–P

[2] Eaton Vance Management has obtained patents with respect to certain aspects of the Funds' method of operation as exchange-traded managed funds.

[3] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74797; File No. SR–NASDAQ–2015–036]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendments Nos. 1 and 2 Thereto, Relating to the Listing and Trading of the Shares of 18 Eaton Vance NextShares ETMFs of Either the Eaton Vance ETMF Trust or the Eaton Vance ETMF Trust II

April 23, 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 April 10, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 21, 2015, the Exchange filed Amendments Nos. 1 and 2 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendments Nos. 1 and 2 thereto, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade under Nasdaq Rule 5745 (Exchange-Traded Managed Fund Shares) the common shares (''Shares'') of the below-listed exchange-traded managed funds (each, a ''Fund,'' and collectively, the ''Funds''):

Eaton Vance Balanced NextShares ™

Eaton Vance Global Dividend Income NextShares ™

Eaton Vance Growth NextShares ™

Eaton Vance Large-Cap Value NextShares ™

Eaton Vance Richard Bernstein All Asset Strategy NextShares ™

Eaton Vance Richard Bernstein Equity Strategy NextShares ™

Eaton Vance Small-Cap NextShares ™

Eaton Vance Stock NextShares ™

Parametric Emerging Markets NextShares ™

Parametric International Equity NextShares ™

Eaton Vance Bond NextShares ™

Eaton Vance TABS 5-to-15 Year Laddered Municipal Bond NextShares ™

Eaton Vance Floating-Rate & High Income NextShares ™

Eaton Vance Global Macro Absolute Return NextShares ™

Eaton Vance Government Obligations NextShares ™

Eaton Vance High Income Opportunities NextShares ™

Eaton Vance High Yield Municipal Income NextShares ™

Eaton Vance National Municipal Income NextShares ™

Each Fund is a series of either Eaton Vance ETMF Trust or Eaton Vance ETMF Trust II (each, a ''Trust,'' and together, the ''Trusts''). The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

[3] Amendment No. 1 amended and replaced the proposed rule change in its entirety. Amendment No. 2 subsequently amended the proposal to include a new footnote to reflect a Web site reference.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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 list and trade the Shares of each Fund under Nasdaq Rule 5745, which governs the listing and trading of exchange-traded managed fund shares, as defined in Nasdaq Rule 5745(c)(1), on the Exchange.[4] Each Trust is registered with the Commission as an open-end investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[5] Each Fund is a series of a Trust.[6]

Eaton Vance Management will be the investment adviser (''Adviser'') to the Funds. Foreside Fund Services, LLC will be the principal underwriter and distributor of each Fund's Shares. State Street Bank and Trust Company will act as the administrator, accounting agent, custodian and transfer agent to the Funds. Interactive Data Corporation will be the intraday indicative value (''IIV'') calculator to the Funds.

Principal Investment Strategies Applicable to Each Fund

Each Fund will be actively managed and will pursue the various principal investment strategies described below.[7]

Eaton Vance Balanced NextShares™

The investment objective of this Fund is to provide current income and long-term growth of capital. The Fund normally will invest between 50% and 75% of its net assets in equity securities and between 25% and 50% of its net assets in fixed-income securities.

Eaton Vance Global Dividend Income NextShares™

The investment objective of this Fund is to provide current income and long-term growth of capital. The Fund normally will invest primarily in common stocks and, in the adviser's discretion, preferred stocks of U.S. and foreign companies that pay dividends.

Eaton Vance Growth NextShares™

The investment objective of this Fund is total return. The Fund will invest in a broadly diversified selection of equity securities, seeking companies with above-average growth and financial strength. Under normal market conditions, the Fund will invest primarily in large-cap companies.

Eaton Vance Large-Cap Value NextShares™

The investment objective of this Fund is total return. Under normal market conditions, the Fund will invest primarily in value stocks of large-cap companies.

Eaton Vance Richard Bernstein All Asset Strategy NextShares™

The investment objective of this Fund is total return. In seeking its investment objective, the Fund will have flexibility to allocate its assets in markets around the world and among various asset classes, including equity, fixed-income, commodity, currency and cash investments.

Eaton Vance Richard Bernstein Equity Strategy NextShares™

The investment objective of this Fund is total return. Under normal market conditions, the Fund will invest primarily in equity securities and derivative instruments that provide exposure to equity securities.

Eaton Vance Small-Cap NextShares™

The investment objective of this Fund is long-term capital appreciation. The Fund normally will invest primarily in equity securities of small-cap companies.

Eaton Vance Stock NextShares™

The investment objective of this Fund is to achieve long-term capital appreciation by investing in a diversified portfolio of equity securities. The Fund normally will invest primarily in a diversified portfolio of common stocks.

Parametric Emerging Markets NextShares™

The investment objective of this Fund is long-term capital appreciation. The Fund normally will invest primarily in equity securities of companies located in emerging market countries.

Parametric International Equity NextShares™

The investment objective of this Fund is long-term capital appreciation. The Fund normally will invest primarily in companies domiciled in developed markets outside of the United States, including securities trading in the form of depositary receipts.

Eaton Vance Bond NextShares™

The investment objective of this Fund is total return. The Fund normally will invest primarily in bonds and other fixed and floating-rate income instruments.

Eaton Vance TABS 5-to-15 Year Laddered Municipal Bond NextShares™

The investment objective of this Fund is to provide current income exempt from regular federal income tax. The Fund normally will invest primarily in municipal obligations with remaining maturities of between 5 and 15 years, the interest on which is exempt from regular federal income tax.

Eaton Vance Floating-Rate & High Income NextShares™

The investment objective of this Fund is to provide a high level of current income. The Fund normally will invest primarily in a combination of income-producing floating rate loans and other floating rate debt securities and high-yield corporate bonds.

Eaton Vance Global Macro Absolute Return NextShares™

The investment objective of this Fund is total return. The Fund will seek its investment objective by investing in securities, derivatives and other

[4] The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 34–73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR–NASDAQ–2014–020). The Funds would be the first exchange-traded managed funds listed on the Exchange.

[5] *See* Registration Statements on Form N–1A for the Eaton Vance NextShares Trust dated April 9, 2015 (File Nos. 333–197733 and 811–22982) and for the Eaton Vance NextShares Trust II dated April 9, 2015 (File Nos. 333–197734 and 811–22983). The descriptions of the Funds and the Shares contained herein conform to the Registration Statements.

[6] The Commission has issued an order granting the Trusts and certain affiliates exemptive relief under the Investment Company Act (the ''Exemptive Order''). *See* Investment Company Act Release No. 31361 (Dec. 2, 2014) (File No. 812–14139). In compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, the application for exemptive relief under the Investment Company Act states that the Funds will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933, as amended (15 U.S.C. 77a) (''Securities Act'').

[7] Additional information regarding the Funds will be available on the public Web site for the Funds and in the Registration Statements for the Funds. *See supra* note 5.

instruments to establish long and short investment exposures around the world.

Eaton Vance Government Obligations NextShares™

The investment objective of this Fund is to provide a high current return. The Fund normally will invest primarily in securities issued, backed or otherwise guaranteed by the U.S. Government, its agencies or instrumentalities.

Eaton Vance High Income Opportunities NextShares™

The primary investment objective of this Fund is to provide a high level of current income. The Fund will seek growth of capital as a secondary investment objective. The Fund normally will invest primarily in fixed-income securities, including preferred stocks, senior and subordinated floating rate loans, and convertible securities.

Eaton Vance High Yield Municipal Income NextShares™

The investment objective of this Fund is to provide high current income exempt from regular federal income tax. The Fund normally will invest primarily in municipal obligations, the interest on which is exempt from regular federal income tax.

Eaton Vance National Municipal Income NextShares™

The investment objective of this Fund is to provide current income exempt from regular federal income tax. The Fund normally will invest primarily in municipal obligations, the interest on which is exempt from regular federal income tax.

Creations and Redemptions of Shares

Shares will be issued and redeemed on a daily basis at the Fund's next-determined net asset value (''NAV'') [8] in specified blocks of Shares called ''Creation Units.'' A Creation Unit will consist of at least 25,000 Shares. Creation Units may be purchased and redeemed by or through ''Authorized Participants.'' [9] Purchases and sales of Shares in amounts less than a Creation Unit may be effected only in the secondary market, as described below, and not directly with the Fund.

The creation and redemption process for Funds may be effected ''in kind,'' in cash, or in a combination of securities and cash. Creation ''in kind'' means that an Authorized Participant—usually a brokerage house or large institutional investor—purchases the Creation Unit with a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit. When an Authorized Participant redeems a Creation Unit in kind, it receives a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit.

Composition File

As defined in Nasdaq Rule 5745(c)(3), the Composition File is the specified portfolio of securities and/or cash that a Fund will accept as a deposit in issuing a Creation Unit of Shares, and the specified portfolio of securities and/or cash that a Fund will deliver in a redemption of a Creation Unit of Shares. The Composition File will be disseminated through the NSCC once each business day before the open of trading in Shares on such day and also will be made available to the public each day on a free Web site.[10] Because the Funds seek to preserve the confidentiality of their current portfolio trading program, a Fund's Composition File generally will not be a pro rata reflection of the Fund's investment positions. Each security included in the Composition File will be a current holding of the Fund, but the Composition File generally will not include all of the securities in the Fund's portfolio or match the weightings of the included securities in the portfolio. Securities that the Adviser is in the process of acquiring for a Fund generally will not be represented in the Fund's Composition File until their purchase has been completed. Similarly, securities that are held in a Fund's portfolio but in the process of being sold may not be removed from its Composition File until the sale program is substantially completed. Funds creating and redeeming Shares in kind will use cash amounts to supplement the in-kind transactions to the extent necessary to ensure that Creation Units are purchased and redeemed at NAV. The Composition File also may consist entirely of cash, in which case it will not include any of the securities in the Fund's portfolio.[11]

Transaction Fees

All persons purchasing or redeeming Creation Units are expected to incur a transaction fee to cover the estimated cost to the Fund of processing the transaction, including the costs of clearance and settlement charged to it by NSCC or DTC, and the estimated trading costs (*i.e.,* brokerage commissions, bid-ask spread and market impact) to be incurred in converting the Composition File to or from the desired portfolio holdings. The transaction fee is determined daily and will be limited to amounts approved by the board of trustees of a Fund and determined by the Adviser to be appropriate to defray the expenses that a Fund incurs in connection with the purchase or redemption of Creation Units. The purpose of transaction fees is to protect a Fund's existing shareholders from the dilutive costs associated with the purchase and redemption of Creation Units. Transaction fees will differ among Funds and may vary over time for a given Fund depending on the estimated trading costs for its portfolio positions and Composition File, processing costs and other considerations. Funds that specify greater amounts of cash in their Composition File may impose higher transaction fees. In addition, Funds that include in their Composition File instruments that clear through DTC may impose higher transaction fees than Funds whose Composition File consists solely of instruments that clear through NSCC, because DTC may charge more than NSCC in connection with Creation Unit transactions.[12] The transaction fees applicable to each Fund's purchases and redemptions on a given business day

[8] As with other registered open-end investment companies, NAV generally will be calculated daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, normally 4:00 p.m. Eastern Time. NAV will be calculated by dividing a Fund's net asset value by the number of Shares outstanding. Information regarding the valuation of investments in calculating a Fund's NAV will be contained in the Registration Statement for its Shares.

[9] ''Authorized Participants'' will be either: (1) ''participating parties,'' *i.e.,* brokers or other participants in the Continuous Net Settlement System (''CNS System'') of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (2) DTC participants, which in either case have executed participant agreements with the Fund's distributor and transfer agent regarding the creation and redemption of Creation Units. Investors will not have to be Authorized Participants in order to transact in Creation Units, but must place an order through and make appropriate arrangements with an Authorized Participant for such transactions.

[10] The free Web site will be *www.eatonvance.com* or *www.nextshares.com.*

[11] In determining whether a Fund will issue or redeem Creation Units entirely on a cash basis, the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution for a Fund than Authorized Participants because of the Adviser's size, experience and potentially stronger relationships in the fixed-income markets.

[12] Authorized Participants that participate in the CNS System of the NSCC are expected to be able to use the enhanced NSCC/CNS process for effecting in-kind purchases and redemptions of ETFs (the ''NSCC Process'') to purchase and redeem Creation Units of Funds that limit the composition of their baskets to include only NSCC Process-eligible instruments (generally domestic equity securities and cash). Because the NSCC Process is generally more efficient than the DTC clearing process, NSCC is likely to charge a Fund less than DTC to settle purchases and redemptions of Creation Units.

will be disseminated through the NSCC prior to the open of market trading on that day and also will be made available to the public each day on a free Web site.[13] In all cases, the transaction fees will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

NAV-Based Trading

Because Shares will be listed and traded on the Exchange, Shares will be available for purchase and sale on an intraday basis. Shares will be purchased and sold in the secondary market at prices directly linked to the Fund's next-determined NAV using a new trading protocol called ''NAV-Based Trading.'' [14] All bids, offers and execution prices of Shares will be expressed as a premium/discount (which may be zero) to the Fund's next-determined NAV (*e.g.,* NAV − $0.01, NAV+$0.01). A Fund's NAV will be determined each business day, normally as of 4:00 p.m. Eastern Time. Trade executions will be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of NAV.

• *Trading Premiums and Discounts.* Bid and offer prices for Shares will be quoted throughout the day relative to NAV. The premium or discount to NAV at which Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for Shares among investors, transaction fees and other costs in connection with creating and redeeming Creation Units of Shares, the cost and availability of borrowing Shares, competition among market makers, the Share inventory positions and inventory strategies of market makers, the profitability requirements and business objectives of market makers, and the volume of Share trading. Reflecting such market factors, prices for Shares in the secondary market may be above, at or below NAV. Funds with higher transaction fees may trade at wider premiums or discounts to NAV than other Funds with lower transaction fees, reflecting the added costs to market makers of managing their Share inventory positions through purchases and redemptions of Creation Units.

Because making markets in Shares will be simple to manage and low risk, competition among market makers seeking to earn reliable, low-risk profits should enable the Shares to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV. As noted below, each Fund will maintain a public Web site that will be updated on a daily basis to show current and historical trading spreads and premiums/discounts of Shares trading in the secondary market.

• *Transmitting and Processing Orders.* Member firms will utilize certain existing order types and interfaces to transmit Share bids and offers to Nasdaq, which will process Share trades like trades in shares of other listed securities.[15] In the systems used to transmit and process transactions in Shares, a Fund's next-determined NAV will be represented by a proxy price (*e.g.,* 100.00) and a premium/discount of a stated amount to the next-determined NAV to be represented by the same increment/decrement from the proxy price used to denote NAV (*e.g.,* NAV − $0.01 would be represented as 99.99; NAV+$0.01 as 100.01).

To avoid potential investor confusion, Nasdaq will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers and execution prices of Shares that are made available to the investing public follow the ''NAV − $0.01/NAV+$0.01'' (or similar) display format. All Shares listed on the Exchange will have a unique identifier associated with their ticker symbols, which would indicate that the Shares are traded using NAV-Based Trading. Nasdaq makes available to member firms and market data services certain proprietary data feeds that are designed to supplement the market information disseminated through the consolidated tape (''Consolidated Tape''). Specifically, the Exchange will use the NASDAQ Basic and NASDAQ Last Sale data feeds to disseminate intraday price and quote data for Shares in real time in the ''NAV − $0.01/NAV+$0.01'' (or similar) display format. Member firms could use the NASDAQ Basic and NASDAQ Last Sale data feeds to source intraday Share prices for presentation to the investing public in the ''NAV–$0.01/NAV+$0.01'' (or similar) display format. Alternatively, member firms could source intraday Share prices in proxy price format from the Consolidated Tape and other Nasdaq data feeds (*e.g.,* Nasdaq TotalView and Nasdaq Level 2) and use a simple algorithm to convert prices into the ''NAV − $0.01/NAV+$0.01'' (or similar) display format. As noted below, prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the identities of the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

• *Intraday Reporting of Quotes and Trades.* All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape [16] and separately disseminated to member firms and market data services through the Exchange data feeds listed above. The Exchange will also provide the member firms participating in each Share trade with a contemporaneous notice of trade execution, indicating the number of Shares bought or sold and the executed premium/discount to NAV.[17]

• *Final Trade Pricing, Reporting and Settlement.* All executed Share trades will be recorded and stored intraday by Nasdaq to await the calculation of the Fund's end-of-day NAV and the determination of final trade pricing. After a Fund's NAV is calculated and provided to the Exchange, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.[18]

[13] The free Web site will be *www.eatonvance.com* or *www.nextshares.com.*

[14] Aspects of NAV-Based Trading are protected intellectual property subject to issued and pending U.S. patents held by Navigate Fund Solutions LLC (''Navigate''), a wholly owned subsidiary of Eaton Vance Corp. Nasdaq will enter into a license agreement with Navigate to allow for NAV-Based Trading on the Exchange of exchange-traded managed funds that have themselves entered into license agreements with Navigate.

[15] As noted below, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the effect of this characteristic on existing order types.

[16] Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for Shares using a proxy price format. As noted, Nasdaq will separately report real-time execution prices and quotes to member firms and providers of market data services in the ''NAV − $0.01/NAV+$0.01'' (or similar) display format, and otherwise seek to ensure that representations of intraday bids, offers and execution prices for Shares that are made available to the investing public follow the same display format.

[17] All orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day.

[18] File Transfer Protocol (''FTP'') is a standard network protocol used to transfer computer files on the Internet. Nasdaq will arrange for the daily

After the pricing is finalized, Nasdaq will deliver the Share trading data to NSCC for clearance and settlement, following the same processes used for the clearance and settlement of trades in other exchange-traded securities.

Availability of Information

Prior to the commencement of market trading in Shares, each Fund will be required to establish and maintain a public Web site through which its current prospectus may be downloaded. The Web site will include additional Fund information updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average and closing prices of Shares in Exchange trading; (b) the midpoint of the highest bid and lowest offer prices as of the close of Exchange trading, expressed as a premium/discount to NAV (the ''Closing Bid/Ask Midpoint''); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading (the ''Closing Bid/Ask Spread.''). The Web site will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints and Closing Bid/Ask Spreads over time.

The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free Web site. Consistent with the disclosure requirements that apply to traditional open-end investment companies, a complete list of current Fund portfolio positions will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

Reports of Share transactions will be disseminated to the market and delivered to the member firms participating in the trade contemporaneous with execution. Once a Fund's daily NAV has been calculated and disseminated, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.

Information regarding NAV-based trading prices, best bids and offers for Shares, and volume of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services.

Initial and Continued Listing

Shares will conform to the initial and continued listing criteria as set forth under Nasdaq Rule 5745. A minimum of 50,000 Shares and no less than two Creation Units of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and provided to Nasdaq via the Mutual Fund Quotation Service (''MFQS'') by the fund accounting agent. As soon as the NAV is entered into MFQS, Nasdaq will disseminate the value to market participants and market data vendors via the Mutual Fund Dissemination Service (''MFDS'') so all firms will receive the data element at the same time.

For each series of Shares, an estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the ''Intraday Indicative Value,'' will be calculated and disseminated at intervals of not more than 15 minutes throughout the Regular Market Session [19] when Shares trade on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated on an intraday basis and provided to Nasdaq for dissemination via the Nasdaq Global Index Service (''GIDS''). The IIV will be based on current information regarding the value of the securities and other assets held by a Fund.[20] The purpose of the IIVs is to enable investors to estimate the next-determined NAV so they can determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount (*e.g.,* if an investor wants to acquire approximately $5,000 of a Fund, how many Shares should the investor buy?).[21]

The Adviser is not a broker-dealer, although it is affiliated with a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to each Fund's portfolio. In the event (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the relevant Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Trading Halts

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Shares. Nasdaq will halt trading in Shares under the conditions specified in Nasdaq Rules 4120 and in Nasdaq Rule 5745(d)(2)(C). Additionally, Nasdaq may cease trading Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. To manage the risk of a non-regulatory Share trading halt, Nasdaq has in place back-up processes and procedures to ensure orderly trading. Because, in NAV-Based Trading, all trade execution prices are linked to end-of-day NAV, buyers and sellers of Shares should be less exposed to risk of loss due to intraday trading halts than buyers and sellers of conventional exchange-traded funds (''ETFs'') and other exchange-traded securities.

Trading Rules

Nasdaq deems Shares to be equity securities, thus rendering trading in Shares to be subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in

dissemination of an FTP file with executed Share trades to member firms and market data services.

[19] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

[20] IIVs disseminated throughout each trading day would be based on the same portfolio as used to calculate that day's NAV. Funds will reflect purchases and sales of portfolio positions in their NAV the next business day after trades are executed.

[21] Because, in NAV-Based Trading, prices of executed trades are not determined until the reference NAV is calculated, buyers and sellers of Shares during the trading day will not know the final value of their purchases and sales until the end of the trading day. A Fund's Registration Statement, Web site and any advertising or marketing materials will include prominent disclosure of this fact. Although IIVs may provide useful estimates of the value of intraday trades, they cannot be used to calculate with precision the dollar value of the Shares to be bought or sold.

Shares from 9:30 a.m. until 4:00 p.m. Eastern Time.

Surveillance

The Exchange represents that trading in Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority, Inc. (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[22] The Exchange represents that these procedures are adequate to properly monitor trading of Shares on the Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG'')[23] regarding trading in Shares, and in exchange-traded securities and instruments held by the Funds (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund's portfolio holdings), and FINRA may obtain trading information regarding such trading from other markets and other entities. In addition, the Exchange may obtain information regarding trading in Shares, and in exchange-traded securities and instruments held by the Funds (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund's portfolio holdings), from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material non-public information by its employees.

Information Circular

Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and noting that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Shares to customers; (3) how information regarding the IIV and Composition File is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing Shares prior to or concurrently with the confirmation of a transaction; and (5) information regarding NAV-Based Trading protocols.

As noted above, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. The Information Circular will discuss the effect of this characteristic on existing order types. The Information Circular also will identify the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. Members purchasing Shares from a Fund for resale to investors will deliver a summary prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

The Information Circular also will reference that the Funds are subject to various fees and expenses described in the Registration Statements. The Information Circular will also disclose the trading hours of the Shares and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares will be publicly available on the Fund's Web site.

Information regarding Fund trading protocols will be disseminated to Nasdaq members in accordance with current processes for newly listed products. Nasdaq intends to provide its members with a detailed explanation of NAV-Based Trading through a Trading Alert issued prior to the commencement of trading in Shares on the Exchange.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act[24] in general, and Section 6(b)(5) of the Act[25] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5745. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on Nasdaq and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' between the investment adviser and the broker-dealer affiliate with respect to access to information concerning the composition and/or changes to the Funds' portfolio holdings. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement, to the extent necessary.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange will obtain a representation from each issuer of Shares that the NAV per Share will be calculated on each business day that the New York Stock Exchange is open for trading and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information would be publicly available regarding the Funds and the Shares, thereby promoting market transparency.

Prior to the commencement of market trading in Shares, the Funds will be required to establish and maintain a public Web site through which its

[22] FINRA provides surveillance of trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[23] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of a Fund's portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

current prospectus may be downloaded. The Web site will display additional Fund information updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average and closing prices of Shares in Exchange trading; (b) the Closing Bid/Ask Midpoint; and (c) the Closing Bid/Ask Spread. The Web site will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints and Closing Bid/Ask Spreads over time. The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free Web site. The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated and disseminated on an intraday basis at intervals of not more than 15 minutes during trading on the Exchange and provided to Nasdaq for dissemination via GIDS. A complete list of current portfolio positions for the Funds will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

Transactions in Shares will be reported to the Consolidated Tape at the time of execution in proxy price format and will be disseminated to member firms and market data services through Nasdaq's trading service and market data interfaces, as defined above. Once each Fund's daily NAV has been calculated and the final price of its intraday Share trades has been determined, Nasdaq will deliver a confirmation with final pricing to the transacting parties. At the end of the day, Nasdaq will also post a newly created FTP file with the final transaction data for the trading and market data services. The Exchange expects that information regarding NAV-based trading prices and volumes of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services. Because Shares will trade at prices based on the next-determined NAV, investors will be able to buy and sell individual Shares at a known premium or discount to NAV that they can limit by transacting using limit orders at the time of order entry. Trading in Shares will be subject to Nasdaq Rules 5745(d)(2)(B) and (C), which provide for the suspension of trading or trading halts under certain circumstances, including if, in the view of the Exchange, trading in Shares becomes inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of the Funds, which seek to provide investors with access to a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure to ensure a tight relationship between market trading prices and NAV.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the introduction of the Funds would promote competition by making available to investors a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure to ensure a tight relationship between market trading prices and NAV. Moreover, the Exchange believes that the proposed method of Share trading would provide investors with transparency of trading costs, and the ability to control trading costs using limit orders, that is not available for conventionally traded ETFs.

These developments could significantly enhance competition to the benefit of the markets and investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2015–036 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–NASDAQ–2015–036. 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–

NASDAQ–2015–036 and should be submitted on or before May 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09919 Filed 4–28–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74796; File No. SR–NYSEArca-2015–08]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To Eliminate Additional Order Type Combinations, Delete Related Rule Text, Restructure the Remaining Rule Text in NYSE Arca Equities Rule 7.31, and Make Other Clarifying Changes to Its Rules

April 23, 2015.

I. Introduction

On February 19, 2015, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to reorganize, revise and clarify the order type and order modifier definitions found in NYSE Arca Equities Rule (''Rule'') 7.31; make certain conforming and clarifying changes to Rules 7.35, 7.36, 7.37 and 7.38; and eliminate certain order type functionality from the restructured rule. The proposed rule change was published for comment in the **Federal Register** on March 9, 2015.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

On June 5, 2014, in a speech entitled ''Enhancing Our Market Equity Structure,'' Mary Jo White, Chair of the Commission, requested that the equity exchanges conduct a comprehensive review of their order types and how they operate in practice, and as part of this review, consider appropriate rule changes to help clarify the nature of their order types.[4] The Exchange has filed this proposed rule change to continue its efforts to review and clarify its rules governing order types.[5]

The Exchange proposes to reorganize and revise its existing order type and modifier definitions in Rule 7.31. Specifically, proposed Rule 7.31(a) would contain the revised Exchange definitions for Market Orders, Limit Orders, and Inside Limit Orders (collectively ''primary order types'').[6] The revised Market Order definition would specify that it cannot be designated Immediate-or-Cancel (''IOC'') and that it would be rejected in the absence of a contra-side bid or offer.[7] The revised Limit Order definition would specify that a ''marketable'' Limit Order is one to buy (sell) at or above (below) the contra- contra-side Protected Best Bid or Offer for the security.[8] The revised Inside Limit Order definition would clarify how the order is routed, the handling of any returning remainder of such order after routing, and that such orders may not be designated IOC.[9]

Proposed Rule 7.31(b) would contain the definitions for the Exchange's Time-in-Force (''TIF'') Modifiers: Day, Good Till Cancelled, Good Till Date, IOC, and Fill-or-Kill.[10] The definition for the NOW Order designation would also be relocated and re-designated as a TIF Modifier in proposed Rule 7.31(b)(5).[11]

Proposed Rule 7.31(c) would contain the Exchange's revised definitions for Limit-on-Open Orders, Market-on-Open Orders, Limit-on-Close Orders, and Market-on-Close Orders (collectively ''Auction-Only Orders'').[12] The revised definitions would clarify that the Exchange would reject Auction-Only Orders in securities that are not eligible for an auction, or if an auction is suspended pursuant to Rule 7.35(g).[13]

Proposed Rule 7.31(d) would contain the Exchange's revised and reformatted definitions for Reserve Orders, Passive Liquidity Orders, and Mid-Point Passive Liquidity (''MPL'') Orders (collectively ''Working Orders'').[14] The revised Reserve Order definition would clarify that such an order could not be designated IOC.[15] Currently, the All-or-None (''AON'') Order is offered as a Working Order, however the Exchange proposes to eliminate the functionality.[16]

Proposed Rule 7.31(e) would contain the Exchange's revised definitions for Adding Liquidity Only (''ALO'') Orders, Intermarket Sweep Orders, Post No Preference (''PNP'') Orders, PNP Blind Orders, Cross Orders, and Tracking Orders (collectively ''non-routable orders'').[17] Proposed Rule 7.31(e)(4) would clarify that PNP Blind Orders combined with the ALO modifier may not also be designated as a Reserve Order.[18]

Proposed Rule 7.31(f) would contain the Exchange's revised definitions for Primary Only Orders, Primary Until 9:45 Orders, and Primary After 3:55 Orders (collectively ''specified routing instructions'').[19] The Primary Sweep Order is currently offered as a specified routing instruction, however the Exchange proposes to eliminate the functionality.[20]

Proposed Rule 7.31(g) would contain the Exchange's definitions for other existing order types and modifiers, including the Pegged Order, Proactive if Locked Modifier, Do Not Reduce Modifier, Do Not Increase Modifier, and Self-Trade Prevention (''STP'') Modifier.[21]

Proposed Rule 7.31(h) would contain the Exchange's revised Q Order definition clarifying that such orders do not route.[22]

The Exchange also proposes to amend and conform Rules 7.35, 7.36, 7.37 and 7.38 to proposed Rule 7.31 as it relates cross references, term usage and capitalization.[23] In addition to certain technical changes, proposed Rule 7.35 would be updated to reflect that the Exchange no longer conducts a closing auction for certain NYSE-listed securities, does not run a Market Order Auction in Nasdaq-listed securities, and only runs a Trading Halt Auction in securities that are listed on the Exchange.[24] In addition to certain technical changes, proposed Rule 7.36 would be amended to clarify how, for

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74415 (March 3, 2015), 80 FR 12537 (''Notice'').

[4] *See* Mary Jo White, Chair, Commission, Speech at the Sandler, O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available at *www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwJiw).*

[5] *See* Notice, 80 FR at 12537.

[6] *See* Notice, 80 FR at 12538.

[7] *Id.*

[8] *Id.* The Exchange also proposes to capitalize the term ''Limit Orders'' where used in the rule. *Id.*

[9] *Id.* The Exchange also proposes to state in proposed Rule 7.31(a)(3) that Inside Limit Orders may be designated with a NOW Modifier. *Id.*

[10] *See* Notice, 80 FR at 12539.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *See* Notice, 80 FR at 12538.

[16] *See* Notice, 80 FR at 12537–38. The Exchange also proposes conforming changes to other rules to reflect the elimination of AON Orders. *See* Notice, 80 FR at 12358; *see also* proposed Rules 7.36 and 7.37.

[17] *See* Notice, 80 FR at 12539–40.

[18] *See* Notice, 80 FR at 12538.

[19] *See* Notice, 80 FR at 12540.

[20] *See* Notice, 80 FR at 12538.

[21] *See* Notice, 80 FR at 12540.

[22] *Id.*

[23] *See* Notice, 80 FR at 12540–41.

[24] *See* Notice, 80 FR at 12540.

purposes of determining the best ranked displayed order(s) on the Exchange for dissemination on the public data feeds, the Exchange handles non-marketable odd-lot orders that are priced better than the best-priced round lot interest at the Exchange.[25] Specifically, proposed Rule 7.36(c) would be amended to explain the current Exchange functionality where non-marketable odd-lot sized orders that can be aggregated to equal at least a round lot are displayed as the best ranked displayed orders to sell (buy) at the least aggressive price at which such odd-lot sized orders can be aggregated to equal at least a round lot.[26] Proposed Rule 7.37 would be amended to make conforming and other non-substantive, technical changes.[27] Proposed Rule 7.38(a)(1) would be amended to specify the order types that cannot be entered as odd-lots, namely Reserve Orders, MPL–IOC Orders, Tracking Orders, and Q Orders.[28]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[29] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[30] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change reflects the Exchange's continued efforts to review and clarify its rules governing order types.[31] In addition, the Commission notes that the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act because it provides greater specificity, clarity and transparency with regard to the Exchange's order handling processes and functionalities, including how otherwise non-marketable odd-lot sized orders are aggregated for purposes of determining the best bid or offer for display on the public data feeds.[32] According to the Exchange, these amendments, both clarifying and technical, should remove impediments to and perfect the mechanism of a free and open market, and are consistent with the protection of investors and the public interest.[33] The Exchange believes that this proposal should help reduce the potential for investor confusion and facilitate a better understanding of the Exchange's order handling operations and navigation of its rulebook.[34]

The Commission notes that the proposal reduces the number of order types that will be accepted by the Exchange. The Commission also notes that the proposal provides additional detail regarding certain order type and modifier functionality that remain available on the Exchange. The Commission further notes that the Exchange has restructured and reorganized proposed Rule 7.31 such that order types with similar functionality are grouped together by subsection. The Commission believes that these proposed changes should provide greater specificity, clarity and transparency with respect to the order type and modifier functionality available on the Exchange, as well as the Exchange's methodology for handling certain order types. Accordingly, the Commission believes that the proposal should help 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, in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (SR–NYSEArca-2015–08) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09918 Filed 4–28–15; 8:45 am]

BILLING CODE 8011–01–P

[25] *See* Notice, 80 FR at 12540–41.

[26] *Id.*

[27] *See* Notice, 80 FR at 12540.

[28] *See* Notice, 80 FR at 12541.

[29] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78f(b)(5).

[31] *See* Notice, 80 FR at 12537.

[32] *See* Notice, 80 FR at 12541.

[33] *Id.*

[34] *Id.*

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74795; File No. SR–NASDAQ–2015–038]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Postpone Implementation of Changes to Rules 4751(h) and 4754(b) Relating to the Closing Process

April 23, 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 April 13, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by 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 the Substance of the Proposed Rule Change

The Exchange proposes to postpone implementation of changes to Rules 4751(h) and 4754(b) relating to the closing process.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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

NASDAQ is proposing to delay implementation of changes to Rules 4751(h) and 4754(b) relating to the closing process, which are effective but not yet implemented. On December 16, 2014, the Exchange filed an immediately effective filing [3] to amend the processing of the Closing Cross under Rule 4754(b) to adopt a ''Lockdown Period,'' the point at which NASDAQ will close the order book for participation in the Closing Cross. The Exchange also amended Rule 4751(h) to harmonize the processing of Market Hours Day orders [4] and Good-til-market close orders [5] upon initiation of the Lockdown Period.

The Exchange had originally anticipated implementing the changes in mid-February 2015, after the expiration of the 30-day operative delay provided by Rule 19b–4(f)(6)(iii) under the Act.[6] The Exchange subsequently extended the period for implementation to Monday, April 13, 2015.[7]

Based upon the Exchange's final internal pre-implementation testing, however, the Exchange has determined not to proceed with the scheduled implementation. Out of an abundance of caution, the Exchange will instead conduct an additional industry-wide User Acceptance Test to ensure the proper function of the proposed changes. Upon successful completion of that test, the Exchange will determine a new implementation date and provide notice of the new date to the industry.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(5) of the Act,[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the changes NASDAQ is making to Rules 4751(h) and 4754(b) promote consistency and transparency in the process for handling orders in the closing process. Delaying implementation of the changes for brief period so that NASDAQ may implement the changes to its systems necessary to ensure that the Lockdown Period and processing of Market Hours Day and Good-til-market close orders are handled in the Closing Cross operate as planned promotes fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[10] The Exchange believes that the proposal is irrelevant to competition because it is not driven by, and will have no impact on, competition. Specifically, the proposal is representative of the Exchange's efforts to harmonize and simplify the processing of orders during the closing process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that NASDAQ may implement the proposed rule change immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NASDAQ the opportunity to conduct further testing to ensure the proper function of the proposed changes before implementing them. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2015–038 on the subject line.

[3] Securities Exchange Act Release No. 73943 (December 24, 2014), 80 FR 69 (January 2, 2015) (SR–NASDAQ–2014–123).

[4] *See* Rule 4751(h)(6).

[5] *See* Rule 4751(h)(8).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] Securities Exchange Act Release No. 74342 (February 20, 2015), 81 FR 10562 (February 26, 2015) (SR–NASDAQ–2015–14 [sic]).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(a)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange did not satisfy this requirement. Nonetheless, the Commission has waived the pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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–NASDAQ–2015–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S. C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–038, and should be submitted on or before May 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09917 Filed 4–28–15; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74801; File No. SR–Phlx–2015–35]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Outdated Rule Language Contained in Rule 1019 and Options Floor Procedures Advices

April 23, 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 April 16, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to delete outdated rule language contained in (i) Rule 1019, Precedence Accorded To Orders Entrusted To Specialists, and (ii) Options Floor Procedures Advices (''Advices'') A–2, A–13, D–1, D–2, F–3, F–7 and F–21, as explained further below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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 purpose of the proposed rule change is to update the Exchange's rules by deleting eight obsolete rules, including Rule 1019 as well as and Advices A–2, A–13, D–1, D–2, F–3, F–7 and F–21. These rules are now obsolete for various reasons explained below.

Historically, Advices replicated the provisions of the Exchange's rule that were most pertinent for the trading floor community to keep handy, in lieu of the large, unwieldy rulebook; the Exchange adopted, for many years, both rules and Advices that contained nearly identical language where the Advice was the subject of a fine schedule under the Exchange's minor rule plan [3] in order for the trading floor to have easy access to these provisions (which the Exchange printed and distributed) and in order for those persons who administered fines to have easy access to consult the applicable fine schedules. Most of the Advices which the Phlx is proposing to delete contain similar information to Rule 1019, which, as stated below, is also obsolete.

Several provisions pertaining to Specialists [4] are obsolete, because Specialists no longer manually handle or execute others' orders due to the migration to a new electronic trading system (''Phlx XL II'') in 2009.[5] Of

[3] Many of these Advices contain a fine schedule which is administered pursuant to the Phlx's minor rule violation enforcement and reporting plan (''Minor Rule Plan''), and therefore the proposal necessarily amends the Exchange's Minor Rule Plan. The Phlx's Minor Rule Plan, codified in Phlx Rule 970, ''Floor Procedure Advices: Violations, Penalties, and Procedures,'' contains Advices with accompanying fine schedules. *See* Securities Exchange Act Release No. 23296 (June 4, 1986), 51 FR 21430 (June 12, 1986) (SR–Phlx–86–11). Pursuant to paragraph (c)(1) of Rule 19d–1 under the Act, a self-regulatory organization (''SRO'') is required to file promptly with the Commission notice of any ''final'' disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

[4] *See* Rule 1020.

[5] In May 2009, the Exchange enhanced the options trading system and adopted corresponding rules referring to it as ''Phlx XL II.'' *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74

Continued

course, many other rules govern the obligations of Specialists, such as quoting and registration obligations,[6] but a manual book no longer exists. Although there was an electronic limit order book for options for a long time,[7] Specialists used to be able to enter manual orders entrusted to them onto the electronic limit order book; with the advent of Phlx XL II, the Specialist could no longer accept and execute orders manually.[8]

Phlx Rule 1019, Precedence Accorded to Orders Entrusted To Specialists, governs the precedence given to orders entrusted to the Specialist. Rule 1019 is now obsolete given that the Specialist no longer manually handles orders and therefore orders cannot be ''entrusted.'' This rule contains several specific obligations related to the Specialist's handling of orders. All of the provisions in Commentaries .01–.05 refer to the Specialist's book, leaving orders with the Specialist or entrusting orders to the Specialist. None of these provisions are operational or can be relied upon because the Specialist's book no longer exists.[9] The Exchange proposes to delete this rule in order to prevent any confusion that may result from this obsolete rule and to ensure that the rulebook accurately reflects member obligations.

Similarly, Advice A–2 governs the types of orders to be accepted into the Specialist's book. Advice A–2 is now obsolete given that the Specialist no longer manually handles orders.[10] Therefore, there is no longer a ''Specialist's book;'' as stated above, the options electronic limit order book is operated by Exchange systems.

Advice A–13 governs the Auto Execution Engagement/Disengagement responsibility of the Specialist. Specifically, it requires Specialists to engage (meaning, turn on) Auto-X, the automatic execution functionality, within a certain period of time and permits disengagement by the Specialist under certain circumstances. Advice A–13 is now obsolete given that the Specialist no longer manually handles orders and all orders are automatically executed.[11] The Specialist no longer has control over the automatic execution functionality; such functionality operates on Phlx XL II for all options, without any need for engagement or disengagement by the Specialist.

Advice D–1 governs the Exchange's handling of errors. Specifically, this Advice governs missed orders and any corresponding remedies and protocols resulting from missed orders. Advice D–1 is now obsolete due to the automated functionality of Phlx XL II, as reflected in Rules 1017, 1080 and 1014. Missed orders cannot occur because orders are not held or guaranteed by Specialists.[12] Potential errors respecting automatically executed orders (and all orders) are handled pursuant to Rule 1092.

Advice D–2 governs instances of non-liability. Advice D–2 is now obsolete because the opening and close of trading are now automated pursuant to Rule 1017; there is no manual participation in the opening for which Specialists or Floor Brokers could be held liable.[13] As stated above, errors are handled pursuant to Rule 1092, including errors involving Floor Brokers.

Advice F–3 governs manual trading of securities by the Specialist. Specifically, this Advice governs members' requests for sold sale designations, including the initialing of sold sales by Specialists. Sold sales are trades for which trade reporting to the ''tape'' was delayed. Advice F–3 is now obsolete given that the Specialist no longer manually handles orders.[14] Sold sales still exist but do not involve the Specialist.

Advice F–7 governs the size of the Exchange's disseminated bid or offer, including the sum of the size associated with Specialist, Streaming Quote Trader (''SQT'') and Remote Streaming Quote Trader (''RSQT'')[15] quotations. Advice F–7 is no longer needed for two reasons: (i) The Exchange's Phlx XL II system determines what size is disseminated, in accordance with Commission rules;[16] and (ii) Rule 1082 contains specifically what the Exchange disseminates.[17]

The Exchange currently offers foreign currency options for trading. At one time, there was a special block trading process for foreign currency options, which appeared in both Rule 1016 and Advice F–21. Both governed block transactions in foreign currency options, including the procedure for quoting and executing a block transaction, and the priority of execution among the contra-side participants of the block order. At the time, foreign currency options did not trade electronically. Because of the adoption of a new type of foreign currency option that became available for electronic trading, as explained below, Rule 1016 was made applicable only to physical delivery[18] foreign currency options in 2007,[19] but Advice F–21 inadvertently was not. Since March 2007, physical delivery foreign currency options are no longer listed and traded on the Exchange, and the Exchange instead offers U.S. dollar-settled foreign currency options, which are available for trading on Phlx XL II.[20] Accordingly, the Exchange proposes to delete Advice F–21.

In summary, the Exchange proposes to delete Options Floor Procedures Advices A–2, A–13, D–1, D–2, F–3, F–7 and F–21 as well as Rule 1019, in order to prevent the confusion that may result from having obsolete rules in the Exchange's rulebook and in order to ensure that the rulebook accurately reflects member obligations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[21] in general, and furthers the objectives of Section 6(b)(5) of the Act[22] in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest, by deleting obsolete provisions and generally providing clarity to the rules. Some of the changes reflect changed practices on the trading floor. Specifically, the deletion of Advices F–3, F–7 and F–21 is consistent with the Act because they are operationally obsolete, as explained above; moreover, having clear and up-to-date rules should promote just and equitable principles of trade on the Exchange.

The proposal should result in a more accurate and understandable rule book, particularly for Exchange Specialists. It

FR 26750 (June 3, 2009) (SR–Phlx–2009–32). Thereafter, the Exchange submitted a number of filings updating various rules and deleting obsolete provisions. *See* Securities Exchange Act Release Nos. 61397 (January 22, 2010), 75 FR 4893 (January 29, 2010) (SR–Phlx–2010–07); 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR–Phlx–2010–131); and 67469 (July 19, 2012), 77 FR 43633 (July 25, 2012) (SR–Phlx–2012–92).

[6] *See e.g.,* Rules 1014(b) and 1020.

[7] *See* Rule 1080.02.

[8] Specifically, the Exchange stated that no orders will be executed, and therefore handled, manually in Phlx XL II. *See* Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR–Phlx–2009–32) (Notice of Filing of Proposed Rule Change Relating to the Exchange's Enhanced Electronic Trading Platform for Options, Phlx XL II at 17258).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] The opening process became fully automated in Phlx XL II. *See supra* note 5.

[14] *See supra* note 8.

[15] *See* Phlx Rule 1014(b).

[16] *See* Rule 602 pursuant to Regulation NMS.

[17] *See e.g.,* Phlx Rule 1082(a)(ii)(C).

[18] Physical delivery options, so named because settlement could involve delivery of the underlying currency (as opposed to cash for U.S. dollar-settled foreign currency options), traded on the Exchange 1982–2007.

[19] *See* Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR–Phlx–2006–34).

[20] *See* Securities Exchange Act Release No. 60169 (June 24, 2009), 74 FR 31782 (July 2, 2009) (SR–Phlx–2009–40).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

should make clearer that Specialists no longer operate a book or handle orders manually. The deletion of Advices and one rule pertaining to Specialists' functions and obligations are consistent with the Act for the same reason stated above pertaining to the importance of having up-to-date rules, which should, in turn, promote just and equitable principles of trade. In addition, the deletion of Advice A–2, Advice D–1 and Rule 1019 should promote just and equitable principles of trade, because there is no longer a Specialist's limit order book

The deletion of Advice D–1 regarding to liability for missed orders on the Specialist's book also promotes just and equitable principles of trade by making clear that a Floor Broker can no longer leave an order with the specialist. The deletion of Advice D–2 should promote just and equitable principles of trade by making it clear that openings occur automatically and do not involve Specialists or Floor Brokers. Specialists' functions are principally governed by Rules 1014 and 1020.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal raises neither intra-market nor inter-market competition issues because it merely deletes obsolete provisions and therefore does not impact how the market operates today.

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)(ii) [sic] of the Act[23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24] Specifically, it does not significantly affect the protection of investors or the public interest because it deletes obsolete rules, as explained in detail above, due to increased automation, which resulted in the concomitant reduction in Specialist responsibilities. Furthermore, this increased automation also affected the dissemination of quotes, which, in turn, affected the need for provisions requiring Specialist, SQTs and RSQTs to be involved in quote dissemination. In addition, the deletion of Advice F–21 relating to foreign currency option trading does not significantly affect the protection of investors or the public interest, because investors would not have expected that block trading be available due to the prior deletion of Rule 1016 and change in the foreign currency option product offering, as described above. Nor does the proposal impose any significant burden on competition, as explained above.

Furthermore, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2015–35 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–Phlx–2015–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–35, and should be submitted on or before May 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09920 Filed 4–28–15; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74791; File No. SR–CBOE–2015–040]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Submission of Financial Reports

April 23, 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 April 15, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding the submission of financial reports. The text of the proposed rule change is provided below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 15.5. Financial Reports

Each Trading Permit Holder shall submit to the Exchange answers to financial questionnaires, reports of income and expenses and additional financial information in the type, form, manner and time prescribed by the Exchange.

. . . Interpretations and Policies:

.01 [Reserved.

.02]Trading Permit Holders [which]*who* are net capital computing must file electronically with the Exchange[‘s Department of Financial and Sales Practice Compliance] any required monthly and quarterly FOCUS Reports utilizing the [WinJammer ™]system[,] or [such other]software [as required]*prescribed* by the Exchange*, which will be announced via Regulatory Circular.*

.0[3]*2* Trading Permit Holders who file an annual FOCUS Report and who are not net capital computing [have the option to]*must* file *electronically with the Exchange* the annual FOCUS Report and Schedule 1 [by sending a hard copy to the Exchange or by filing electronically to]*utilizing the system or software prescribed by* the Exchange*, which will be announced via Regulatory Circular.*

* * * * *

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 II.A., II.B., and II.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 its rules regarding the submission of financial reports. CBOE Rule 15.5 requires each Trading Permit Holder to submit to the Exchange answers to financial questionnaires, reports of income and expenses, and additional financial information in the type, form, manner, and time prescribed by the Exchange. With respect to FOCUS Reports [5]:

- Rule 15.5, Interpretation and Policy .02 requires Trading Permit Holders which are net capital computing to file electronically with the Exchange's Department of Financial and Sales Practice Compliance any required monthly and quarterly FOCUS Reports utilizing the WinJammer™ system,[6] or such other software as required by the Exchange; and
- Rule 15.5, Interpretation and Policy .03 requires Trading Permit Holders who file an annual FOCUS Report and who are not net capital computing to, at their option, file the annual FOCUS Report and Schedule 1 by sending a hard copy to the Exchange or by filing electronically to the Exchange.

The Exchange recently entered into a Regulatory Services Agreement (the ''RSA'') with the Financial Industry Regulatory Authority, Inc. (''FINRA''). FINRA provides its members and the members of exchanges for which it provides regulatory services access to its Firm Gateway system, which is a portal that provides consolidated access to various FINRA regulatory systems, including its financial reporting systems.[7] One of these systems is the e-FOCUS system, through which members may submit their FOCUS Reports.

In connection with the RSA, FINRA is making the Firm Gateway available to Trading Permit Holders for the submission of various regulatory filings, including certain financial filings, such as FOCUS Reports. As a result, CBOE intends to require Trading Permit Holders that are required to submit FOCUS Reports to the Exchange to submit their FOCUS Reports through the Firm Gateway system, including Trading Permit Holders that are not net capital computing. Therefore, CBOE is proposing to amend Rule 15.5, Interpretations .02 and .03 to provide that FOCUS Reports must be filed electronically with the Exchange utilizing the system or software prescribed by the Exchange.[8] CBOE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] A ''FOCUS Report'' is the Financial and Operational Combined Uniform Single Report that broker-dealers file with their designated examining authority (''DEA'') pursuant to Rule 17a–5 under the Act. The FOCUS Report filing requirements for Trading Permit Holders for whom CBOE is the DEA are set forth in CBOE Rule 15.5, Interpretations and Policies .02 and .03.

[6] The WinJammer system is an internet-based system that Trading Permit Holders can log into and then input relevant FOCUS Report information.

[7] Prior to the RSA, all Trading Permit Holders were able to submit Forms BD, U4, and U5 filings through WebCRD, which is accessible through the Firm Gateway, and Trading Permit Holders who are also FINRA members had access to the Firm Gateway in their capacity as FINRA members. Beginning on February 20, 2015, FINRA provided Trading Permit Holders who are not FINRA members with access to the Firm Gateway Request Manager, which streamlines the execution document request and production process and creates an audit trail of requests and productions. Beginning on March 16, 2015, certain Firm Gateway financial filing and notification functions became available to Trading Permit Holders that are required to submit the financial information to the Exchange. As of that date, Trading Permit Holders may submit the information on a voluntary basis through the Firm Gateway system (or they may still submit directly to the Exchange). The Exchange will announce via Regulatory Circular the date on which it will require Trading Permit Holders to submit this financial information through Firm Gateway. FINRA has not yet made available to Trading Permit Holders that are required to file FOCUS Reports with the Exchange access to the Firm Gateway eFOCUS system. The Exchange will announce via Regulatory Circular the date on which it will begin to require the submission of FOCUS Reports through that system. *See* Regulatory Circular RG15–026. Any changes to the form and manner of other financial filings required to be submitted by Trading Permit Holders to the Exchange in light of the RSA with FINRA will also be announced via Regulatory Circular pursuant to Rule 15.5.

[8] CBOE does not believe it is necessary to name the system in the Rules, as the Rules already provide CBOE with the flexibility to use a system or software other than WinJammer and do not

believes that requiring Trading Permit Holders to submit FOCUS Reports in this manner will streamline the processing of these reports. Additionally, CBOE believes the submission of these reports directly into the system of the Exchange's regulatory services provider, into which Trading Permit Holders will submit other financial reports, will provide for a more efficient and effective process for the collection, tracking, consolidation, and review of Trading Permit Holders' financial reports.

Many Trading Permit Holders are FINRA members and thus already have access to and submit reports via the Firm Gateway system. Additionally, the majority of Trading Permit Holders that currently submit FOCUS Reports to the Exchange do so electronically, and CBOE understands that the FINRA e-FOCUS system operates in a similar manner to the WinJammer system, as they are both web-based systems into which Trading Permit Holders sign in and input the relevant information. Thus, the Exchange does not anticipate that Trading Permit Holders who currently submit FOCUS Reports through WinJammer will experience any significant systemic or operational burden in order to submit FOCUS Reports via the Firm Gateway system.

The proposed rule change also makes technical, nonsubstantive changes to:

- Conform language in current Rule 15.5, Interpretations and Policies .02 and .03;
- renumber Interpretations and Policies .02 and .03 to .01 and .02, respectively, as current .01 is only reserved; and
- specify in the Rules that CBOE will announce the applicable system or software by Regulatory Circular (as is specified in Rule 15.5 for other financial reports).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, 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 requirement in Section 6(b)(5) of the Act that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed change will create a more efficient and effective process for the Exchange's regulatory services provider, FINRA, to collect and review Trading Permit Holders' FOCUS Reports required to be filed with the Exchange, which fosters cooperation and coordination with FINRA in its performance of regulatory services with respect to Trading Permit Holders and CBOE's markets. By enhancing the process through which the Exchange (through its regulatory services provider) receives FOCUS Reports and allowing consolidation with other financial reports for electronic review, the Exchange believes the proposed rule change will promote just and equitable principles of trade and ultimately protect investors. Additionally, upon implementation, all Trading Permit Holders that are required to submit FOCUS Reports to the Exchange will be required to submit them in the same (and thus nondiscriminatory) electronic manner. Regulation of Trading Permits Holders continues to be performed by electronic processes, and thus the Exchange believes it is appropriate to require electronic submission of these reports so that they may be incorporated into these processes. By maintaining the flexibility within the rules for the Exchange to prescribe by Regulatory Circular which system or software will be used for the submission of FOCUS Reports, the Exchange believes it will be able to adjust, as necessary, its standards of financial reporting in a timely manner, particularly to the extent that new or enhanced software or systems are developed for this purpose.[11] As discussed above, CBOE's and other exchanges' rules maintain this flexibility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change requires all Trading Permit Holders that are required to submit FOCUS Reports to submit those reports in the same electronic manner. Many Trading Permit Holders are also FINRA members and thus already have access to the Firm Gateway system. The majority of Trading Permit Holders that are required to submit FOCUS Reports to the Exchange currently do so electronically in a manner similar to what will be required when submission through the Firm Gateway system becomes mandatory, thus resulting in minimal additional burden. While some Trading Permit Holders will no longer be able submit hard copies of FOCUS Reports, the Exchange believes that any burden imposed by the proposed rule change is minimal and outweighed by the regulatory efficiencies that may be gained through electronic submission directly to the Exchange's regulatory services provider, who will be able to more efficiently and effectively review FOCUS Reports together with other financial reports in its system. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition, as the proposed rule change is for regulatory purposes to enhance the process for Trading Permit Holders' submission and the Exchange's collection, tracking, consolidation, and review (through its regulatory services provider) of FOCUS Reports.

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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 [13] 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

include the manner of filing for other financial reports. *See* Rule 15.5, Interpretation and Policy .02; *see also, e.g.* BATS Exchange, Inc. Rule 24.3; International Securities Exchange, LLC Rule 1402; and Miami International Securities Exchange, LLC (which rules do not specify an electronic system for the submission of any financial reports).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] To the extent CBOE changes the FOCUS Report submission software or system in the future, CBOE represents it will provide Trading Permit Holders with sufficient notice to comply with any such changes.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–CBOE–2015–040 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–CBOE–2015–040. 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–2015–040 and should be submitted on or before May 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09916 Filed 4–28–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31576; 812–14439]

Hartford Funds NextShares Trust, et al.; Notice of Application

April 23, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: Hartford Funds NextShares Trust (the ''Trust''), Hartford Funds Management Company, LLC (the ''Adviser'') and Hartford Funds Distributors, LLC (the ''Distributor'').

Summary of Application: Applicants request an order (''Order'') that permits: (a) Actively managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at the next-determined net asset value plus or minus a market-determined premium or discount that may vary during the trading day; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to create and redeem Shares in kind in a master-feeder structure. The Order would incorporate by reference terms and conditions of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

Filing Dates: The application was filed on March 31, 2015.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 18, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Edward Macdonald, Esq., 5 Radnor Corporate Center–Suite 300, 100 Matsonford Road, Radnor, PA 19087.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants:

1. The Trust will be registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. Applicants seek relief with respect to four Funds (as defined below, and those Funds, the ''Initial Funds''). The portfolio positions of each Fund will consist of securities and other assets selected and managed by its

[14] *See* 17 CFR 200.30–3(a)(12).

[1] Eaton Vance Management, *et al.,* Investment Company Act Rel. Nos. 31333 (Nov. 6, 2014) (notice) and 31361 (Dec. 2, 2014) (order).

Adviser or Subadviser (as defined below) to pursue the Fund's investment objective.

2. The Adviser, a Delaware limited liability company, will be the investment adviser to the Initial Funds. An Adviser (as defined below) will serve as investment adviser to each Fund. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may retain one or more subadvisers (each a ''Subadviser'') to manage the portfolios of the Funds. Any Subadviser will be registered, or not subject to registration, under the Advisers Act.

3. The Distributor is a Delaware limited liability company and a broker-dealer registered under the Securities Exchange Act of 1934 and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser (included in the term ''Distributor''). Any Distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act. The requested Order would permit applicants to offer exchange-traded managed funds. Because the relief requested is the same as the relief granted by the Commission under the Reference Order and because the Adviser has entered into, or anticipates entering into, a licensing agreement with Eaton Vance Management, or an affiliate thereof in order to offer exchange-traded managed funds,[2] the Order would incorporate by reference the terms and conditions of the Reference Order.

5. Applicants request that the Order apply to the Initial Funds and to any other existing or future open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (any such entity included in the term ''Adviser''); and (b) operates as an exchange-traded managed fund as described in the Reference Order; and (c) complies with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein (each such company or series and Initial Fund, a ''Fund'').[3]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

7. Applicants submit that for the reasons stated in the Reference Order: (1) With respect to the relief requested pursuant to section 6(c) of the Act, the relief is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; (2) with respect to the relief request pursuant to section 17(b) of the Act, the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of each registered investment company concerned and consistent with the general purposes of the Act; and (3) with respect to the relief requested pursuant to section 12(d)(1)(J) of the Act, the relief is consistent with the public interest and the protection of investors.

[2] Eaton Vance Management has obtained patents with respect to certain aspects of the Funds' method of operation as exchange-traded managed funds.

[3] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein.

By the Division of Investment Management, pursuant to delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2015–09964 Filed 4–28–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, April 29, 2015 at 12:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting will be a matter related to an enforcement proceeding.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: April 24, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–10037 Filed 4–27–15; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–22]

Petition for Exemption; Summary of Petition Received; Last Frontier Aviation Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 19, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–0561 using any of the following methods:

• *Federal eRulemaking Portal: Go to http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Valentine Castaneda (202) 267–7977, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 23, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0561.

Petitioner: Last Frontier Aviation Group.

Section(s) of 14 CFR Affected: 14 CFR part 120.

Description of Relief Sought: Last Frontier Aviation Group is seeking relief from the regulatory requirements under 14 CFR part 120 to maintain and administer separate drug and alcohol testing programs for two of its part 135 operations. Last Frontier Aviation Group anticipates that operating one combined drug and alcohol testing program, for Last Frontier Air Ventures, Ltd. and Prism Helicopters Inc., will decrease potential statistical anomalies for random testing as well as reduce paperwork and administrative costs.

[FR Doc. 2015–09949 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–14]

Petition for Exemption; Summary of Petition Received; Airlines for America

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 19, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–0555 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 24, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0555.

Petitioner: Airlines for America.

Section(s) of 14 CFR Affected: § 121.629(b).

Description of Relief Sought: Airlines for America seeks to allow its member carriers to operate the Boeing B737–600, –700, –800, and –900/–900ER Next Generation series aircraft with cold soaked fuel frost (CSFF) present in defined areas of the wing upper surface. The relief would be limited by the FAA-approved Airplane Flight Manual—Miscellaneous Limitations notion, which defines conditions under which takeoff with CSFF is not permitted.

[FR Doc. 2015–09981 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2015–0037]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes the collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before June 29, 2015.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2015–0037 using any of the following methods:

Electronic submissions: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

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 number for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Dr. J. Stephen Higgins, (202)-366–3976.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected; and (iv) How to minimize the burden of the collection of information on those who are to respond, including 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. In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Survey of Law Enforcement Officers/Agencies: Attitudes Towards and Resources for Traffic Safety Enforcement

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—NHTSA 1186.

Requested Expiration Date of Approval—3 years from date of approval.

Summary of the Collection of Information— NHTSA is interested in the attitudes of Law Enforcement Officers (LEOs) and the resources that Law Enforcement Agencies (LEAs) have for traffic safety enforcement. More specifically NHTSA is interested in past and present LEO viewpoints, agency resources currently being employed, how resources are being utilized, and which additional resources can be implemented to make the enforcement of traffic safety more successful, efficient, and safe for both the Law Enforcement Community as well as the public. NHTSA proposes to collect information from LEOs and LEAs responsible for traffic safety enforcement. Information will be collected through a separate survey completed by line officers and supervisors, as well as structured phone interviews with LEA Chiefs or their designees. Agency administrative data will be gathered through authorized LEA personnel responsible for maintaining such information.

This proposed study is the first step in NHTSA understanding the attitudes and challenges that LEOs and LEAs have with traffic safety enforcement. The agency will gain not only valuable information on the attitudes of Law Enforcement but will also gain valuable guidance in the logistics involved in recruiting and collecting data from agencies and officers as well as the quality of responses and data from the developed instruments for larger nationally representative future studies.

Description of the Need for the Information and Proposed Use of the Information—NHTSA has the responsibility for promoting and implementing effective educational, engineering and enforcement programs with the goal of ending preventable tragedies and reducing economic costs associated with vehicle use and highway travel. In June 2001, a NHTSA report stated that ''command emphasis is obviously essential to sustaining traffic law enforcement levels. During times of budget shortfalls or public safety problems, traffic enforcement is one of the first areas to be curtailed. Without the support of senior staff and officials, efforts may decline.'' [1] As a consequence of recent economic challenges, a number of LEAs have merged traffic enforcement with other enforcement divisions in order to reduce costs.

This project will document the state of current attitudes and resources and how they have changed in recent years. The result of this project will assist NHTSA in determining what can be done to encourage a more ideal prioritization of traffic safety.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—For the proposed study, we will recruit participant groups from 40 LEAs across the United States. LEOs, supervisors, and staff compiling administrative data will supply data via a web survey. Chiefs will provide information through structured telephone interviews. Approximately 40 semi-structured interviews will be conducted via telephone with either the agency head or his/her designee. An estimated 1,200 law enforcement officers will complete the web-based survey. Approximately 80 supervisor-level officers will complete a separate web-based survey.

Estimate of the Total Annual Reporting and Record Keeping Burden

[1] Cyr, E., Jones, R.K., Lacey, J.H., & Wiliszowski, C.H. (2001). *A trend analysis of traffic law enforcement in the United States* (DOT 809 269). Washington, DC: NHTSA.

Resulting from the Collection of Information—The web survey for the line officers and supervisors will average approximately 15 minutes including introduction, consent, confidentiality, survey questions, and debriefing. The estimated completion time for each semi-structured interview is 30 minutes per agency head or designee. Individuals providing administrative data have an estimated completion time of 30–45 minutes. The total estimated annual burden if all solicited participants respond is approximately 370 hours. Participants will incur no costs and no record keeping burden from the information collection.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued on: April 23, 2015.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2015–09990 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Request for Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collection was published on January 21, 2015 (80 FR 3010).

DATES: Submit comments to the Office of Management and Budget (OMB) on or before XXX. May 29, 2015.

FOR FURTHER INFORMATION CONTACT: Dr. J. Stephen Higgins, 202–366–3976.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2127—New.

Title: Characterizing Ambulance Driver Training in EMS Systems.

Form No.: NHTSA Form 1186.

Type of Review: Regular.

Respondents: The study sample will consist of two distinct groups. The first sample will include representatives from EMS agencies across the United States. The second will include representatives from State offices that are responsible for various aspects of ambulance driver training and regulation for the 50 States and Washington, DC.

Estimated Number of Respondents: A maximum of 8,000 agencies will be solicited for the survey. Up to 153 representatives from State agencies may be contacted for semi-structured interviews.

Estimated Time per Response: The expected average completion time for the Internet-based survey of EMS agency representatives is 15 minutes. The 153 semi-structured interviews with State personnel are expected to average approximately 60 minutes in length.

Total Estimated Annual Burden Hours: 2,153 hours if all 8,000 EMS agencies and State personnel respond to the solicitations. The real burden will be reduced proportionally by the actual response rates to each information gathering effort.

Frequency of Collection: Each data collection effort will take place a single time.

Abstract: Although emergency vehicle operator training for EMS personnel has been repeatedly identified as an important step in the safety system, the current situation with respect to EMS personnel driver training in the United States is not well characterized. In order to characterize training for EMS personnel driving ambulances across the United States, the National Highway Traffic Safety Administration (NHTSA) proposes to collect information from EMS agencies providing ambulance services and State offices responsible for overseeing training, licensing, and regulation of EMS agencies and their personnel that drive ambulances. NHTSA is interested in learning about what types of driver training are required, when the training is required (new drivers, continuing education, etc.), how driving incidents (crashes, moving violations, etc.) impact driving privileges, initial qualification standards (age, number of years with license, driving record, type of license, etc.), and other related topics. Participation in the study will be voluntary and will only include State level agency representatives and representatives from EMS agencies that offer ambulance services. Data collection will be in the form of semi-structured interviews (in-person or over the phone) for personnel at State offices, and an Internet-based survey for personnel at public and private EMS agencies providing ambulance services. EMS agencies will be contacted via email, mail, or phone with a link to the Internet survey. State offices will be contacted via email or phone to participate in the semi-structured interviews. The results of this project will assist NHTSA in determining the current state of driver training for EMS personnel which will help the Agency determine if additional research and development on the topic are warranted.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at *oira_submission@omb.eop.gov,* or fax: 202–395–5806.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Dated: April 23, 2015.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2015–09991 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 21, 2015 (**Federal Register**/Vol. 80, No. 13/pp. 3008–3010).

DATES: Comments must be submitted on or before May 29, 2015.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Dr. Amanda M. Kelley, 202–366–7394.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of Correct Child Restraint System Installations.

Type of Request: New information collection requirement.

Abstract: Motor vehicle crashes are a leading cause of death to children in the United States. In 2012, a total of 952 children younger than 13 years died in motor vehicle traffic crashes, and two-thirds of these fatalities occurred among children riding in passenger vehicles. The National Highway Traffic Safety Administration (NHTSA), recommends that all children ages 12 years and under be properly buckled in an age- and size-appropriate car seat, booster seat, or seat belt in the rear seat. Currently, there are four types of child restraint systems designed for children: Infant, convertible, combination, and belt-positioning booster seats. Each system is designed to protect a child within a given height and weight category in the event of a crash.

While child restraint use has increased over the years, many children are still fatally injured as a result of motor vehicles crashes. One possible explanation for this occurrence could be the large number of child passengers who are either riding unrestrained in vehicles, improperly placed in a CRS, or prematurely graduated to an adult vehicle seat belt system. The most prevalent installation errors observed include: Incorrect harness routing slot used, improper harness clip position, loose CRS installation, loose harness straps, and improper lap belt placement (NHTSA, 2012). Researchers have also identified errors related to caregivers selecting the correct CRS for the children's ages, heights, and weights.

Evaluating the causes of the various selection and installation errors can be challenging. That is, one or more factors may contribute to any one type of installation error. There are numerous CRS makes and models marketed to the consumer, each with its own installation procedures/manual. In addition, vehicle manufacturers design vehicle restraint systems and vehicle seats that are incompatible with various CRSs. New vehicles are continually introduced to the fleet, and CRSs continue to evolve each year. Finally, there is a never-ending flow of new parents/caregivers who need to be educated on child passenger safety. Despite their inexperience, new parents may overestimate their own accuracy in selecting and securely installing a CRS to the vehicle and securing the child in the CRS.

In an effort to reduce the number of errors, NHTSA is undertaking a study to gain some insight into the causes of errors related to selecting and installing CRSs. To accomplish this, NHTSA will evaluate installation performance and caregiver confidence for 150 experienced and novice CRS users and determine which factors contribute to both installation and securement errors and to determine what factors related to the CRS, vehicle, and user confidence contribute to errors. Evaluation measures will involve the independent identification, collection and evaluation of both qualitative and quantitative data that specifically document the types of errors made by both user groups, as well as vehicle and CRS features that might contribute to those errors. Identifying these causal factors that contribute to errors related to selecting and installing CRSs, as well as those factors that contribute to accurately selecting and properly installing CRSs for both novice and experienced users, will be the first step in increasing the safety of child passengers in moving vehicles. In addition, overall findings can be made available to CRS manufacturers and vehicle manufacturers related to improvements to specific CRS and vehicle design features that may foster a better fit in the vehicles and securement for children.

Affected Public: Participants will represent both ''novice'' and ''experienced'' CRS users recruited from the Greater Washington, DC area. ''Experienced'' users regularly care for a child under the age of 4 years, transport the child in a vehicle at least twice a week, have secured the child in a CRS a minimum of five times in the past 6 months, and have installed any type of CRS at least once in the past 12 months. ''Novice'' CRS users do not regularly transport children and have not installed a CRS in the past 6 months will be recruited for participation.

Estimated Total Annual Burden: 300 hours (150 participants, averaging 2 hours).

Comments are invited on the following:

(i) 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) the accuracy of the agency's estimate of the burden of the proposed information collection;

(iii) ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Dated: April 23, 2015.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2015–09989 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2015–0119; Notice No. 15–12]

Hazardous Materials: Safety Advisory—Unauthorized Certification of Compressed Gas Cylinders

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety Advisory Notice.

SUMMARY: PHMSA is issuing this safety advisory to notify the public that Liberty Industrial Gases and Welding Supplies Inc., located at 600 Smith Street, Brooklyn, NY 11231, also known as Liberty Industrial Gases and Welding Supply, Inc., marked ICC, DOT-Specification, and DOT-Special Permit high pressure compressed gas cylinders as authorized for hazardous materials transportation without properly testing the cylinders and without authorization to do so.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Durkin, Hazardous Materials Investigator, Eastern Region, Office of Hazardous Materials Safety, Pipeline

and Hazardous Materials Safety Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, West Trenton, NJ 08034. Telephone: (609) 989–2256, Fax: (609) 989–2277 or, via email: *patrick.durkin@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Actions Requested

If ICC, DOT-Specification, or DOT-Special Permit cylinders have been taken to or received from Liberty Industrial Gases and Welding Supplies Inc., from April 1986 through October 2014, these cylinders may not have been properly tested as prescribed by the Hazardous Materials Regulations (HMR). These cylinders should be considered unsafe and not authorized for the filling of hazardous materials unless the cylinder is first properly tested by an individual or company authorized to requalify DOT-Specification and DOT-Special Permit cylinders. Cylinders described in this safety advisory notice that are filled with atmospheric gas should be vented or otherwise safely discharged. Cylinders that are filled with a material other than an atmospheric gas should not be vented but instead should be safely discharged.

Prior to refilling or continued use, the cylinders must be taken to a DOT-authorized cylinder requalifier to ensure their suitability for continued service. A list of authorized requalifiers may be obtained at the following Web site: *http://www.phmsa.dot.gov/hazmat/regs/sp-a/approvals/cylinders*.

II. Background

A cylinder requalification consisting of a visual inspection and a hydrostatic test, conducted as prescribed in the HMR, specifically 49 CFR § 173.301, is used to verify the structural integrity of a cylinder. If the requalification is not performed in accordance with the regulations, a cylinder with compromised structural integrity may not be detected and may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder.

Investigators from PHMSA's Office of Hazardous Materials Safety (OHMS) recently conducted a compliance inspection of Liberty Industrial Gases and Welding Supplies Inc. after the company self-reported improper marking of cylinders. As a result of that inspection, PHMSA determined that Liberty Industrial Gases and Welding Supplies Inc. marked an unknown number of high pressure compressed gas cylinders with unauthorized markings and certified an unknown number of high pressure compressed gas cylinders as being properly requalified when it had not conducted the required testing.

The evidence suggests that Liberty Industrial Gases and Welding Supplies Inc. marked Requalifier Identification Number (RIN) A890 on these cylinders. However, Liberty Industrial Gases and Welding Supplies Inc. does not hold a RIN approval authorizing it to requalify cylinders. RIN A890 was issued by PHMSA to another company, Hi Pressure Technologies, located in Newark, NJ, granting it authority to requalify cylinders under the terms of the RIN approval supplied to it. Thus, if the cylinders were serviced by the approved RIN holder, Hi Pressure Technologies, they are not subject to this notice. Only cylinders serviced by Liberty Industrial Gases and Welding Supplies Inc. bearing these markings are affected.

Issued in Washington, DC, on April 17, 2015 under authority delegated in 49 CFR Part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2015–09937 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2015–0098 (Notice No. 15–8)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on certain information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal and extension from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before June 29, 2015.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2015–0098) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov.* Note that comments received will be posted without change to: *http://www.regulations.gov* including any personal information provided.

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*.

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR parts 172, 173, 174, 175, 176, and 177 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised

burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**. PHMSA requests comments on the following information collections:

Title: Hazardous Materials Shipping Papers and Emergency Response Information.

OMB Control Number: 2137–0034.

Summary: This information collection is for the requirement to provide a shipping paper and emergency response information with shipments of hazardous materials. Shipping papers are considered to be a basic communication tool relative to the transportation of hazardous materials. The definition of a shipping paper in 49 CFR 171.8 includes a shipping order, bill of lading, manifest, or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203, and 172.204 of the HMR. A shipping paper with emergency response information must accompany most hazardous materials shipments and be readily available at all times during transportation. Shipping papers serve as the principal source of information regarding the presence of hazardous materials, identification, quantity, and emergency response procedures. They also serve as the source of information for compliance with other requirements, such as the placement of rail cars containing different hazardous materials in trains; prevent the loading of poisons with foodstuffs; maintain the separation of incompatible hazardous materials; and limit the amount of radioactive materials that may be transported in a vehicle or aircraft. Shipping papers and emergency response information serve as a means of notifying transport workers that hazardous materials are present. Most importantly, shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the Department of Transportation (DOT) shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies.

PHMSA is revising this information collection burden to reflect the anticipated completion of the collection of information under the Hazardous Materials Automated Cargo Communications for Efficient and Safe Shipments (HM–ACCESS) pilot program.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 260,000.

Total Annual Responses: 185,000,000.

Total Annual Burden Hours: 4,625,846.

Frequency of Collection: On occasion.

Title: Radioactive (RAM) Transportation Requirements.

OMB Control Number: 2137–0510.

Summary: This information collection consolidates and describes the information collection provisions in the HMR involving the transportation of radioactive materials in commerce. Information collection requirements for RAM include: Shipper notification to consignees of the dates of shipment of RAM; expected arrival; special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM, and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported; external radiation levels do not exceed prescribed limits; and packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers, and emergency responders.

Affected Public: Shippers and carriers of radioactive materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 3,817.

Total Annual Responses: 21,519.

Total Annual Burden Hours: 15,270.

Frequency of Collection: On occasion.

Title: Subsidiary Hazard Class and Number/Type of Packagings.

OMB Control Number: 2137–0613.

Summary: The HMR require that shipping papers and emergency response information accompany each shipment of hazardous materials in commerce. In addition to the basic shipping description information, we also require the subsidiary hazard class or subsidiary division number(s) to be entered in parentheses following the primary hazard class or division number on shipping papers. This requirement was originally required only by transportation by vessel. However, the lack of such a requirement posed problems for motor carriers with regard to complying with segregation, separation, and placarding requirements, as well as posing a safety hazard. For example, in the event the motor vehicle becomes involved in an accident, when the hazardous materials being transported include a subsidiary hazard such as ''dangerous when wet'' or a subsidiary hazard requiring more stringent requirements than the primary hazard, there is no indication of the subsidiary hazards on the shipping papers and no indication of the subsidiary risks on placards. Under circumstances such as motor vehicles being loaded at a dock, labels are not enough to alert hazardous materials employees loading the vehicles, nor are they enough to alert emergency responders of the subsidiary risks contained on the vehicles. Therefore, we require the subsidiary hazard class or subsidiary division number(s) to be entered on the shipping paper, for purposes of enhancing safety and international harmonization.

We also require the number and type of packagings to be indicated on the shipping paper. This requirement makes it mandatory for shippers to indicate on shipping papers the numbers and types of packages, such as drums, boxes, jerricans, etc., being used to transport hazardous materials by all modes of transportation.

Shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the DOT shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies. The additional information would aid

emergency responders by more clearly identifying the hazard.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 250,000.

Total Annual Responses: 6,337,500.

Total Annual Burden Hours: 17,604.

Frequency of Collection: On occasion.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2015–09896 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA 2015–0004]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: On February 4, 2015, in accordance with the Paperwork Reduction Act of 1995, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice in the **Federal Register** (80 FR 6172) inviting comments on an information collection titled ''Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting'' identified by Office of Management and Budget (OMB) control number 2137–0047. This information collection will be expiring on July 31, 2015. PHMSA will request an extension with a minor revision for this information collection.

During the 60-day comment period, PHMSA received no comments in response to this collection. PHMSA is publishing this notice to provide the public with an additional 30 days to comment on the renewal of this information collection and announce that the information collection will be submitted to OMB for approval.

DATES: Interested persons are invited to submit comments on or before May 29, 2015 to be assured of consideration.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2015–0004 by any of the following methods:

- *Fax:* 1–202–395–5806.
- *Mail:* Office of Information and Regulatory Affairs, Records Management Center, Room 10102 NEOB, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer for the U.S. Department of Transportation/PHMSA.
- *Email:* Office of Information and Regulatory Affairs, OMB, at the following email address: *OIRA_Submission@omb.eop.gov*.

Requests for a copy of the Information Collection should be directed to Cameron Satterthwaite by telephone at 202–366–1319, by fax at 202–366–4566, by email at *cameron.satterthwaite@dot.gov,* or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by email at *angela.dow@dot.gov,* by fax at 202–366–4566, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1320.8(d), title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for minor revision and extension approval. The information collection expires July 31, 2015, and is identified under OMB Control No. 2137–0047, titled: ''Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.'' This information collection addresses general recordkeeping and accident reporting requirements for hazardous liquid pipeline operators under 49 CFR part 195. The minor revision, as more fully described in the February notice, simplifies the instructions for reporting the amount of product released when completing form PHMSA F 7000–1 ACCIDENT REPORT—HAZARDOUS LIQUID PIPELINE SYSTEMS. This proposed revision to the instructions will not increase the hourly burden estimate for this information collection.

B. Summary of Comments Received

During the 60-day comment period, PHMSA received no comments on this information collection.

C. Summary of Impacted Collection

The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Type of request; (4) Abstract of the information collection activity; (5) Description of affected public; (6) Estimate of total annual reporting and recordkeeping burden; and (7) Frequency of collection. PHMSA will request a three-year term of approval for this information collection activity. PHMSA requests comments on the following information collection:

Title: Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.

OMB Control Number: 2137–0047.

Current Expiration Date: 7/31/2015.

Type of Request: Revision.

Abstract: This information collection covers recordkeeping and accident reporting by hazardous liquid pipeline operators who are subject to 49 CFR part 195. Section 195.50 specifies the definition of an ''accident'' and the reporting criteria for submitting a Hazardous Liquid Accident Report (form PHMSA F7000–1) is detailed in § 195.54. PHMSA is proposing to revise the form PHMSA F7000–1 instructions for editorial and clarification purposes.

Affected Public: Hazardous liquid pipeline operators.

Annual Reporting and Recordkeeping Burden:

Annual Responses: 897.

Annual Burden Hours: 52,429.

Frequency of collection: On Occasion.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on April 22, 2015.

Alan K. Mayberry,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2015–09804 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2015–0076]

Agency Information Collection Activities: Request for Comments; Clearance of a New Information Collection(s): U.S. Department of Transportation, Individual Complaint of Employment Discrimination Form

AGENCY: Office of the Secretary, U.S. Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), this notice announces the U.S. Department of Transportation's (DOT) intention to request the Office of Management and Budget's (OMB) approval for the utilization of the Individual Complaint of Employment Discrimination form when processing Equal Employment Opportunity (EEO) discrimination complaints filed by applicants for employment with DOT. The OMB approved the form in 2009 with its renewal required by September 30, 2012. Subsequently, DOT was given approval of the form until August 31, 2014. The renewal period then lapsed; therefore, the form expired.

DATES: Comments on this notice must be received by June 29, 2015.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2015–0076] by any of the following methods:

- *Fax:* 202–493–2064.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name (Office of the Secretary, DOT) and docket number for this rulemaking. You should provide two copies of your comments if you submit them by mail or hand delivery. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided, and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://DocketsInfo.dot.gov.*

Docket: For Internet access to the docket to read background documents and comments received, go to *www.regulations.gov.* Background documents and comments received may also be viewed at DOT, 1200 New Jersey Avenue SE., Docket Operations, West Building, Room W12–140, Washington, DC 25090, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tami L. Wright, Associate Director, Compliance Operations Division (S–34), Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–9370 or (TTY) 202–366–0663.

SUPPLEMENTARY INFORMATION:

OMB Control Number: XXXX—NEW.

Title: Individual Compliant of Employment Discrimination Form.

Form Numbers: None.

Type of Review: OMB Approval.

Abstract: The DOT will utilize the form to collect information necessary to process EEO discrimination complaints filed by individuals who are not Federal employees and are applicants for employment with the Department. These complaints are processed in accordance with the U.S. Equal Employment Opportunity Commission's regulations, Title 29, Code of Federal Regulations, Part 1614, as amended. The DOT will use the form to: (a) Request requisite information from the applicant for processing his/her EEO discrimination complaint; and (b) obtain information to identify an individual or his or her attorney or other representative, if appropriate. An applicant's filing of an EEO discrimination complaint is solely voluntary. The DOT estimates that it takes an applicant approximately one hour to complete the form.

Respondents: Job applicants filing EEO discrimination complaints.

Estimated Number of Respondents: 10 per year.

Estimated Total Burden on Respondents: 10 hours per year.

Comments Are Invited on: (a) Whether the proposed collection of information is reasonable for the proper performance of the EEO functions of the Department, and (b) the accuracy of the Department's estimate of the burden of the proposed information collection. All responses to the notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on April 22, 2015.

Mary Whigham Jones,

Deputy Director, Departmental Office of Civil Rights.

[FR Doc. 2015–09992 Filed 4–28–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Community Development Advisory Board (the ''Advisory Board''), which provides advice to the Director of the Community Development Financial Institutions Fund (CDFI Fund).

DATES: The next meeting of the Advisory Board will be held from 9 a.m. to 4 p.m. Eastern Daylight Time on Wednesday, May 20, 2015.

ADDRESSES: The Advisory Board meeting will be held in the Cash Room at the U.S. Department of the Treasury located at 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Bill Luecht, Manager, Office of Legislative and External Affairs, CDFI Fund, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 653–0322 (this is not a toll free number) or *AdvisoryBoard@cdfi.treas.gov.* Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the CDFI Fund (who has been delegated the authority to administer the CDFI Fund) on the policies regarding the activities of the CDFI Fund. The Advisory Board does not advise the CDFI Fund on approving

or declining any particular application for monetary or non-monetary awards. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and therefore regulatory impact analysis is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Bill Luecht, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the next meeting of the Advisory Board, which will be open to the public, will be held in the Cash Room at the U.S. Department of the Treasury located at 1500 Pennsylvania Avenue NW., Washington, DC 20220, from 9 a.m. to 4 p.m. Eastern Daylight Time on Wednesday, May 20, 2015. The room will accommodate up to 50 members of the public on a first-come, first-served basis.

Because the meeting will be held in a secured federal building, members of the public who desire to attend the meeting must register in advance. The link to the online registration system can be found in the meeting announcement found at the top of *www.cdfifund.gov/cdab.* The registration deadline is 11:59 p.m. Eastern Daylight time on May 14, 2015. To register, each member of the public must provide the requested personal information. For entry into the building on the date of the meeting, each attendee must present his/her government issued ID, such as a driver's license or passport, which includes a photo.

Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Anyone who would like to have the Advisory Board consider a written statement must submit it to the CDFI Fund's Office of Legislative and External Affairs by 5 p.m. Eastern Daylight Time on Thursday, May 7, 2015, by mail to Bill Luecht, Manager, Office of Legislative and External Affairs, CDFI Fund, 1500 Pennsylvania Avenue NW., Washington, DC 20220, or by email at *AdvisoryBoard@cdfi.treas.gov.*

In general, the CDFI Fund will make all statements available in their original format, including any business or personal information provided such names, addresses, email addresses, or telephone numbers, for public inspection and photocopying at the CDFI Fund. The CDFI Fund is open on official business days between the hours of 9 a.m. and 5 p.m. You can make an appointment to inspect statements by emailing *AdvisoryBoard@cdfi.treas.gov.* All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publically available.

The Advisory Board meeting will include a report from the CDFI Fund Director on the activities of the CDFI Fund since the last Advisory Board meeting and on Fiscal Year 2015 priorities.

Authority: 12 U.S.C. 4703.

Dated: April 22, 2015.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2015–09962 Filed 4–28–15; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 13448

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is removing the name of one individual and two entities whose property and interests in property have been unblocked pursuant to Executive Order 13448.

DATES: OFAC's actions described in this notice are effective April 23, 2015.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The list of Specially Designated Nationals and Blocked Persons (SDN List) and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Action

On April 23, 2015, OFAC unblocked the property and interests in property of the following individual and entities pursuant to Executive Order 13448 of October 18, 2007, ''Blocking Property and Prohibiting Certain Transactions Related to Burma.''

Individual:

AUNG, Win (a.k.a. AUNG, Dagon Win; a.k.a. AUNG, U Win); DOB 1953; nationality Burma (individual) [BURMA] (Linked To: DAGON INTERNATIONAL LIMITED; Linked To: DAGON TIMBER LIMITED).

Entities:

DAGON INTERNATIONAL LIMITED (a.k.a. DAGON INTERNATIONAL; a.k.a. DAGON INTERNATIONAL CONSTRUCTION COMPANY), Dagon Centre, 6th Floor, 262–264 Pyay Road, Myayingone, Sanchaung Township, Yangon, Burma [BURMA].

DAGON TIMBER LIMITED (a.k.a. DAGON TIMBER), Dagon Centre, 262–264 Pyay Road, Myaynigone, Yangon, Burma [BURMA].

Dated: April 23, 2015.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–09980 Filed 4–28–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2015 Coin and Chronicles Sets for Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, and Lyndon B. Johnson

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for the 2015 Coin and Chronicles Sets as follows:

Coin and medal sets	Price for each set
2015 Coin and Chronicles Set—Harry S. Truman	$57.95
2015 Coin and Chronicles Set—Dwight D. Eisenhower.	
2015 Coin and Chronicles Set—John F. Kennedy.	
2015 Coin and Chronicles Set—Lyndon B. Johnson.	

FOR FURTHER INFORMATION CONTACT: Mary Lhotsky, Acting Associate Director

for Sales and Marketing; United States Mint; 801 Ninth Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111(a)(2), 5112.

Dated: April 24, 2015.

Richard A. Peterson,

Deputy Director for Manufacturing and Quality, United States Mint.

[FR Doc. 2015–10010 Filed 4–28–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0092]

Agency Information Collection (Rehabilitation Needs Inventory) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 29, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0092'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0092'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Rehabilitation Needs Inventory (RNI), VA Form 28–1902w.

OMB Control Number: 2900–0092.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 28–1902w is mailed to service-connected disabled veterans who submitted an application for vocational rehabilitation benefits. VA will use data collected to determine the types of rehabilitation program the veteran will need.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 29, 2012, at page 31690.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,000 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 60,000.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–09886 Filed 4–28–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0673]

Agency Information Collection (One-VA Identification Verification Card) Activities Under OMB Review

AGENCY: Office of Operations, Security, and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that The Office of Operations, Security, and Preparedness, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and it's expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 29, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0673'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492, or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0673 in any correspondence.''

SUPPLEMENTARY INFORMATION:

Title: Request for One-VA Identification Card.

OMB Control Number: 2900–0673.

Type of Review: Revision of a currently approved collection.

Abstract: VA PIV Enrollment System Portal is use to collect pertinent information from Federal employees, contractors, and affiliates prior to issuing a Department identification credential. VA will use the data collected to personalize, print, and issue a PIV card.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 9, 2014, at page 75864.

Affected Public: Federal government.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 100,000.

By direction of the Secretary.

Crystal Rennie,

Program Analyst, Enterprise Records Service.

[FR Doc. 2015–09885 Filed 4–28–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 80 Wednesday,
No. 82 April 29, 2015

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

National Hazardous Materials Route Registry; Notice

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0022]

National Hazardous Materials Route Registry

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

ACTION: Notice; current listing of designated and restricted routes for hazardous materials

SUMMARY: This notice provides the current National Hazardous Materials Route Registry (NHMRR), which is a listing, as reported by State and Tribal Government routing officials, of all designated and restricted road and highway routes for transportation of highway route controlled quantities (HRCQ) of Class 7 (radioactive) materials (RAM) (HRCQ/RAM) and non-radioactive hazardous materials (NRHMs) transportation. The listing in this notice supersedes the NHMRR published on July 14, 2014, and includes current route limitations and allowances, and information on State and Tribal Government routing agency contacts reported to FMCSA as of March 30, 2015. The notice also responds to comments received on the Agency's Notice and request for comment on this subject published on July 14, 2014.

DATES: *Effective Date:* April 29, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Roxane Oliver, (202) 366–0735, or *Roxane.Oliver@dot.gov,* Hazardous Materials Division, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., E.T., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Electronic Access to the National Hazardous Materials Route Registry

To find the most up-to-date listing of hazmat routes, you may access the NHMRR directly at: *http://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry.* This site is the source of information in this notice and displays Hazardous Materials (HM) route listings that reflect any changes made after the publication date of this notice.

II. Legal Basis for This Action

Section 5112 of 49 U.S.C. paragraphs (a)(2) and (b) permit States and Tribal Governments to designate and limit highway routes over which HM may be transported provided the State or Tribal Government complies with standards prescribed by the Secretary of Transportation (the Secretary) and meets publication requirements in section 5112(c). To establish standards under paragraph (b), the Secretary must consult with the States, and, under section 5112(c), coordinate with the States to publish periodically a list of currently effective HM highway routing designations and restrictions. Subpart C of 49 CFR part 397 sets out the procedural requirements States and Tribal Governments must follow to establish, maintain, or enforce routing designations for the transport of placardable quantities of NRHM. In Subpart D, § 397.103 sets out the requirements for designating preferred routes for HRCQ/RAM shipments as an alternative to, or in addition to Interstate System highways. For HRCQ/RAM shipments, a preferred route is defined as an Interstate Highway for which no alternative route is designated by the State; a route specifically designated by the State; or both. See § 397.103(b). For the definition of NHRM routes, see § 397.65 ''routing designations.''

Under a delegation from the Secretary,[1] FMCSA has authority to implement 49 U.S.C. 5112 and 5125(c). Currently, 49 CFR 397.73 establishes public information and reporting requirements for NRHM,[2] by States or Tribal Governments who are required to furnish information regarding any new or changed routes to FMCSA within 60 days after establishment. Under 49 CFR 397.103, a State routing designation for HRCQ/RAM routes (preferred routes) as an alternative to, or in addition to an Interstate System highway is effective when the authorized routing agency provides FMCSA with written notification, FMCSA acknowledges receipt in writing, and the route is published in FMCSA's National Hazardous Material Route Registry. FMCSA's regulations in 49 CFR part 397 also include other standards and procedures that States and Tribal Governments must follow to establish, maintain, and enforce designations specifying road and highway routes within their jurisdictions over which HRCQ/RAM and NRHM may or may not be transported, and to impose limitations or requirements for transporting these materials over applicable roads and highways. The Office of Management and Budget (OMB) has approved these collections of information under control number 2126–0014, Transportation of Hazardous Materials, Highway Routing.

[1] 49 CFR 1.87(d)(2).

[2] 49 CFR 397.65 defines NRHM as, ''A non-radioactive hazardous material transported by motor vehicle in types and quantities which require placarding, pursuant to Table 1 or 2 of 49 CFR 172.504.''

III. Background and Response to Comments

In 49 CFR part 172, the Pipeline and Hazardous Materials Safety Administration (PHMSA) publishes a list of proper shipping names with corresponding identification numbers for HM that must be used when offering for transportation, or transporting any chemical or product that is a HM, hazardous substance or hazardous waste, as defined in 49 CFR 171.8. PHMSA lists HM in nine Classes, based on the type of substance and hazard, and determines the quantities that require a placard on the vehicle (*e.g.,* truck, railroad car) transporting the substance so that emergency responders can identify the hazard at a distance.

State and Tribal Governments may designate routes for transporting these HM. The States and Tribal Governments may also establish limitations for the use of routes under section 5112 by using the required procedures specified in 49 CFR part 397. Carriers must develop written route plans for transporting HRCQ/RAM, and adhere to the written route plan [§§ 397.71 and 397.101(d)].

The NHMRR provides publicly accessible information concerning designated routes, which are mandatory assigned routes for transporting HM shipments and restricted routes over which such shipments may not be transported. FMCSA last published the NHMRR on July 14, 2014 (79 FR 40844). That listing reflected the Agency's validation through publicly available information of route designations and limitations, using as the starting point a 2008 spreadsheet developed to address requirements of the Implementing Recommendations of the 9/11 Commission Act of 2007. While validating HM route entries, FMCSA identified other information that could either enhance the NHMRR or correct identified issues. (For detailed information, see the July 2014 **Federal Register** document.) The July 2014 notice also sought comment on a new

approach to ordering the routes and presenting the listings table.

Response to Comments

The Agency received five comments on the notice. Two industry organizations the American Trucking Associations (ATA) and the Institute of Makers of Explosives (IME) endorsed the new route order approach and content listing. ATA commended FMCSA for updating the routes with a ''user-friendly planning tool.'' However, ATA encouraged FMCSA to update the NHMRR process to implement the requirements of section 33013 of the Moving Forward for Progress in the 21st Century Act of 2012 (MAP–21) concerning establishing the form, manner, and timetable for State and Tribal Governments to issue and update HM route information. ATA asserted that until FMCSA updates the route registry process, States could not change HM routes and carrier operations could be affected adversely by conflicts between State and Federal officials over which routes to enforce.

IME expressed support for FMCSA's revised ''streamlined approach,'' stating that the new ordering approach was easy to understand and access. IME asserted, however, that the Agency either should use ''preemptive authority'' to compel State and Tribal Governments to update incorrect HM route information, or remove the designations from the NHMRR. Two State Government commenters (Texas and Commonwealth of Virginia Department of Transportation) and one individual citizen offered corrections to contact information, street names, or jurisdictional boundaries.

Regarding ATA's comments on updating the NHMRR process to conform to MAP–21, FMCSA published a Technical Amendments Rule that included provisions to address section 33013 of the statute. [79 FR 59450; October 2, 2014]. Among the amendments was a State reporting requirement to include the name of the agency responsible for HM highway route designations, and another to clarify that any State or Tribal-government-designated route is effective only after publication in the NHMRR. The NHMRR process now conforms to MAP–21.

FMCSA notes that in response to IME's comment on preemption, the Agency does not have preemptive authority to update State routing information. The Agency will continue notifying States concerning their obligations to submit correct and updated HM routing information. However, the applicable statute requires the Agency to update HM route listings in coordination with the States' submissions. A citizen who believes there are errors in these listings, such as the individual who commented on this notice, should contact the State entity responsible for designating and maintaining that State's listings.

The Agency has corrected the listing based on comments received from the State agencies with responsibility for HM route designations. The technical amendments referenced above should result in the maintenance of a current list of State and Tribal agencies and contacts that can provide current information on HM routes. Going forward, these entities can promote carrier and driver compliance by using the new ordering approach to provide clear route descriptions for each HM route. Specifically, State and Tribal entities should consider clearly defining each route, including start and endpoints (*e.g.,* road intersections, mile marker numbers, geographic features, and boundary delineations). An example of clear start and endpoints might be for this Delaware route, ''Interstate 495 from Interstate 95 [southwest of Wilmington, Delaware] to Interstate 95 [northeast of Wilmington, Delaware].'' Entities also should consider providing county and city information for each route, which information is especially important for HM routes that cross jurisdictional boundaries (*e.g.,* ''North Prince of Wales Rd. from Big Salt Lake Rd. [Thorne Bay] north to the Labouchere Bay [Prince of Wales]'' [AK]). Finally, HM route descriptions should include commonly used names for each road to avoid including duplicate descriptions in the NHMRR of the same route (*e.g.,* ''Loop 375/Americas Ave [El Paso] from Border Highway/Loop 375 to Interstate 10'' [TX]).

IV. About the Tables in the National Hazardous Materials Route Registry

As stated above, the only comments FMCSA received on the new route ordering approach and table expressed support for these changes, and the NHMRR published today reflects the same route ordering approach and content presentation as the listing published July 14, 2014. Today's listing also includes additions, changes, and corrections received from four State authorities (Colorado, Ohio, Texas, and Virginia). Any remaining Quality Assurance (QA) issues are noted in the ''FMCSA QA Comment'' column in the NHMMR tables for the applicable jurisdictions.

Note that the following 14 States have no designated or restricted HM routes in the NHMRR: Connecticut, Hawaii, Kansas, Maine, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, South Carolina, Vermont, and Wisconsin. Note, too, that the NHMRR does not include HM route designations and restrictions applicable to lands under the jurisdiction of Federal entities except for National Park Service (NPS) lands in Montana and South Dakota. The listing of HM routes on NPS lands is based on information readily available to FMCSA at the time of publication of this notice and may not be complete.

NPS regulations generally prohibit commercial motor vehicles and traffic in National Parks, including commercial shipments of HM (36 CFR 5.6). However, a park Superintendent may allow commercial motor vehicles in a National Park subject to permits issued by the Superintendent, and according to terms and conditions set in those permits. In the case of an HM shipment, if the Superintendent designates a route for HM shipments, the operator of the motor vehicle must apply for the permit under 36 CFR 1.6. The Superintendent will apply criteria in that provision to make a determination whether such a shipment is permissible, identify routes, and set other terms and conditions. Subject to obtaining the proper permit, current NPS regulations provide conditions for HM shipments along specified routes in Yellowstone (36 CFR 7.13) and Badlands (36 CFR 7.23) National Parks. NPS regulations expressly state the operator's obligation to comply with any State or Federal laws and regulations applicable to transportation of HM, including 49 CFR subtitle B (*i.e.,* parts 100 to 1699). HM motor carriers and drivers should consult the Federal authorities with jurisdiction over Federal lands and activities on those lands for route information.

The NHMRR presents HM route information in up to three tables per State. The three table possibilities are: (1) ''Restricted Routes'' (prohibited routes for specified classes of HM shipments), (2) ''Designated HRCQ/RAM Routes'' (permissible routes tor transporting HRCQ quantities of Class 7 [radioactive] HM shipments), and (3) ''Designated NRHM Routes'' (permissible routes for transporting specified classes of non-radioactive HM shipments). To help users and stakeholders interested in HM transportation operations understand the route ordering approach and table presentation, FMCSA is repeating the description of the NHMRR elements in

today's notice that was provided in the July 14, 2014, notice.

V. Route Ordering Approach

Each listing in the NHMRR includes codes to identify each route designation and each route restriction reported by the State. Designation codes identify the routes along which a driver can or must transport specified HM. Among the designation codes is one for ''preferred routes,'' which is defined in § 397.101(b)(1) [3] and applies to transporting ''a highway route controlled quantity of Class 7 (radioactive) materials.'' Restriction codes identify the routes along which a driver cannot transport specified HM shipments. Table 1 presents information on each restriction and designation code.

TABLE 1—RESTRICTION/DESIGNATION KEY

Restrictions	Designations
0—ALL Hazardous Materials	A—ALL NRHM Hazardous Materials.
1—Class 1—Explosives	B—Class 1—Explosives.
2—Class 2—Gas	I—Poisonous Inhalation Hazard (PIH).
3—Class 3—Flammable	P—*Preferred Route* Class 7—Radioactive.
4—Class 4—Flammable Solid/Combustible.	
5—Class 5—Organic.	
6—Class 6—Poison.	
7—Class 7—Radioactive.	
8—Class 8—Corrosives.	
9—Class 9—Dangerous (Other).	
i—Poisonous Inhalation Hazard (PIH).	

Each HM table is sorted by the ''Route Order'' column to help drivers navigate designated NRHM and HRCQ/RAM routes more easily and avoid restricted routes. At a minimum, each entry in the ''Route Order'' column, includes a capital letter and may contain a combination of capital letters, Arabic numbers, dashes, and decimals that present a ''route order character'' identifying the ordering relationship of each HM route in the table. The following table presents the alphanumeric key for understanding route order characters.

TABLE 2—ROUTE ORDER CHARACTER NAMING APPROACH

Order level	Alphanumeric identifier	Route order character example
1	A, B, C . . . Z, AA, AB.	A
2	1, 2, 3	A1
3	A, B, C	A2A
4	1.0, 2.0, 3.0	A3A–1.0
5	A, B, C	A4A–1.0–A
6	1, 2, 3	A5A–1.0–A1
7	A, B, C	A6A–1.0–A1A
8	1.0, 2.0, 3.0	A7A–1.0–A1A–1.0
9	A, B, C	A8A–1.0–A1A–1.0–A
10	1, 2, 3	A9A–1.0–A1A–1.0–A1

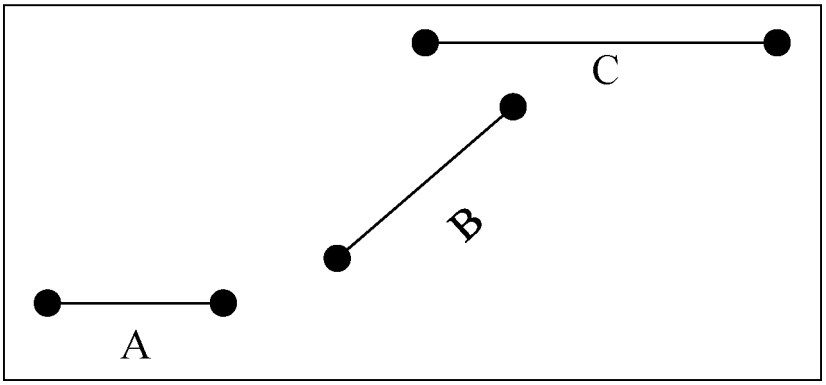
For the majority of states, the route order characters generally progress no further than the fourth order level. Alaska, California, Colorado, Illinois, Louisiana, Rhode Island, and Texas have route order characters beyond level four.

The route ordering approach is based on how distinct HM routes connect (each HM route is a separate row in the HM table). An HM route is a single road segment that does not connect (*i.e.,* does not share a terminus) with any other HM route. In this instance, the route order character will be a capital letter only. The route order character for HM routes begins at the first order level with a capital letter identifier (A, B, C, etc.) for each distinct HM route. If there are more than 26 distinct HM routes in a State (as with California and Texas), the first order level for the 27th HM route will begin with two capital letters and continue in alphabetical sequence for each new HM route (AA, AB, AC, etc.).

For each HM table for a State, the route order character lettering runs directionally from Southwest to Northeast. For example, if the first letter of a route order character is ''A,'' the route is the first HM route encountered beginning from the Southwest section and moving across the State. Figure 1 displays an example of this relationship.

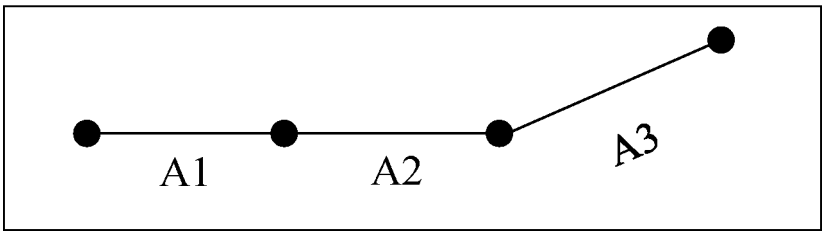
[3] 49 CFR 397.101(b)(1) defines ''preferred route'' as, ''an Interstate System highway for which an alternative route is not designated by a State routing agency; a State-designated route selected by a State routing agency pursuant to § 397.103; or both.''

Figure 1. – Route Order Sequence, Example A



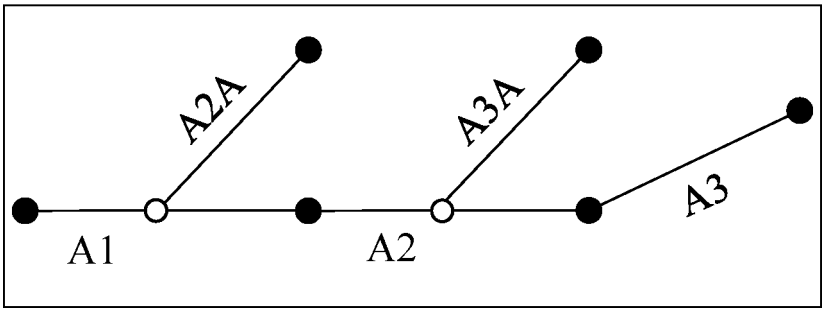
A ''continuous route'' is a sequence of distinct HM routes that connect at the termini. The individual HM routes will have the same first order level capital letter, with a second order level number added for each new, connecting HM route. In a continuous route, the second order level number increases by one from west to east for each connecting HM route (*e.g.,* A1, A2, A3). Figure 2 displays an example of this relationship.

Figure 2. – Route Order Sequence, Example B



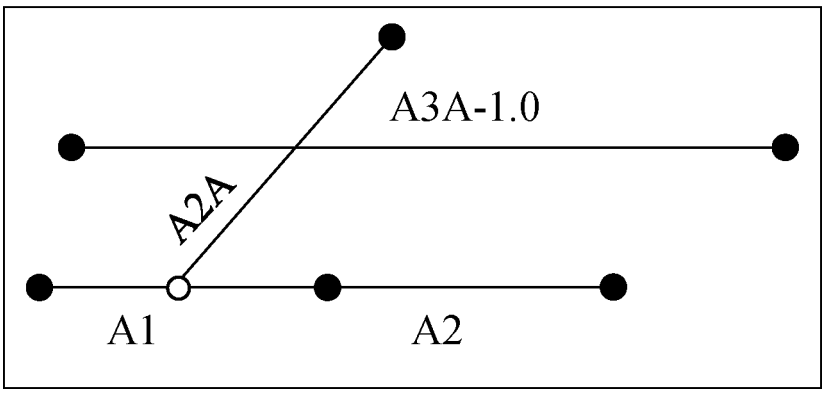
A ''continuous route with junctions'' is a sequence of distinct HM routes that connect and intersect or branch. A junction may either be an intersection where two HM routes cross; or a branch where a new HM route starts at the termini of the previous HM route or at a point along the HM route (see A2A or A3A in Figure 3). For a continuous route with junctions, the route order character begins alphabetically with a first order level capital letter, a second order level number, and at each junction, a third order level alphabetical letter. When an HM route (*e.g.,* A1, A2) junctions, each new HM route will have a capital letter as the third element in the route order character and the second order level numeric character increases by one. In Figure 3, A1, A2, and A3 are continuous HM routes (*i.e.,* connect at the termini) and A2A and A3A junction with HM routes A1 and A2 respectively.

Figure 3. – Route Order Sequence, Example C



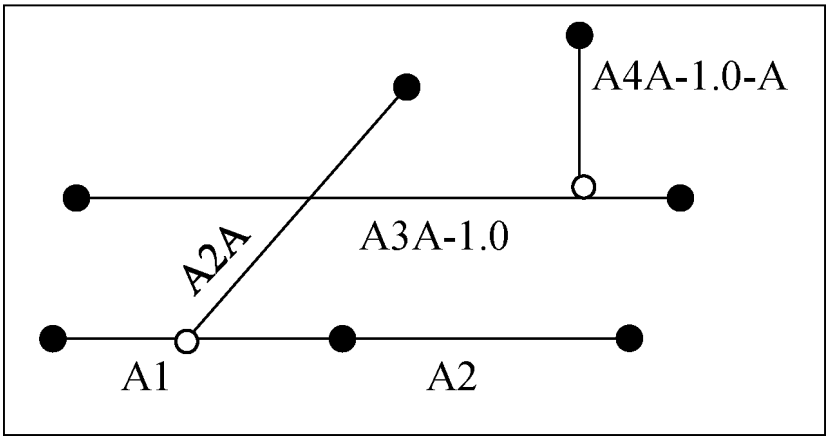
If an HM route (*e.g.,* A2A, A2B) junctions a second time, the sequence will include the fourth order level which begins with a hyphen and number followed by a decimal point and a zero; the second order level number increases by one. In Figure 4, the next junction from A2A is A3A–1.0.

Figure 4. – Route Order Sequence, Example D



If a road segment (*e.g.,* A3A–1.0) junctions a third time the fifth order level begins with a hyphen and an alphabetical letter; the second order level number increases by one. In Figure 5, the next junction from HM route A3A–1.0 is A4A–1.0–A.

Figure 5. – Route Order Sequence, Example E



The pattern of increasing and alternating sequential numbers, letters, dashes, and decimals continues for each new junction from a road segment. For the three HM tables (Designated NRHM Routes, Designated HRCQ/RAM Routes, and Restricted HM Routes), the route ordering sequence begins anew, with the first HM route originating in the Southwest starting with the letter A.

Figures 6, 7 and 8 illustrate the ordering approach for a subset of Designated NRHM Routes in Lorain, Ohio, Columbus, Ohio, and Denver, Colorado. High-resolution images of Figures 6, 7, and 8 also will be available for review in the docket.

The regulatory process that States must follow for route designations and limitations is provided in 49 CFR part 397. FMCSA continues to seek comment from the States of Alaska and California, and the District of Columbia about the route quality assurance issues identified in the tables as ''FMCSA QA Comment.''

Issued on: April 21, 2015.

T.F. Scott Darling, III,

Chief Counsel.

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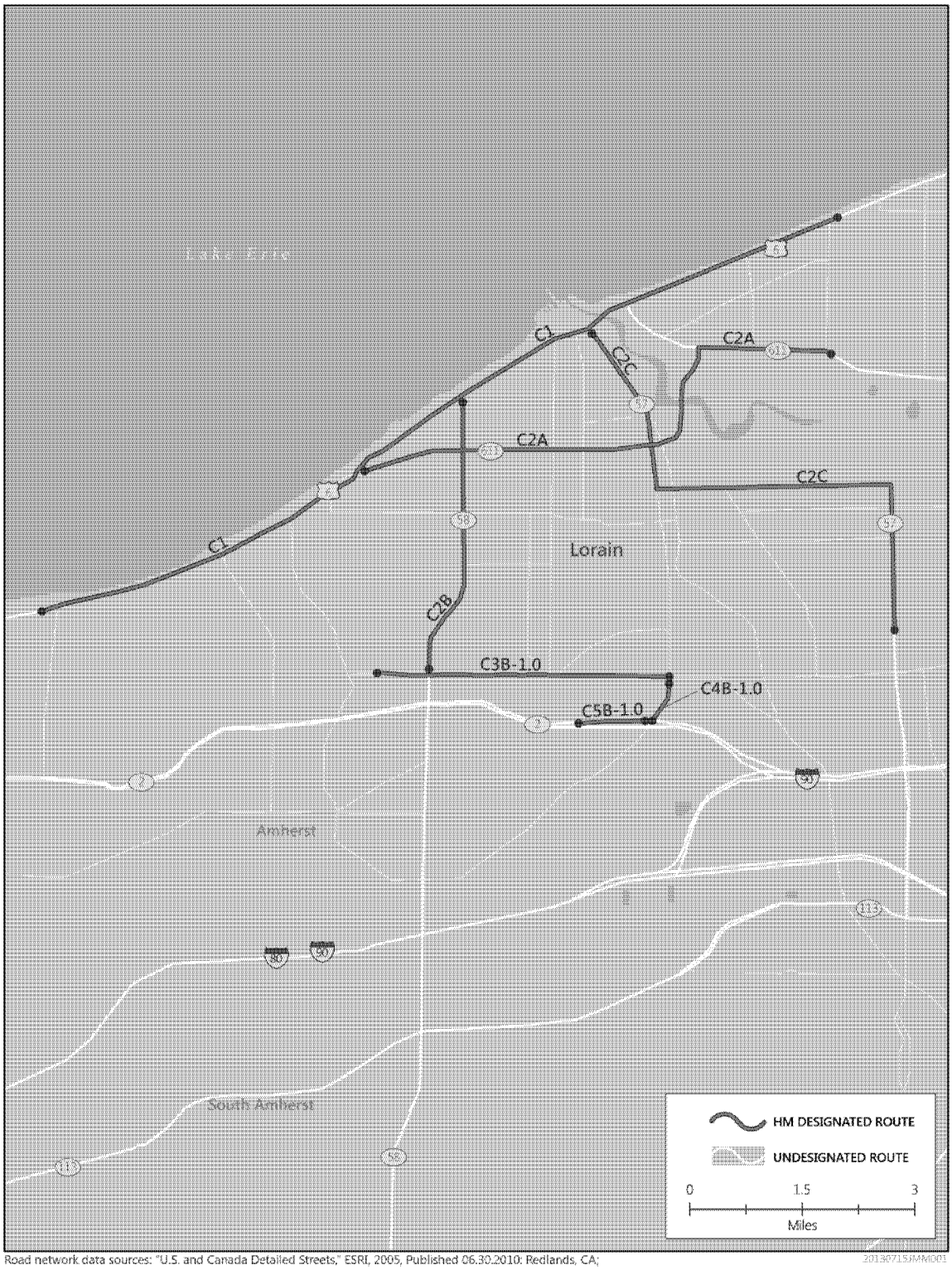
Figure 6. – Select Designated NRHM Routes in Lorain, Ohio [See Table 85]



Road network data sources: "U.S. and Canada Detailed Streets," ESRI, 2005, Published 06.30.2010: Redlands, CA; "U.S. Major Highways" and "U.S. Highways," Census 2000-2002TIGER Line files, ESRI, 2000-2002: Redlands, CA.

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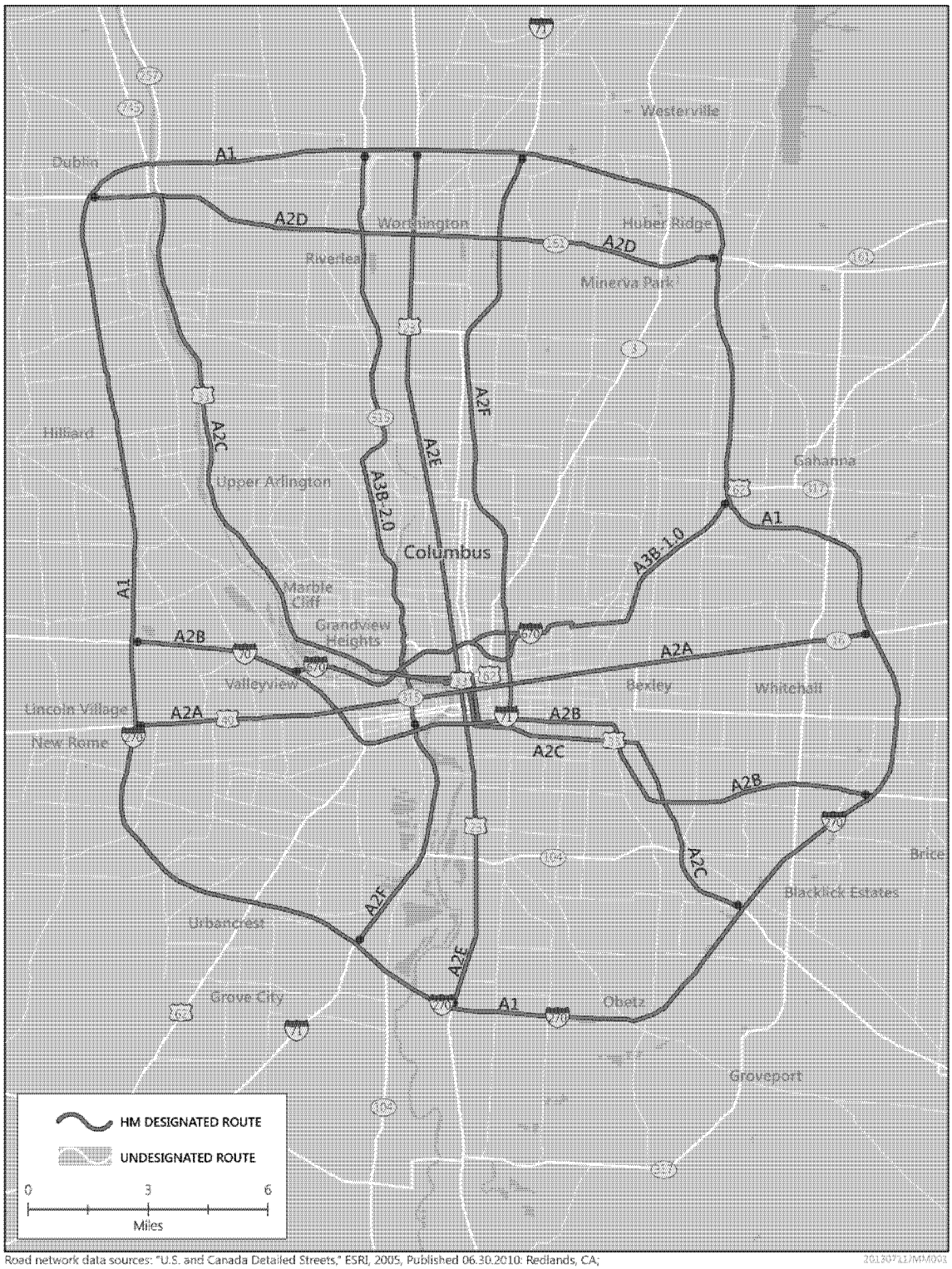
Figure 7. – Select Designated NRHM Routes in Columbus, Ohio [See Table 85]



Road network data sources: "U.S. and Canada Detailed Streets," ESRI, 2005, Published 06.30.2010: Redlands, CA;
"U.S. Major Highways" and "U.S. Highways," Census 2000-2002TIGER Line files, ESRI, 2000-2002: Redlands, CA.

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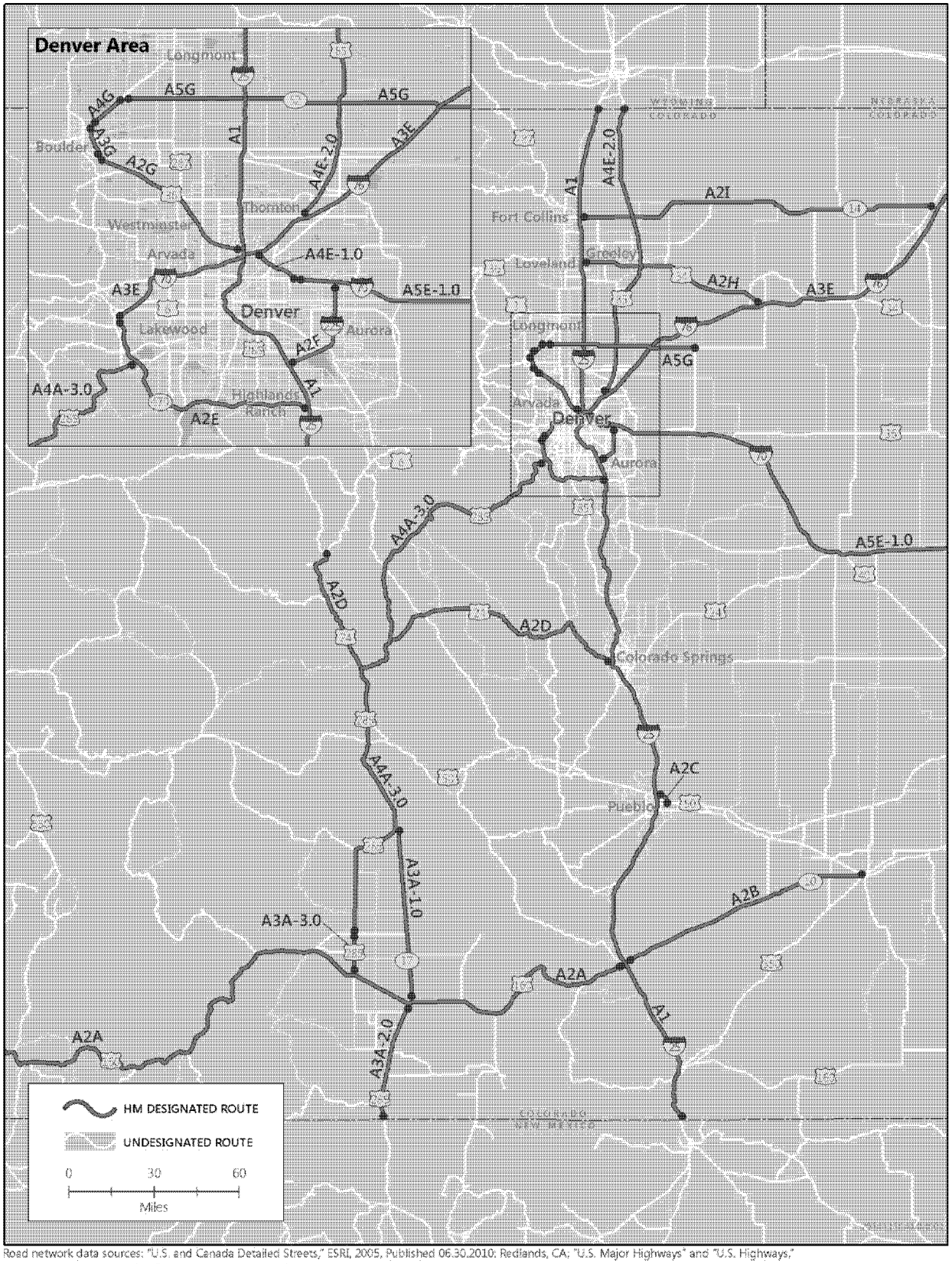
Figure 8. – Select Designated NRHM Routes in Colorado [See Table 22]



Road network data sources: "U.S. and Canada Detailed Streets," ESRI, 2005, Published 06.30.2010: Redlands, CA; "U.S. Major Highways" and "U.S. Highways," Census 2000-2002TIGER Line files, ESRI, 2000-2002: Redlands, CA.

VI. National Hazardous Materials Route Registry

TABLE 3. – State: Alabama

State Agency:	AL DOT	**FMCSA:**	AL FMCSA Field Office
POC:	Randy Braden	**FMCSA POC:**	AL Motor Carrier Division Administrator
Address:	1409 Coliseum Blvd. Montgomery, AL 36130	**Address:**	520 Cotton Gin Rd. Montgomery, AL 36117
Phone:	(334) 242-6474	**Phone:**	(334) 209-4954
Fax:	(334) 242-6378	**Fax:**	(334) 290-4944
Web Address:	www.dot.state.al.us		

TABLE 4. – ALABAMA – RESTRICTED HM ROUTES

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/07/94	A	Wallace Twin Tunnels [I-10 & US 90 in Mobile] [A signed detour is in place to direct traffic along Water St., US 43, and Alt US 90. Traffic will pass over the Mobile River using the Cochrane Bridge.]	Mobile		0

TABLE 5. – Alabama – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
08/26/96	A1	Interstate 10 from Mobile City Limits to Exit 26B [Water St] [Eastbound Traffic: To avoid the downtown area, exit on I-65 North]	Mobile		P
08/26/96	A2A	Interstate 65 from Interstate 10 to Interstate 165 [A route for trucks wishing to by-pass the downtown area.]	Mobile		P
08/26/96	A2B	Water St. [Mobile] from Interstate 10 [exit 26B] to Interstate 165	Mobile		P

TABLE 5. – Alabama – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
08/26/96	A3A	Interstate 65 from Mobile City Limits to Interstate 165	Mobile		P
08/26/96	A3B	Interstate 165 from Water St. [Mobile] to Bay Bridge Rd. exit [Mobile]	Mobile		P
08/26/96	A4B	Bay Bridge Rd. [Mobile] from Interstate 165 to Battleship Parkway [over Africa Town Cochran Bridge] [Westbound Traffic: Head south on I-165; To by-pass the downtown area, head north on I-165.]	Mobile		P
08/26/96	A5B	Battleship Parkway [Mobile] from Bay Bridge Rd. [Mobile] to Interstate 10 [exit 27]	Mobile		P
08/26/96	A6B	Interstate 10 from Mobile City Limits to Exit 27	Mobile		P
09/27/93	B	Interstate 459 from Interstate 20/I-59 [Northeast of Birmingham] to Interstate 20/I-59 [Southwest of Birmingham] [This route should be used in lieu of I-20/I-50 in the Birmingham area, Jefferson county.]	Birmingham	Jefferson	P

TABLE 6. – Alabama – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
11/07/94	A	US 43/Alt US 90 from State 16/US 90 or I-10 to State 16/US 90 or I-10 [Alternate route for Wallace Twin Tunnels, Mobile County.]	Mobile		A

TABLE 7. – State: Alaska

State Agency:	AK DOT	**FMCSA:**	AK FMCSA Field Office
POC:	Sgt. Daniel Byrd	**FMCSA POC:**	AK Motor Carrier Division Administrator
Address:	Transportation & Public Facilities 12050 Industry Way #0-6 MS-2540 Anchorage, AK 99515	**Address:**	Frontier Building, Suite 260 3601 "C" Street Anchorage, AK 99503
Phone:	(907) 365-1207	**Phone:**	(907) 271-4068
Fax:	(907) 586- 8365	**Fax:**	(907) 271-4069
Web Address:	www.dot.state.ak.us		

TABLE 8. – Alaska – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
11/01/05	A1	Pasagshak Rd. from Chiniak Highway south to end of road	Kodiak	A	
11/01/05	A2	Chiniak Highway from West Rezanof Dr. to Pasagshak Rd.	Kodiak	A	
11/01/05	A3	West Rezanof Dr. from Marine Way to Chiniak Highway	Kodiak	A	
11/01/05	A4	Marine Way from ocean to West Rezanof Dr.	Kodiak	A	
11/01/05	A4A	Airport Terminal Rd. from Rezanof Dr. south to end of road	Kodiak	A	
11/01/05	B1	Kachemak Bay Dr. from Sterling Highway/Homer Spit Rd. to East End Rd.	Homer	A	
11/01/05	B2	Sterling Highway from Seward Highway to Homer Spit Rd.	Moose Pass and Homer	A	
11/01/05	B3A	K-Beach Rd. from Bridge Access Rd. to Sterling Highway	Kenai	A	
11/01/05	B3B	Seward Highway from Gambell/Ingra split to Railway Ave.	Anchorage and Seward	A	
11/01/05	B4A	Bridge Access Rd. from Kenai Spur Highway to K-Beach Rd."	Kenai	A	

TABLE 8. – Alaska – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
11/01/05	B4B	Gambell St. from Third Ave. to Seward Highway	Anchorage	A	
11/01/05	B4B	Ingra St. from Third Ave. to Seward Highway	Anchorage	A	
11/01/05	B4B-1.0	Nash Rd. from Seward Highway to Morris Ave.	Seward	A	
11/01/05	B4B-2.0	O'Malley Rd. from Minnesota Dr. to Seward Highway	Anchorage	A	
11/01/05	B5A-1.0	Kenai Spur Highway from Beach Bay Rd. along coast to Marathon Rd.	Kenai	A	
11/01/05	B5B-2.0	Minnesota Drive from Tudor Rd. to O'Malley Rd.	Anchorage	A	
11/01/05	B5B-3.0	Third Ave. from the ocean to Reeve Blvd.	Anchorage	A	
11/01/05	B6A-1.0-A	Nikishka Beach Rd. from Dock Gate Rd. to Kenai Spur Highway	Kenai	A	
11/01/05	B6B-2.0	Tudor Road from Muldoon Rd. to Minnesota Drive	Anchorage	A	
11/01/05	B6B-2.0-A	Raspberry Road from the ocean to Minnesota Drive	Anchorage	A	
11/01/05	B6B-3.0-A	Reeve Blvd. from Post Rd. to 5th Ave.	Anchorage	A	
11/01/05	B7B-2.0	Muldoon Road from Glenn Highway to Tudor Rd.	Anchorage	A	
11/01/05	B7B-3.0-A	Post Rd. from Whitney Rd. to Reeve Blvd.	Anchorage	A	
11/01/05	B8B-2.0-B	Glenn Highway from 5th Ave. to Richardson Highway	Anchorage and Glenallen	A	

TABLE 8. – Alaska – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
11/01/05	B8B-3.0-A	Whitney Rd. from Ocean Dock Rd. to Post Rd.	Anchorage	A	
11/01/05	B9B-2.0-B1	Artillery Rd. from Mausel St. to Artillery Rd./Glenn Highway overpass	Eagle River	A	
11/01/05	B9B-2.0-B2	George Parks Highway from Glenn Highway northwest to Richardson Highway	Fairbanks and Wasilla	A	
11/01/05	B9B-2.0-B3	Palmer/Wasilla Highway from Glenn Highway to Knik Goose Bay Rd.	Palmer and Wasilla	A	
11/01/05	B9B-2.0-B4	Palmer-Fishhook Rd. from Glenn Highway north to Willow Fishhook Rd.	Palmer	A	
11/01/05	B9B-3.0-A	Ocean Dock Road from the ocean to Whitney Rd.	Anchorage	A	
11/01/05	B10B-2.0-B2	Richardson Highway from George Parks Highway (Fairbanks) southeast to Meals Ave. (Valdez)	Fairbanks and Valdez	A	
11/01/05	B10B-2.0-B2A	Sheep Creek Rd. from George Parks Highway to Murphy Dome Rd., continuing on Goldstream Rd. to Steese Highway	Fairbanks	A	
11/01/05	B10B-2.0-B2B	Geist Rd. from George Parks Highway to Peger Rd.	Fairbanks	A	
11/01/05	B10B-2.0-B2C	Airport Way from George Parks Highway to Cushman St.	Fairbanks	A	
11/01/05	B10B-2.0-B3	Knik Goose Bay Rd. from Palmer/Wasilla Highway to Point MacKenzie Rd.	Wasilla/ Knik	A	
11/01/05	B11B-2.0-B2B-1.0	Johansen Expressway from Geist Rd. to Steese Expressway/Elliot Highway	Fairbanks	A	

TABLE 8. – Alaska – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
11/01/05	B11B-2.0-B2B-2.0	Peger Rd. from Geist Rd. southward until end of road	Fairbanks	A	
11/01/05	B11B-2.0-B2D	Steese Highway from Richardson Highway (Fairbanks) to end of road (Circle)	Fairbanks and Circle	A	
11/01/05	B11B-2.0-B2E	Badger Rd. from Richardson Highway to Richardson Highway	Fairbanks and the North Pole	A	
11/01/05	B11B-2.0-B2F	Old Richardson Highway from Richardson Highway to Laurance Rd.	North Pole	A	
11/01/05	B11B-2.0-B3	Point McKenzie Rd. from Knik Goose Bay Rd. south to end of road	Port MacKenzie	A	
11/01/05	B12B-2.0-B2B-2.0-A	Van Horn Rd. from Cushman St west to University Ave.	Fairbanks	A	
11/01/05	B12B-2.0-B2D-1.0	Elliott Highway from Steese Highway (Fairbanks) to Airfield Access (Manley Hot Springs)	Fairbanks and Manley Hot Springs	A	
11/01/05	B12B-2.0-B2F	Laurance Rd. from Old Richardson Highway east to end of road	North Pole	A	
11/01/05	C1	South Tongass Highway from North Tongass Highway east to end of road	Ketchikan	A	
11/01/05	C2	North Tongass Highway from South Tongass Highway north to end of road	Ketchikan	A	
11/01/05	D1	Hydaburg Highway from Craig/Klawock/Hollis Highway south to ocean	Hydaburg	A	
11/01/05	D2A	Craig/Klawock/Hollis Highway from Big Salt Lake Rd. east to Hollis Ferry Terminal Rd.	Klawock and Hollis	A	

TABLE 8. – Alaska – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
11/01/05	D3A-1.0	Big Salt Lake Rd. from Thorne Bay Rd. south to Craig/Klawock/Hollis Highway	Klawock	A	
11/01/05	D3A-2.0	Hollis Ferry Terminal Rd. from Craig/Klawock/Hollis Highway to end of road	Hollis	A	
11/01/05	D4A-1.0-A	North Prince of Wales Rd. from Big Salt Lake Rd. (Thorne Bay) north to the Labouchere Bay (Prince of Wales)	Thorne Bay and Prince of Wales	A	
11/01/05	D4A-1.0-B	Thorne Bay Rd. from Big Salt Lake Rd. east to Sandy Beach Rd.	Thorne Bay	A	
11/01/05	E1	Zimovia Highway from Bennett St./Wrangell Avenue south to McCormick Creek Rd	Wrangell	A	
11/01/05	E2	Bennett St. from Airport Rd. to Wrangell Ave.	Wrangell	A	
11/01/05	F1	Mitkof Highway from Nordic Dr. to end of road	Petersburg	A	
11/01/05	F2	Nordic Dr. from ocean to Mitkof Highway	Petersburg	A	
11/01/05	F3A	Haugen Dr. from Sandy Beach Rd. to Nordic Dr.	Petersburg	A	
11/01/05	H1	Halibut Point Rd. along coast to Sawmill Creek Rd.	Sitka	A	
11/01/05	H2	Sawmill Creek Rd. from end of Rd. west to Halibut Point Rd.	Sitka	A	
11/01/05	H3A	Lake St. from Sawmill Creek Rd. to Harbor Dr.	Sitka	A	
11/01/05	H4A	Harbor Drive from Lake St. to Airport Rd.	Sitka	A	

TABLE 8. – Alaska – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
11/01/05	H5A	Airport Rd. from Harbor Dr. to ocean	Sitka	A	
11/01/05	I	Airport Way to and from Garteeni Highway	Hoonah	A	
11/01/05	J	Cannery Rd. from Hoonah Ferry Terminal Rd. to end of road	Hoonah	A	
11/01/05	K	North Douglas Highway along coast to Douglas Highway	Juneau	A	
11/01/05	L1	Thane Rd. from Franklin St. to end of road	Juneau	A	
11/01/05	L2	Egan Dr. from Glacier Highway to Franklin St to Thane Rd.	Juneau	A	
11/01/05	L3	Glacier Highway along coast to Egan Dr.	Juneau	A	
11/01/05	L3A	Channel Dr. from Egan Dr. to Egan Dr.	Juneau	A	
11/01/05	L3B	Yandukin Dr. from Egan Dr. west to Shell Simmons Dr.	Juneau	A	
11/01/05	L4B	Shell Simmons Dr. from Yandukin Dr. to Yandukin Dr.	Juneau	A	
11/01/05	M1	Old Haines Highway/Beach Rd. from Second Ave. east to end of road	Haines	A	
11/01/05	M2A	Haines Highway from the intersection of Main St. to Second Ave.	Haines	A	
11/01/05	M2B	Second Ave. from Union St. to Beach Rd.	Haines	A	
11/01/05	M3A	Haines Highway from Main St. west to US/Canada Border	Haines	A	

TABLE 8. – Alaska – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
11/01/05	M3A-1.0	Union St. from Haines Highway/Lutak Rd./Second Ave to Haines Highway/Main St.	Haines	A	
11/01/05	M4A-1.0-A	Haines Highway/Lutak Rd. from Ferry Terminal Rd. to Haines Highway/Main St.	Haines	A	
11/01/05	M4A-2.0	Airport Rd. from Haines Highway west to Haines Airport	Haines	A	
11/01/05	M5A-1.0-A	Ferry Terminal Rd. from ocean to Haines Highway/Lutak Rd.	Haines	A	
11/01/05	N	Klondike Highway from State St. to US/Canada Border	Skagway	A	
11/01/05	O1	Dangerous River Rd. from ocean to ocean	Yakutat	A	
11/01/05	O2A	Mallott Ave. from Airport Rd. to ocean	Yakutat	A	
11/01/05	O3A	Airport Rd. from Mallott Ave. southeast to airport	Yakutat	A	
11/01/05	TBD	Cushman St. from the Johansen Expressway to Peger Rd.	Fairbanks	A	Unable to confirm route information with state.
11/01/05	TBD	Illinois Street from the Johansen Expressway to Phillips Field Rd.	Fairbanks and the North Pole	A	Unable to confirm route information with state.
11/01/05	TBD	Phillips Field Rd. from Geist Rd. to Illinois St.	Fairbanks and the North Pole	A	Phillips Field Rd. is not in the Alaska GIS database of HM routes. Unable to confirm route information with state.

TABLE 8. – Alaska – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
11/01/05	TBD	Airport Rd. from Keku Rd. north	Kake	A	Unable to confirm route information with state.
11/01/05	TBD	Church Street	Kake	A	Church St. is not in the Alaska GIS database of HM routes. Unable to confirm route information with state.
11/01/05	TBD	Fourth St. from Church St. to Kake Rd.	Kake	A	Church St. and Fourth St. are not in the Alaska GIS database of HM routes. Unable to confirm route information with state.
11/01/05	TBD	Kake Rd. from 4th St. to Keku Rd.	Kake	A	Keku Rd. is the only road in the route description included in the Alaska GIS database of HM routes. Unable to confirm route information with state.
11/01/05	TBD	Keku Rd. from Church St. to Airport Rd.	Kake	A	Church St. is not in the Alaska GIS database of HM routes. Unable to confirm route information with state.

TABLE 8. – Alaska – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
11/01/05	TBD	Silver Spike Rd.	Kake	A	Silver Spike Rd. is not in the Alaska GIS database of HM routes. Unable to confirm route information with state.
11/01/05	TBD	Douglas Highway along coast	Juneau	A	Two distinct route segments appear to comprise Douglas Highway: (1) North Douglas Highway from Douglas Highway roundabout to end of road; and (2) Douglas Highway from Egan/Glacier Highway to end of road Unable to confirm route information with state.
11/01/05	TBD	Marathon Road from Kenai Spur Rd. north	Kenai	A	Marathon Rd. is not in the Alaska GIS database of HM routes. Unable to confirm route information with state.

TABLE 9. – State: Arizona

State Agency:	AZ DOT	**FMCSA:**	AZ FMCSA Field Office
POC:	Mike Manthey	**FMCSA POC:**	AZ Motor Carrier Division Administrator
Address:	206 South 17th Ave. Phoenix, AZ 85007	**Address:**	400 East Van Buren St., Suite 401 Phoenix, AZ 85004
Phone:	(602) 712-8888	**Phone:**	(602) 379-6851
Fax:	(602) 407-3243	**Fax:**	(602) 379-3627
Web Address:	www.azdot.gov		

TABLE 10. – Arizona – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6, 7,8,9,i)
03/27/99	A	Exit Ramp from US 60 [Eastbound] to State 101[Southbound]	0
03/20/99	B	Exit Ramp from US 60 [Westbound] to State 101[Northbound]	0
01/01/90	C	Interstate 10 [Deck Tunnel - Phoenix] from 7th St. exit [Mile Post 144.3] to 7th Ave. exit [Mile Post 146.2] [Interstate 17 is the designated truck route which has been posted as the alternative route for hazmat traffic.]	0
10/16/95	D	State 202 from Mile Post 8.33 [McClintock Exit] to Mile Post 11.07 [Dobson Exit] [Alternate Routes are as follows: 1. McClintock to University to Dobson 2. McClintock to McKellips to SR-101 Note: Freeway ends at SR-101 with temporary lanes to Dobson. Alternative routing may vary with continuing construction.]	0

TABLE 11. – Arizona – Designated NRHM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
01/01/90	A	Interstate 17 from Interstate 10 [west of Deck Tunnel] to Interstate 10 [east of Deck Tunnel]	A

TABLE 12. – State: Arkansas

State Agency:	AR Hwy & Transportation Dept.	**FMCSA:**	AR FMCSA Field Office
POC:	Yolanda Gomillion	**FMCSA**	AR Motor Carrier Division Administrator
Address:	Arkansas Highway Police Div.	**POC:**	Room 2427 Federal Building
	10324 Interstate 30	**Address:**	700 W. Capitol Ave.
	Little Rock, AR 72209		Little Rock, AR 72201
Phone:	(501) 569-2546	**Phone:**	(501) 324-5050
Fax:	(501) 569-4998	**Fax:**	(501) 324-6562
Web Address:	www.arkansashighways.com		

TABLE 13. – Arkansas – Restricted HM routes

Designation Date	Route Order	Route Description	City	Restriction(s) (0,1,2,3,4,5,6, 7,8,9,i)
07/08/92	A1	Interstate 630 [Entire Highway] [Downtown Little Rock. Exception for local delivery.]	Little Rock	0
07/08/92	A2A	Interstate 30 from Interstate 440 to Interstate 40 [in downtown Little Rock] [Exception for local delivery.]	Little Rock	0

TABLE 14. – Arkansas – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
unknown	A1	Interstate 30 from Interstate 440 to Texas [Memphis to Texarkana Route. Use this route in lieu of I-430, I-630 or that portion of I-30 connecting I-40 and I-440]		P
11/28/88	A2	Interstate 440 from Interstate 40 to Interstate 30 [Memphis to Texarkana route Use this route in lieu of I-430, I-630 or that portion of I-30 connecting I-40 and I-440]		P
11/28/88	A3A	Interstate 40 from Tennessee to Oklahoma [Memphis to Fort Smith route]		P

TABLE 15. – State: California

State Agency:	CA Highway Patrol	**FMCSA:**	CA FMCSA Field Office
POC:	Tian-Ting Shih	**FMCSA POC:**	CA Motor Carrier Division Administrator
Address:	Commercial Vehicle Section P.O. Box 942898 Sacramento, CA 94298-0001	**Address:**	1325 J Street, Suite 1540 Sacramento, CA 95814
Phone:	(916) 843-3400	**Phone:**	(916) 930-2760
Fax:	(916) 322-3154	**Fax:**	(916) 930-2778
Web Address:	www.chp.ca.gov		

TABLE 16. – California – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
10/28/92	A	No person shall drive or permit the driving of any vehicle transporting commodities listed in Section 13 CCR 1150 upon any highway not designated by this article. For pickup and delivery not over designated routes, the route selected must be the shortest-distance route from the pickup location to the nearest designated route entry location, and the shortest-distance route to the delivery location from the nearest designated route exit location.			1
01/01/95	B	State 75 [Coronado Toll Bridge] from Mile Post 20.28 to Mile Post R22.26 Junction 5 [San Diego County] No flammables/corrosives or explosives on Coronado Bay Bridge (otherwise route is terminal access)	San Diego	San Diego	1,2,3,4
06/29/00	C	Sepulveda Blvd. [tunnel] from Interstate 105/Imperial Highway to W. Century Blvd. [Restriction for Tank Vehicles]	Los Angeles	Los Angeles	1,2,3,4,5,6,8
10/28/92	D	State 118 from State 232 [Oxnard] to Los Angeles [western county line]			1

TABLE 16. – California – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/01/95	E	State 154 from State 246 [MP 8.11- Santa Ynez] to US 101 [near Los Olivos] No hazardous materials or waste except pickup and delivery (otherwise, from R8.11 to R9.97 is Terminal Access and from R9.97 to 32.29 is California Legal)		Santa Barbara	0
1968	F	Monterey Traffic Underpass from Washington St. to Lighthouse Ave. [Alternate route: Pacific St. to Del Monte Ave.]	Monterey	Monterey	0
03/26/13	G	State 1 Tom Lantos Tunnel (Devil's Slide Tunnel) No explosives (Class 1), flammable gases (Division 2.1), or flammable and combustible liquids (Class 3).	Pacifica	San Mateo	1, 2, 3
01/01/95	H	State 84 from State 238 /Mission Blvd. [MP 10.83 - Fremont] to Interstate 680 [Sunol] Trucks restricted from transporting hazardous materials and waste due to adjacent drinking water source (otherwise, route is Advisory 32)		Alameda	0
02/25/95	I	US 101/Golden Gate Bridge [Bridge escort required. No explosive laden trucks permitted on the bridge between 6:30-9:30 and 16:00-19:00 weekdays]		San Francisco	1
01/01/95	J	Interstate 80 – SF-Oakland Bay Bridge from Mile Post 4.92 [San Francisco] to Mile Post 2.20 [Alameda County] No flammable tank vehicles or explosives on SF-Oakland Bay Bridge (otherwise, route is National Network)	San Francisco		1, 2, 3, 4

TABLE 16. – California – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/01/95	K	State 260 from Atlantic Ave. [MP R0.62-Alameda] to Interstate 880 [MP R1.92- Oakland] [Eastbound Webster St. Tube & Westbound Posey Tube] Trucks restricted from transporting hazardous materials and waste through Webster and Posey Tubes (otherwise, route is California Legal)		Alameda	0
01/01/95	L	State 24 [Caldecott Tunnel] from Mile Post R5.89 [Alameda County] to Mile Post R0.35 [Contra Costa County] [Transportation of an explosive substance, flammable liquid, liquefied petroleum gas, or poisonous gas in a tank truck, trailer, or semi-trailer is allowed through the tunnel only between the hours of 3:00 AM and 5:00 AM.] Otherwise route is National Network.			1, 2, 3
10/28/92	M	Tennessee St. from Mare Island Way to Columbus Way.	Vallejo	Solano	1
01/01/95	N	State 20 from State 29 [MP 8.32 - Upper Lake] to State 53 [MP 31.62 - Clearlake Oaks] [No vehicles transporting hazardous materials or waste due to adjacent waters (otherwise, route is terminal access).]		Lake	0

TABLE 17. – California – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)	FMCSA QA Comment
10/19/94	A	Interstate 5 from Mexican Border [MP 0] to Interstate 805 [MP 1 - San Ysidro]			P	This route will be considered by the California Highway Patrol for updates in a future rulemaking.

TABLE 17. – California – Designated HRCQ/RAM routes

Desig-nation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)	FMCSA QA Comment
10/19/94	B1	Interstate 805 from Interstate 5 [Torrey Pines] to Interstate 5 [San Ysidro]		San Diego	P	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/19/94	B2	Interstate 5 from State 78 [MP 51 - Carlsbad] to Interstate 805 [MP 31- Torrey Pines]			P	
10/19/94	B2A	Interstate 15 from State 163 to Interstate 8	San Diego	San Diego	P	
10/19/94	B2B	Interstate 8 from Arizona to Interstate 5 [San Diego]			P	
10/19/94	B3	Interstate 5 from Interstate 405 [MP 93- Irvine] to State 78 [MP 78 - Carlsbad]			P	
10/19/94	B3A	Interstate 15 from State 60 [Mira Loma] to State 163 [San Diego]			P	
10/19/94	B4	Interstate 5 from Interstate 605 [MP 123 - Santa Fe Springs] to Interstate 405 [MP 93-Irvine]			P	
10/19/94	B4A	Interstate 15 from Nevada border to State 60 [Mira Loma]			P	
10/19/94	B5	Interstate 605 from Interstate 210 [Duarte] to Interstate 5 [Santa Fe Springs]		Los Angeles	P	
10/19/94	B5A-1.0	Interstate 40 from Arizona to Interstate 15 [Barstow]			P	
10/19/94	B6A-1.0	Interstate 10 from Arizona to Interstate 605 [Baldwin Park]			P	
10/19/94	B6A-2.0	Interstate 210 from Interstate 5 [Sylmar] to State 57 [Glendora]		Los Angeles	P	

TABLE 17. – California – Designated HRCQ/RAM routes

Desig-nation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)	FMCSA QA Comment
10/19/94	B7A-2.0	Interstate 5 from Oregon [MP 796] to Interstate 210 [MP 160 - Sylmar]			P	
10/19/94	C1	Interstate 280 from Interstate 680 [in San Jose] to Interstate 380 [in San Francisco]			P	
10/19/94	C2	Interstate 680 from Interstate 80 [Cordelia Junction, Fairfield] to Interstate 280 [San Jose]			P	
10/19/94	D1	Interstate 880 from Interstate 980 [Oakland] to Interstate 238 [San Leandro]		Alameda	P	
10/19/94	D2A	Interstate 980 from Interstate 580 to Interstate 880	Oakland	Alameda	P	
10/19/94	E	Interstate 238 from Interstate 580 [Ashland] to Interstate 880 [San Leandro]		Alameda	P	
10/19/94	F1	Interstate 580 from Interstate 5 [Southwest of Tracy] to Interstate 680 [in Dublin]			P	
10/19/94	F2A	Interstate 205 from Interstate 5 [Lanthrop] to Interstate 580 [Alameda County]"			P	
10/19/94	G	Interstate 80 from Nevada to Interstate 580 [north of Oakland]			P	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92 (B) 04/16/92 (I)	A1	Interstate 5 from Mexican Border [MP 0] to Interstate 805 [MP 1 - San Ysidro]	San Diego	San Diego	B,I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A2	Interstate 805 from Interstate 5 [Torrey Pines] to Interstate 5 [San Ysidro]		San Diego	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
04/16/92	A2	Interstate 805 [San Diego] from SR 163 [San Diego] to Interstate 8 [San Diego]	San Diego	San Diego	I	
10/28/92	A2A	Interstate 5 from Interstate 805 [MP 31 - Torrey Pines] to State 805 [San Ysidro]	San Diego	San Diego	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A3	Interstate 5 from State 78 [MP 51 - Carlsbad] to Interstate 805 [MP 31- Torrey Pines]		San Diego	B	
10/28/92	A3A-1.0	State 75 from Interstate 5 [San Diego] to R. H. Dana Place [Coronado]		San Diego	B	
10/28/92	A3A-2.0	State 15 from State 94 to Interstate 5	San Diego	San Diego	B	
04/16/92	A3A-3.0	Interstate 8 from Arizona to Interstate 805 [San Diego]			I	
10/28/92	A3A-3.0	Interstate 8 from Arizona to end of road [San Diego] at the intersection of Sunset Cliffs Blvd./Nimitz Blvd.			B	
10/28/92	A3B	State 94 from Interstate 5 to Interstate 8	San Diego	San Diego	B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92 (B) 04/16/92 (I)	A4	Interstate 5 from Interstate 405 [MP 93- Irvine] to State 78 [MP 78 - Carlsbad]			B,I	
10/28/92	A4A-1.0	R.H. Dana Place from State 75 to Ocean Blvd.	San Diego	San Diego	B	
10/28/92	A4A-3.0-A	State 163 from Interstate 8 to Interstate 15	San Diego	San Diego	B	
04/16/92	A4A-3.0-A	State 163 from Interstate 15 to Interstate 805	San Diego	San Diego	I	
04/16/92	A4A-3.0-B	Interstate 15 from State 60 [Mira Loma] to State 163 [San Diego]			I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A4A-3.0-B	Interstate 15 from State 91 [Corona] and Interstate 8 [San Diego]			B	
10/28/92	A4A-3.0-C	State 98 from Interstate 8 [MP 88- Ocotillo] to Interstate 8 [MP 144 - Warren H. Brock Reservoir]		Imperial	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92 (B) 04/16/92 (I)	A4A-3.0-D	CR S30/ Forrester Rd. from State 86 [Westmorland] to Interstate 8 [El Centro]		Imperial	B,I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A4B-1.0	State 125 from State 94 to Interstate 8	La Mesa	San Diego	B	
04/16/92	A4C	State 78 from Interstate 5 [Oceanside] to Interstate 15 [Escondido]		San Diego	I	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A5	Interstate 5 from Interstate 605 [MP 123 - Santa Fe Springs] to Interstate 405 [MP 93-Irvine]			B	
10/28/92	A5A-1.0	Ocean Blvd. from R. H. Dana Place to North Island Naval Air Station	Coro-nado	San Diego	B	
10/28/92 (B) 04/16/92 (I)	A5A-3.0-B	Interstate 15 from Nevada border to State 60 [Mira Loma]			B,I	
10/28/92	A5A-3.0-B1	Interstate 215 from Interstate 15 [San Bernardino] to Interstate 15 [Murietta]			B	
10/28/92	A5A-3.0-C1	Railroad Blvd./ River Rd. from State 98 to U.S. Customs Compound [at Mexico]	Cal-exico	Imperial	B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A5A-3.0-C2	State 111 from Interstate 8 [El Centro] to State 98 [Calexico]		Imperial	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92 (B) 04/16/92 (I)	A5A-3.0-D	State 86 [Indio] to CR S30 / Forrester Rd. [Westmorland]			B,I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A5D	State 76 from Interstate 5 [Oceanside] to Interstate 15 [Fallbrook]		San Diego	B	
10/28/92 (B) 04/16/92 (I)	A5E	Interstate 405 from Interstate 5 [North Valley] to Interstate 5 [Irvine]			B,I	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A6	Interstate 5 from Interstate 405 [MP158- North Valley] to Interstate 605 [MP 123- Santa Fe Springs]		Los Angeles	B	
10/28/92	A6A-3.0-B2	US 395 from Oregon to US 6 [Bishop] [NOTE: US 395 enters Nevada and returns into California near Topaz]			B	
10/28/92 (B) 04/16/92 (I)	A6A-3.0-B2	US 395 from US 6 [Bishop] to Interstate 15 [Hesperia] [NOTE: US 395 enters Nevada and returns into California in the mid-eastern section]			B,I	
10/28/92 (B) 04/16/92 (I)	A6A-3.0-B3	Lenwood Rd. from State 58 to Interstate 15		San Bernardino	B,I	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92 (B) 04/16/92 (I)	A6A-3.0-B4	Interstate 40 from Arizona to Interstate 15 [Barstow]			B,I	
10/28/92	A6A-3.0-B5	Fort Irwin Rd. from Interstate 15 to Fort Irwin	Barstow	San Bernardino	B	
10/28/92	A6A-3.0-B6	State 127 from Nevada to Interstate 15 [Baker]			B	
10/28/92	A6D-1.0	CR- S13 from Interstate 15 to State 76	Fall-brook	San Diego	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A6E-1.0	State 55 from Interstate 405 [Costa Mesa] to State 91 [Anaheim]		Orange	B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A6E-2.0	State 22/Garden Grove Freeway from State 1 [Seal Beach] to State 55 [Orange]		Orange	B	
10/28/92	A6E-3.0	Seal Beach Blvd. from Interstate 405 to Electric Ave	Seal Beach	Orange	B	
10/28/92	A6E-4.0	Interstate 605 from Interstate 210 to Interstate 405	Los Angeles	Los Angeles	B	
10/28/92	A6E-5.0	Interstate 105 from Interstate 405 [Hawthorne] to Interstate 605 [Norwalk]		Los Angeles	B	
04/16/92	A6E-6.0	Interstate 10 from Arizona to State 60 [Beaumont]			I	
10/28/92	A6E-6.0	Interstate 10 from Interstate 405 [Los Angeles] to Arizona			B	
04/16/92	A6E-7.0	US 101 from State 34/Lewis Rd. [Camarillo] to Interstate 405 [Sherman Oaks, Los Angeles]			I	
10/28/92	A6E-8.0	State 118 from Interstate 405 [Mission Hills, Los Angeles] to L.A. county line [Chatsworth]	Los Angeles	Los Angeles	B	
10/28/92	A6F	State 57 from Interstate 5 [Orange] to Interstate 210 [Glendora]		Los Angeles	B	
10/28/92 (B) 04/16/92 (I)	A7	Interstate 5 from Interstate 210 [MP 160] to Interstate 405 [MP 158]	Sylmar	Los Angeles	B,I	
10/28/92	A7A-3.0-B2A	State 190 [Olancha] from US 395 to State 127 [Death Valley Junction]			B	
10/28/92	A7A-3.0-B2B	State 136 from US 395 to State 190	Lone Pine	Inyo	B	
10/28/92 (B) 04/16/92 (I)	A7A-3.0-B2C	US 6 from Nevada to US 395 [Bishop]			B,I	
10/28/92	A7A-3.0-B2D	State 167/Pole Line Rd. from Nevada to US 395 [Mono City]			B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A7A-3.0-B4-A	A St. from National Trails Hwy/Historical US-66 to Interstate 40		San Bernardino	B	
10/28/92	A7E-6.0-A	Interstate 110 from Interstate 10 [Pico Union] to State 47 [San Pedro]		Los Angeles	B	
10/28/92	A7E-6.0-B	Interstate 710 from Interstate 10 to Interstate 405	Los Angeles	Los Angeles	B	
10/28/92	A7E-6.0-C	Alabama St. from Interstate 10 [Redlands] to San Bernardino International Airport [San Bernardino]		San Bernardino	B	
10/28/92	A7E-6.0-D	State 62 [Desert Hot Springs] from Interstate 10 to Arizona			B	
10/28/92	A7E-6.0-E	State 177 from State 62 to Interstate 10	Desert Center	Riverside	B	
10/28/92 (B) 04/16/92 (I)	A7E-6.0-F	US 95 from Nevada to Interstate 10 [Blythe]			B,I	
04/16/92	A7E-8.0	State 27/Topanga Canyon Blvd. from State 118 to Chatsworth St.	Chats-worth	Los Angeles	I	
10/28/92	A7G	State 60 from Interstate 5 [Los Angeles] to Interstate 10 [Beaumont]			B	
04/16/92	A7G	State 60 from Interstate 605 [South El Monte] to Interstate 10 [Beaumont]			I	
10/28/92	A7H	State 2 from Interstate 5 to Interstate 210	Los Angeles	Los Angeles	B	
10/28/92	A7I	State 134 from Interstate 5 to Interstate 210	Los Angeles	Los Angeles	B	
10/28/92	A7J	State 118 from Interstate 5 to Interstate 210	Los Angeles	Los Angeles	B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92 (B) 04/16/92 (I)	A8	Interstate 5 from Oregon [MP 796] to Interstate 210 [MP 160 - Sylmar]			B,I	
10/28/92	A8A-3.0-B2E	State 89 from State 49 [Sierraville] to US 395 [Topaz]			B	
10/28/92	A8A-3.0-B2F	CR A3/Standish-Buntingville Rd. from US 395 [Standish] to US 395 [Buntingville]		Lassen	B	
10/28/92	A8A-3.0-B4-A	Daggett-Yermo Rd. from Interstate 15 [Yermo] to National Trails Hwy./Historical US-66		San Bernardino	B	
10/28/92	A8E-6.0-A	State 47 from Interstate 110 to Navy Way	San Pedro	Los Angeles	B	
04/16/92	A8E-6.0-B1	State 91 from Interstate 605 to Interstate 710	Los Angeles	Los Angeles	I	
04/16/92	A8E-6.0-B2	Interstate 710 from Interstate 5 [Commerce] to Port of Long Beach [Long Beach]		Los Angeles	I	
10/28/92	A8E-6.0-C1	W. Lugonia Ave from Alabama St. to Orange St.	Red-lands	San Bernardino	B	
10/28/92	A8E-6.0-D1	Adobe Rd. from Amboy Rd. to State 62	Twentynine Palms	San Bernardino	B	
04/16/92	A8J	State 118 from Interstate 405 [Mission Hills] to State 27 [Chatsworth]		Los Angeles	I	
10/28/92	A8L	Interstate 210 from Interstate 5 [Sylmar] to State 57 [Glendora]		Los Angeles	B	
10/28/92	A9A-3.0-B2E-1.0	State 88 from State 89 [Woodfords] to Nevada		Alpine	B	
10/28/92	A9AA	State 44 from Interstate 5 [Redding] to State 36 [Susanville]		Lassen	B	
10/28/92 (B) 04/16/92 (I)	A9AB	US 97 from Oregon to Interstate 5 [Weed}		Siskiyou	B,I	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A9E-6.0-B1	State 91 from Interstate 605 [Cerritos] to State 215 [Riverside]			B	
04/16/92	A9E-6.0-B1A	Interstate 605 from State 60 [City of Industry] to State 91 [Cerritos]		Los Angeles	I	
10/28/92	A9E-6.0-C1	E. Lugonia Ave./ State 38 from Orange St. to N. Wabash Ave.	Red-lands	San Bernardino	B	
10/28/92	A9E-6.0-D1	Amboy Rd. from National Trails Highway [Amboy] to Adobe Rd. [Twentynine Palms]		San Bernardino	B	
04/16/92	A9M	State 14 from US 395 [Indian Wells] to State 138 [Lancaster]			I	
10/28/92	A9M	State 14 from US 395 [Indian Wells] to Interstate 5 [Santa Clarita]			B	
04/16/92	A9N	State 126 from Interstate 5 [Castaic Junction] to Santa Paula [western boundary]			I	
10/28/92	A9N	State 126 from Interstate 5 [Castaic Junction] to State 118 [Saticoy]			B	
04/16/92	A9O	State 138 from Interstate 5 [Gorman] to State 14 [Lancaster]		Los Angeles	I	
10/28/92	A9O	State 138 from Interstate 5 [Gorman] to Interstate 15 [Cajon Junction]			B	
10/28/92 (B) 04/16/92 (I)	A9P	State 166 from Interstate 5 [Mettler] to US 101/State 166 to E. Main St. [Santa Maria]			B,I	
10/28/92	A9Q	State 99 from State 36 [Red Bluff] to Interstate 5 [MP 217-Mettler]			B	
04/16/92	A9Q	State 99 from State 46 [Famoso] to McFarland [northern city boundary]			I	
10/28/92	A9R	State 223 from Interstate 5 [Bakersfield] to State 58 [Caliente]		Kern	B	
10/28/92	A9S	State 119 from State 99 to Interstate 5	Bakers-field	Kern	B	
10/28/92	A9T	State 140 from State 49 [Mariposa] to Interstate 5 [Gustine]			B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A9U	Kasson Rd. from Interstate 205B/11th St. to Interstate 5	Tracy	San Joaquin	B	
10/28/92	A9V	State 120 from Interstate 5 [Lathrop] to Yosemite National Park			B	
10/28/92	A9W	Twin Cities Rd./ E13 from State 99 [Galt] To Interstate 5 [MP 497- Elk Grove]		Sacramento	B	
10/28/92	A9X	CR E8 [Road 102] from Interstate 5 [Woodland] to State 113 [Knights Landing]		Yolo	B	
10/28/92	A9Y	State 32 from State 36/89 [Mill Creek] to Interstate 5 [Orland]			B	
10/28/92	A9Z	State 36 from Interstate 5 [Red Bluff] to US 395 [Susanville]			B	
10/28/92	A10E-6.0-B1A	State 71 from Interstate 10 [Pomona] to State 91 [Corona]			B	
10/28/92	A10E-6.0-C1	Menton Blvd./State 38 from Crafton Ave. to N. Wabash Ave.	Men-tone	San Bernardino	B	
10/28/92	A10E-6.0-D1A	National Trails Hwy./State 66 from Interstate 40 [Ludlow] to Interstate 40 [Fenner]		San Bernardino	B	
10/28/92	A10N	State 118 from State 126 to State 232	Saticoy	Ventura	B	
10/28/92	A10O-1.0	State 18 from State 138 [Llano] to US 395 [Adelanto]			B	
10/28/92	A10P-1.0	State 33 from Interstate 5 [Tracy] to State 166 [Maricopa]			B	
04/16/92	A10P-2.0	US 101 from Healdsburg [northern city boundary] to State 37 [Novato]		Marin	I	
10/28/92	A10P-2.0	US 101 from Oregon to State 246 [Buellton]		Sonoma	B	
04/16/92	A10P-2.0	US 101 from State 166 [Nipomo] to State 246 [Buellton]			I	

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Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
02/25/95	A10P-2.0	US 101 [Golden Gate Bridge] from Marin/San Francisco [County Line - North End] to Toll Plaza [South End] [Route is restricted from 6:30-9:30 and 16:00-19:00 weekdays. Separate entry is included in table for RESTRICTION.]		San Francisco	B	
10/28/92	A10Q-1.0	State 65 from State 198 [Exeter] to State 99 [Oildale]			B	
10/28/92	A10Q-2.0	State 43 from State 99 [Selma] to State 58 [Rosedale]			B	
10/28/92	A10Q-3.0	W. Jensen Ave./ E. Jensen Ave. from S. Marks Ave. to State 99	Fresno	Fresno	B	
10/28/92	A10Q-4.0	State 145 from State 99 to State 41	Madera	Madera	B	
10/28/92	A10Q-5.0	State 26 from State 99 [Stockton] to State 49 [Mokelumne Hill]			B	
10/28/92	A10Q-6.0	State 88 from State 99 [MP 269 - Stockton] to State 49 [Martell]			B	
10/28/92	A10Q-7.0	State 70 from State 99 [Pleasant Grove] to US 395 [Hallelujah Junction, east of Chilcoot-Vinton]			B	
10/28/92	A10Q-8.0	State 149 from State 99 to State 70	Oroville	Butte	B	
10/28/92	A10T	State 49 from State 70 [Vinton] to State 140 [Mariposa]			B	
10/28/92	A10U	Grant Line Rd./CR-J4 from Byron Rd./CR-J4 to Interstate 205B/11th St.	Tracy	San Joaquin	B	
10/28/92	A10X	State 113 from State 99 [Woodland] to CR E8 / Road 102 [Yuba City]			B	
10/28/92	A10Z-1.0	State 139 from Oregon to State 36 [Susanville]			B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A11E-6.0-C1	Crafton Ave. from Sand Canyon Rd. to Lockheed Propulsion	Mentone	San Bernardino	B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A11N	State 232 from State 118 [Saticoy] to US 101 [Oxnard]		Ventura	B	
10/28/92	A11O-1.0	Bear Valley Rd. from US 395 [Victorville] to State 18 [Apple Valley]		San Bernardino	B	
10/28/92	A11P-1.0	Ahern Rd. from S. Bird Rd. to Interstate 5	Tracy	San Joaquin	B	
04/16/92	A11P-1.0-A	State 58 from State 14 [Mojave] to Interstate 15 [Barstow]			I	
10/28/92	A11P-1.0-A	State 58 from State 33 [McKittrick] to Interstate 15 [Barstow]			B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A11P-1.0-B	State 180 from State 33 [Mendota] to Marks Ave. [Fresno]		Fresno	B	
10/28/92	A11P-1.0-C	State 132 from Interstate 580 [Tracy] to State 49 [Coulterville]			B	
10/28/92	A11P-2.0-A	State 246 from State 1 [Lompoc] to US 101 [Buellton]		Santa Barbara	B	
04/16/92	A11P-2.0-B	State 246 from US 101 [Buellton] to Purisima Rd. [Lompoc]		Santa Barbara	I	
04/16/92	A11P-2.0-C	State 46 from Interstate 5 [Lost Hills] to State 99 [McFarland]		Kern	I	
10/28/92	A11P-2.0-C	State 46 from US 101 [Paso Robles] to State 99 [McFarland]			B	
10/28/92	A11P-2.0-D	CR G18 from CR G14 [Lockwood] to US 101 [Bradley]		Monterey	B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A11P-2.0-E	State 198 from US 101 [San Lucas] to State 99 [Visalia]			B	
10/28/92	A11P-2.0-F	State 25 from US 101 [Gilroy] to State 156 [Hollister]			B	
04/16/92	A11P-2.0-G	State 152/Pacheco Pass Highway from Interstate 5 [Los Banos] to State 101 [Gilroy]			I	
10/28/92	A11P-2.0-G	State 152/Pacheco Pass Highway from US 101 [Gilroy] to State 99 [Fairmead]			B	
10/28/92	A11P-2.0-H	State 85 from Interstate 280 [Cupertino] to US 101 [Mountain View]		Santa Clara	B	
10/28/92	A11P-2.0-I	Interstate 280 from US 1010 [San Francisco] to Interstate 680/US 101 [San Jose]			B	
04/16/92	A11P-2.0-J	Interstate 680 from Interstate 80 [Cordelia Junction, Fairfield] to Interstate 580 [Dublin]			I	
10/28/92	A11P-2.0-J	Interstate 680 [Cordelia Junction, Fairfield] to US 101 [San Jose]			B	
10/28/92	A11P-2.0-K	State 237 from Interstate 680 [Milpitas] to US 101 [Sunnyvale]		Santa Clara	B	
10/28/92	A11P-2.0-L	State 92 from US 101 to Interstate 280	San Mateo	San Mateo	B	
10/28/92	A11P-2.0-M	3rd St. [San Francisco Bay] from US 101 to Cesar Chavez St.	San Francisco		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A11P-2.0-N	State 1 from US 101 [Presidio, San Francisco] to the Tom Lantos Tunnels [north entrance, Pacifica]			B	
10/28/92	A11P-2.0-O	State 1 from US 101 [Leggett, Mendocino County] to US 101 [Manzanita, Marin County]			B	

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10/28/92 (B) 04/16/92 (I)	A11P-2.0-P	State 37 from US 101 [City of Novato] to Interstate 80 [MP 32 City of Vallejo]			B,I	
10/28/92	A11P-2.0-Q	State 299 from US 101 [Arcata] to Nevada			B	
10/28/92	A11P-2.0-R	US 199 from Oregon to US 101 [Crescent City]		Del Norte	B	
10/28/92	A11Q-1.0	State 245 from State 201 [Elderwood] to State 198 [Exeter]		Tulare	B	
10/28/92	A11Q-1.0-A	State 198 from State 65 [Visalia] to the Sequoia National Park		Tulare	B	
10/28/92	A11Q-3.0	S. Marks Ave. from State 180 to W. Jensen Ave.	Fresno	Fresno	B	
10/28/92	A11Q-4.0	State 41 from State 145 [Madera] to Yosemite National Park			B	
10/28/92	A11Q-7.0-A	State 89 from Interstate 5 [Mount Shasta] to State 80/State 70 to State 70 [Blairsden]			B	
10/28/92	A11U	Byron Hwy./CR-J4 from Grant Line Rd. [Tracy] to Byron Hwy./Byron-Bethany Rd./CR-J4 to State 4 [Byron]			B	
10/28/92	A11U-1.0	Interstate 205 from Interstate 5 [Lanthrop] to Interstate 580 [Alameda County]			B	
10/28/92	A11Z-1.0-A	Termo-Grasshopper Rd. from State 139 to US 395	Termo	Lassen	B	
10/28/92	A12E-6.0-C1A	Sand Canyon Rd. from Crafton Ave. to Interstate 10	Red-lands	San Bernardino	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A12N	US 101 from State 232 [Oxnard] to Las Posas Rd [Camarillo]			B	

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10/28/92	A12O-1.0	State 18 from Bear Valley Rd. [Apple Valley] to Old Woman Springs Rd. [Lucerne Valley]		San Bernardino	B	
10/28/92	A12P-1.0	S. Bird Rd. from Interstate 205B/11th St. to Ahern Rd.	Tracy	San Joaquin	B	
10/28/92	A12P-1.0-A1	Old State 58 from State 58 [Hinkley] to Interstate 15 [Barstow]		San Bernardino	B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A12P-1.0-C	Chrisman Rd. from Interstate 205B/11th St. to Interstate 580	Tracy	San Joaquin	B	
10/28/92	A12P-1.0-C1	State 108 from State 132 [Modesto] to US 395 [Sonora Junction]			B	
10/28/92	A12P-2.0-A	State 1 from State 246 [Lompoc] to US 101 [Las Cruces]			B	
10/28/92	A12P-2.0-A1	Mission Gate Rd. from Purisima Rd. to State 246	Lompoc	Santa Barbara	B	
10/28/92 (B) 04/16/92 (I)	A12P-2.0-B	Purisima Rd. from State 246 to State 1	Lompoc	Santa Barbara	B,I	
10/28/92	A12P-2.0-C1	State 41 from State 46 [Cholame] to E. Jensen Ave. [Fresno]			B	
10/28/92	A12P-2.0-D	CR G14/Jolon Rd. from US 101 [King City] to CR G18 [Lockwood]		Monterey	B	
10/28/92	A12P-2.0-J1	Interstate 580 from Interstate 236 [Ashland] to Interstate 680 [Dublin]			B	
10/28/92 (B) 04/16/92 (I)	A12P-2.0-J2	Interstate 580 from Interstate 5 [Southwest of Tracy] to Interstate 680 [in Dublin]			B,I	
04/16/92	A12P-2.0-J3	State 242 from Interstate 680 to State 4	Concord	Contra Costa	I	

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04/16/92	A12P-2.0-J4	State 4 from Interstate 680 [Pacheco] to Loveridge Rd. [Pittsburg]		Contra Costa	I	
10/28/92	A12P-2.0-M1	Evans Ave. [San Francisco Bay] from 3rd St. to Jennings St.	San Francisco		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A12P-2.0-M2	Cargo Way [San Francisco Bay] from 3rd St. to Jennings St.	San Francisco		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A12P-2.0-O1	State 128 from State 1 [Near Albion Mendocino County] to US 101 [Cloverdale Sonoma County]			B	
10/28/92	A12P-2.0-O2	State 20 from State 1 [Fort Bragg] to State 29 [Upper Lake]		Mendocino	B	
10/28/92	A12P-2.0-Q1	State 96 from State 299 [Willow Creek] to Interstate 5 [Yreka]			B	
10/28/92	A12P-2.0-Q2	CR A2/Susanville Rd. from State 299 [Bieber] to State 139 [Adin]		Lassen	B	
10/28/92	A12Q-1.0	State 201 from State 99 [Kingsburg] to State 245 [Elderwood]			B	
10/28/92	A12Q-3.0	N. Marks Ave. from State 99 south to State 180	Fresno	Fresno	B	
10/28/92	A12Q-7.0-A1	State 147 from State 36 [Westwood] to State 89 [Canyondam]			B	
10/28/92	A12U-1.0-A	Mountain House Parkway from Byron Rd. to Interstate 580	Tracy	San Joaquin	B	
10/28/92	A13N	Las Posas Rd. from US 101 [Camarillo] to Naval Base Ventura County [Oxnard]		Ventura	B	

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10/28/92	A13O-1.0	Old Woman Springs Rd. from State 18 to State 247	Lucerne Valley	San Bernardino	B	
10/17/94	A13P-1.0-C	Interstate 205B/11th St. from Chrisman Rd. to Interstate 5	Tracy	San Joaquin	B	
10/28/92	A13P-2.0-B	State 1 from State 166 [Guadalupe] to Purisima Rd. [Lompoc]			B	
04/16/92	A13P-2.0-B2	State 1 from Purisima Rd. to Santa Lucia Canyon Rd.	Lompoc	Santa Barbara	I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A13P-2.0-C1A	Grangeville Blvd. from State 41 to Lemoore Naval Air Station	Le-moore	Kings	B	
10/28/92	A13P-2.0-J1	Interstate 238 from Interstate 580 [Ashland] to Interstate 880 [San Leandro]			B	
10/28/92	A13P-2.0-M1	Hunters Point Blvd. [San Francisco Bay] from Evans Ave. to Innes Ave.	San Fran-cisco		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A13P-2.0-M2	Jennings St. [San Francisco Bay] from Evans Ave. to Cargo Way	San Fran-cisco		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A13P-2.0-O2	State 29 from State 20 [Upper Lake] to State 53 [Clear Lake]		Lake	B	
10/28/92	A13Q-1.0-A	State 63 from American Ave. [Orange Cove] to State 201 [Cutler]		Fresno	B	

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10/28/92	A14N-1.0	E. Hueneme Rd. from S. Las Posas Rd. [Camarillo] to W. Hueneme Rd. to E. Port Hueneme Rd. to end of road at Port Hueneme Harbor [Hueneme]		Ventura	B	
10/28/92	A14N-2.0	State 1 from Hueneme Rd. [Oxnard] to Las Posas Rd. [Camarillo]		Ventura	B	
10/28/92	A14O-1.0	State 247 from Old Woman Springs Rd. [Lucerne Valley] to State 62 [Yucca Valley]		San Bernardino	B	
10/28/92	A14P-2.0-B	State 166/ W. Main St. from Bonita School Rd. [Santa Maria] to State 1 [Guadalupe]		Santa Barbara	B	
10/28/92	A14P-2.0-B1	Santa Lucia Canyon Rd. from State 1 to Lompoc Gate, Vandenberg AFB	Lompoc	Santa Barbara	B	
10/28/92	A14P-2.0-M1	Innes Ave. [San Francisco Bay] from Hunters Point Blvd. to Hunters Pt. Naval Shipyards	San Francisco		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A14P-2.0-O2	State 53 from State 20 [Clearlake Oaks] to State 29 [Lower Lake]		Lake	B	
10/28/92	A14Q-1.0-A	E. American Ave. from Cove Ave. [Squaw Valley] to State 63 [Orange Cove]		Fresno	B	
10/28/92	A15P-2.0-B	Bonita School Rd. from Division St. [Nipomo] to State 166/W. Main St. [Santa Maria]			B	
10/28/92	A15P-2.0-O2	State 20 from State 53 [Clearlake Oaks] to Interstate 80 [MP 166 - Yuba Pass]			B	
10/28/92	A15Q-1.0-A	Cove Rd. from State 180 [Squaw Valley] to American Ave. [Orange Cove].		Fresno	B	
10/28/92	A16P-2.0-B	Division St. from State 1 to Bonita School Rd.	Nipomo	San Luis Obispo	B	

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10/28/92	A16Q-1.0-A	State 180 from McCall Ave [Sanger] to Cove Rd. [west of Squaw Valley]		Fresno	B	
10/28/92	A17P-2.0-B	State 1 from Tom Lantos Tunnel [south entrance, Pacifica] to Division St. [Guadalupe]			B	
10/28/92	A17Q-1.0-A	S. McCall Ave. from E. Jensen Ave. to State 180	Sanger	Fresno	B	
10/28/92	A17Q-1.0-A1	N. Academy Ave. from State 180 [Sanger] to State 168 [Clovis]		Fresno	B	
10/28/92	A18P-2.0-B3	State 68 from State 1 [Monterey] to US 101 [Salinas]			B	
10/28/92	A18P-2.0-B4	State 156 from State 1 [Castroville] to State 152/Pacheco Pass Highway [Hollister]			B	
10/28/92	A18P-2.0-B5	State 183 from State 1 [Castroville] to N. Main St. [Salinas]		Monterey	B	
10/28/92	A18P-2.0-B6	State 17 from Interstate 880/Interstate 280 [San Jose] to State 1 [Santa Cruz]			B	
10/28/92	A18Q-1.0-A	E. Jensen Ave. from S. Chestnut Ave. [Fresno] to S. McCall Ave. [Sanger]		Fresno	B	
10/28/92	A18Q-1.0-A1	State 168 from N. Academy Ave [Clovis] to Huntington Lake Rd./Big Creek Rd. [Lakeshore]			B	
10/28/92	A19P-2.0-B6	Interstate 880 from Interstate 280 [San Jose] to Market St. [Oakland]			B	
10/28/92	A19Q-1.0-A	S. Chestnut Ave. from State 99 to E. Jensen Ave.	Fresno	Fresno	B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A20P-2.0-B6	Oakland Army Base [US Navy Supply Center] from W. Grand Ave. [at Interstate 80] to Market St. [at Interstate 880] [From W. Grand Ave. via Interstate 80 to Maritime St. to Middle Harbor Rd. to 3rd St. to Market St. which connects to Interstate 880]	Oakland	Alameda	B	
10/28/92	A20P-2.0-B6A	Hegenberger Rd. from Interstate 880 to Doolittle Dr./State 61	Oakland	Alameda	B	
10/28/92	A20P-2.0-B6B	Dennison St. from Interstate 880 [Oakland] to Coast Guard Island [Alameda]		Alameda	B	
10/28/92	A20P-2.0-B6C	Interstate 980 from Interstate 580 to Interstate 880	Oakland	Alameda	B	
10/28/92	A21P-2.0-B6	Interstate 80 from Interstate 580 and W. Grand Ave	Oakland	Alameda	B	
10/28/92	A21P-2.0-B6A	State 61 from Webster St. [Alameda] to Hegenberger Rd. [Oakland]		Alameda	B	
10/28/92	A21P-2.0-B6C	Interstate 580 from Interstate 80 to Interstate 980	Oakland	Alameda	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
04/16/92	A22P-2.0-B6	Interstate 80 from Interstate 5 [MP 92 - Sacramento] to State 37 [MP 32 - Vallejo]			I	
10/28/92	A22P-2.0-B6	Interstate 80 from Nevada to Interstate 580 [north of Oakland]			B	
10/28/92	A22P-2.0-B6A	Central Ave. from State 61/Webster St. to Main St.	Alameda	Alameda	B	
10/28/92	A22P-2.0-B6A-1.0	Grand St. from Encinal Ave. to Buena Vista Ave.	Alameda	Alameda	B	
10/28/92	A23P-2.0-B6A	Main St. from Central Ave. to Atlantic Ave.	Alameda	Alameda	B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A23P-2.0-B6D	State 4 from 80 [Hercules] to State 89 [Markleeville]			B	
10/28/92	A23P-2.0-B6E	Interstate 780 from Interstate 80 [Vallejo] to Interstate 680 [Benicia]		Solano	B	
10/28/92	A23P-2.0-B6F	State 12 from Interstate 80 [MP 49 - Fairfield] to State 49 [San Andreas]		Solano	B	
10/28/92 (B) 04/16/92 (I)	A23P-2.0-B6G	Interstate 505 from Interstate 5 [MP 552 - Zamora] to Interstate 80 [MP 61 - Vacaville]			B,I	
10/28/92	A23P-2.0-B6H	CR E7/Pedrick Rd. from Interstate 80 [Dixon] to Interstate 5 [Woodland]			B	
10/28/92 (B) 04/16/92 (I)	A23P-2.0-B6I	Interstate Business 80 from Interstate 80 [west of Sacramento] to US 50/State 99/Interstate Business 80 [east of Sacramento]	Sacramento	Sacramento	B,I	
10/28/92	A23P-2.0-B6J	State 65 from State 70 [Olivehurst] to Interstate 80 [Roseville]			B	
10/28/92	A24P-2.0-B6A	Atlantic Ave. from Main St. to Webster St./State 61	Alameda	Alameda	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A24P-2.0-B6F-1.0	State 113 from Interstate 80 [Dixon] to State 12 [Rio Vista]		Solano	B	
10/28/92	A24P-2.0-B6H-1.0	State 16 from State 20 [Williams] to CR E7/County Road 98/Pedrick Rd. [Woodland]			B	
10/28/92 (B) 04/16/92 (I)	A24P-2.0-B6I-1.0	US 50 from US 50/State 99/Interstate Business 80 [east of Sacramento] to Prairie City Rd [Folsom]		Sacramento	B,I	
10/28/92	A24P-2.0-B6I-2.0	Interstate Business 80 from US 50/State 99 [east of Sacramento] to Interstate 80 [north of Sacramento]	Sacramento	Sacramento	B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
11/16/94	A24P-2.0-B6J-1.0	Old Highway 65 / Lincoln Blvd from State 65 [Lincoln] to Riosa Rd. [Sheridan]		Placer	B	
10/28/92	A25P-2.0-B6A	State 61 from Atlantic Ave. to Buena Vista Ave.	Alameda	Alameda	B	
10/28/92	A25P-2.0-B6I-1.0	US 50 from Prairie City Rd. [Folsom] to Nevada			B	
10/28/92	A25P-2.0-B6I-1.0-A	State 16 from US 50 [Sacramento] to State 49 [Plymouth]			B	
04/16/92	A25P-2.0-B6I-2.0-A	W. El Camino Ave. from Interstate 80 to El Centro Rd.	Sacramento	Sacramento	I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
11/16/94	A25P-2.0-B6J-1.0	Riosa Rd. from State 65 to Old Highway 65/Lincoln Blvd.	Sheridan	Placer	B	
10/28/92	A25P-2.0-B6J-1.0-A	State 193 from State 65 [Lincoln] to Interstate 80 [Newcastle]		Placer	B	
10/28/92	A26P-2.0-B6A	Buena Vista Ave. from Webster St./State 61 to Park St.	Alameda	Alameda	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A27P-2.0-B6A	23rd Ave. from Park St.[Alameda] to Interstate 880 [Oakland]		Alameda	B	

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	A27P-2.0-B6A-1.0	Sherman St. [San Francisco Bay] from Buena Vista Ave. to S.F. Bay [Inner Harbor]	Alameda		B	This route will be considered by the California Highway Patrol for update or removal in a future rulemaking.
10/28/92	A28P-2.0-B6A	Park St. from Buena Vista Ave.[Alameda] to 23rd Ave.[Oakland]		Alameda	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	B	Army St. [San Francisco Bay] from 3rd St. to Pier 80	San Francisco		B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	C1	6th St. [San Francisco Bay] from Channel St. to [southeast]	San Francisco		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	C2	Channel St. from 4th St. to 6th St.	San Francisco		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.

TABLE 18. – California – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B, I,P)	FMCSA QA Comment
10/28/92	C3	4th St. [San Francisco Bay] from 3rd St. to Channel St.	San Francisco		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	D	Berry St. [San Francisco Bay] from 3rd St. to pier	San Francisco		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking

TABLE 19. – State: Colorado

State Agency:	CO State Patrol	**FMCSA:**	CO FMCSA Field Office
POC:	Capt. Josh Downing	**FMCSA POC:**	CO Motor Carrier Division Administrator
Address:	15065 South Golden Rd. Golden, CO 80401	**Address:**	12300 West Dakota Ave., Suite 130 Lakewood, CO 80228
Phone:	(303) 273-1900	**Phone:**	(720) 963-3130
Fax:	(303) 273-1911	**Fax:**	(720) 963-3131
Web Address:	www.colorado.gov/cs/Satellite/StatePatrol-Main/CBON/1251592908196		

TABLE 20. – Colorado – Restricted HM routes

Designation Date	Route Order	Route Description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
12/30/86	A	Interstate 70 from Interstate 25 [at Mile Post 274.039] to State 2 [at Mile Post 276.572]		7
12/30/86	B	Interstate 70 from Utah to US 40 [at Mile Post 261.63]		7

TABLE 21. – Colorado – Designated HRCQ/RAM routes

Desig-nation Date	Route Order	Route Description	City	Desig-nation(s) (A,B,I,P)
04/30/89	A1	Interstate 25 from Wyoming to New Mexico		P
04/30/89	A2A	Interstate 225 from Interstate 70 to Interstate 25		P
04/30/89	A2B	Interstate 76 from Interstate 25 to Nebraska		P
04/30/08	A3A	Interstate 270 [Near Denver] from Interstate 25 to Interstate 70		P
4/30/89	A4A	Interstate 70 from Interstate 270 to Kansas		P

TABLE 22. – Colorado – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
04/30/89	A1	Interstate 25 from Wyoming to New Mexico		A
04/30/89	A2A	US 160 from New Mexico to Interstate 25 [Business Route in Walsenburg South to Exit 49 on I-25]		A
04/30/89	A2B	State 10 from Interstate 25 [in Walsenburg] to US 50 [in La Junta]		A
04/30/89	A2C	State 47 from Interstate 25 to US 50 [State 96]		A
04/30/89	A2D	US 24 from State 91 [at Leadville] to Interstate 25 [in Colorado Springs]		A
04/01/14	A2E	State 470 from Interstate 70 to Interstate 25		A
04/30/89	A2F	Interstate 225 from Interstate 70 to Interstate 25		A
04/30/89	A2G	US 36 from Interstate 25 to State 157		A
04/30/89	A2H	US 34 from Interstate 25 to Interstate 76		A
04/30/89	A2I	State 14 from Interstate 25 to US 6 [in Sterling]		A

TABLE 22. – Colorado – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
04/30/89	A3A-1.0	State 17 from US 285 [near Mineral Hot Springs] to US 160 [near Alamosa]		A
04/30/89	A3A-2.0	US 285 from US 160 [in Alamosa] to New Mexico		A
04/30/89	A3A-3.0	US 285 from State 112 to US 160		A
04/30/89	A3A-4.0	State 112 from US 285 to US 160		A
04/30/89	A3A-5.0	US 550 from US 160 to New Mexico		A
04/30/89	A3A-6.0	US 491 from Utah to New Mexico		A
04/30/89	A3D	State 91 from Interstate 70 to US 24 [near Leadville]		A
04/01/14	A3E	Interstate 76 from Interstate 70 to Nebraska		A
04/30/89	A3G	State 157 from US 36 to State 119		A
04/30/89	A3I	US 6 from State 14 [(Main St.) in Sterling] to Nebraska		A
04/30/89	A3I-1.0	State 71 from Nebraska to State 14		A
04/30/89	A4A-3.0	US 285 from State 470 to State 112		A
04/30/89	A4A-6.0-A	State 141 from US 50 to US 491		A
04/30/89	A4E-1.0	Interstate 270 [Near Denver] from Interstate 70 to Interstate 76		A
04/30/89	A4E-2.0	US 85 from Wyoming to Interstate 76		A
04/30/89	A4G	State 119 from State 157 to State 52		A
04/30/89	A4I-1.0	US 138 from State 113 to US 6 [(Chestnut St.) in Sterling]		A
04/30/89	A5A-6.0-A1	US 50 from State 141 [north junction near Grand Junction] to Kansas		A

TABLE 22. – Colorado – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
04/30/89	A5E-1.0	Interstate 70 from Interstate 270 to Kansas		A
11/21/11	A5F-1.0-A	US 36 from Interstate 70 [in Byers] to Kansas		A
04/30/89	A5G	State 52 from State 119 to State 79		A
04/30/89	A5I-1.0	State 113 from Nebraska to US 138		A
04/30/89	A6A-6.0-A1	State 141 from Interstate 70 [(Business Loop) near Grand Junction] to US 50		A
04/30/89	A6A-6.0-A1A	State 115 from State 83 (also called Academy Blvd.) to US 50		A
04/30/89	A6A-6.0-A1B	State 71 from US 24 [in Limon (west junction)] to US 50 [near Rocky Ford]		A
04/30/89	A6A-6.0-A1C	US 287 from US 40 [in Kit Carson] to Oklahoma		A
04/30/89	A6G	State 79 from State 52 to Interstate 70 [at Bennett]		A
04/30/89	A7A-6.0-A1	Interstate 70 [business loop] from Interstate 70 [east of Grand Junction] to State 141		A
04/30/89	A7A-6.0-A1A	State 83 (also called Academy Blvd.) from US 24 to State 115		A
04/30/89	A7A-6.0-A1B	US 24 [Business Route] from US 24 [on the west side of Limon] to State 71 [west junction]		A
04/30/89	A7A-6.0-A1D-1.0	Maple St. [City of Lamar] from 2nd St. to US 50/287	Lamar	A
04/30/89	A7A-6.0-A1D-2.0	US 40 from Interstate 70 [(Exit 363) in Limon] to Kansas		A
04/30/89	A8A-6.0-A1A	Interstate 70 from Utah to US 6 [at Silverthorne [Loveland Pass]		A
04/30/89	A8A-6.0-A1B	US 24 from State 83 (also called Academy Blvd.) to Interstate 70 [at West Limon (Exit 359)]		A

TABLE 22. – Colorado – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
04/30/89	A8A-6.0-A1D-1.0	2nd St. [City of Lamar] from US 50/385 to Maple St.	Lamar	A
04/30/89	A8A-6.0-A1D-2.0	US 24 [Business Route] from State 71 [east junction in Limon] to Interstate 70 (Exit 363)		A
04/30/89	A8A-6.0-A1D-2.0-A	US 385 from Interstate 76 [in Julesburg] to US 40 [in Cheyenne Wells]		A
04/30/89	A9A-6.0-A1A	US 6 [Loveland Pass] from Interstate 70 [just east of the Eisenhower/Johnson Tunnels] to [just west of the Eisenhower/Johnson Tunnels at Silverthorne]		A
04/30/89	A9A-6.0-A1A-1.0	State 139 from State 64 [in Rangely] to Interstate 70 [near Loma]		A
04/30/89	A9A-6.0-A1A-2.0	US 6 from State 13 [west of Rifle] to Interstate 70 [Exit 87]		A
04/30/89	A9A-6.0-A1A-3.0	State 9 from US 40 [in Kremmling] to Interstate 70 [in Silverthorne]		A
04/30/89	A9A-6.0-A1D-2.0	State 71 from State 14 to US 24 [in Limon (east junction)]"		A
04/30/89	A10A-6.0-A1A	Interstate 70 from US 6 [east of Loveland Pass] to Interstate 25		A
04/30/89	A10A-6.0-A1A-1.0-A	State 64 from US 40 [in Dinosaur] to State 13		A
04/30/89	A10A-6.0-A1A-2.0	State 13 from US 40 [west of Craig] to US 6 [west of Rifle]		A
04/30/89	A10A-6.0-A1D-2.0-A	US 34 from State 71 [west junction] to Nebraska		A
04/30/89	A11A-6.0-A1A-1.0-A1	US 40 from Utah to State 13 [west of Craig]		
04/30/89	A11A-6.0-A1A-2.0-A	1st St. [City of Craig] from State 13 [east] to State 394 [Craig City Limit]	Craig	A
04/30/89	A12A-6.0-A1A-1.0-A1	County 7 [Great Divide Rd.] from US 40 to City Limit [City of Craig (north)]		A

TABLE 22. – Colorado – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
04/30/89	A12A-6.0-A1A-2.0-A	1st. St. [Moffat County Rd. CG 2] from State 394 [Craig City Limit] to US 40 [Runs East from Route 394 to US 40.]		A
04/30/89	A13A-6.0-A1A-1.0-A1	County 7 [(Great Divide Rd.)] from City Limit [City of Craig (north)] to County 183 [in Moffat County]		A
04/30/89	A13A-6.0-A1A-2.0-A	US 40 from First St. [Moffat County Road CG 2] to Interstate 70 [east of Craig]		A
04/30/89	A14A-6.0-A1A-1.0-A1	County 183 [Moffat County] from County 7 (Great Divide Rd.) [Moffat County] to State 13		A
04/30/89	A14A-6.0-A1A-2.0-A1	State 14 from US 40 to State 125		A
04/30/89	A14A-6.0-A1A-2.0-A2	State 125 from Wyoming to US 40 [west of Granby]		A
04/30/89	A15A-6.0-A1A-1.0-A1	State 13 from Wyoming to Moffat County 183 [North of Craig]		A
04/30/89	A15A-6.0-A1A-2.0-A2	State 127 from Wyoming to State 125		A

TABLE 23. – State: Connecticut

State Agency:	CT Dept. of Env. Protection	**FMCSA:**	CT FMCSA Field Office
POC:	Dave Sattler	**FMCSA POC:**	CT Motor Carrier Division Administrator
Address:	79 Elm St. Hartford, CT 06106	**Address:**	628-2 Hebron Ave., Suite 302 Glastonbury, CT 06033
Phone:	(860) 424-3289	**Phone:**	(860) 659-6700
Fax:	(860) 424-4059	**Fax:**	(860) 659-6725
Web Address:	www.ct.gov/dep/site/default.asp		

No designated or restricted routes as of 03/30/2015

TABLE 24. – State: Delaware

State Agency:	DE Emergency Mgmt. Agency	**FMCSA:**	DE FMCSA Field Office
POC:	Kevin Kille	**FMCSA POC:**	DE Motor Carrier Division Administrator
Address:	165 Brick Stone Landing Rd. Smyrna, DE 19977	**Address:**	J. Allen Frear Federal Building 300 South New St., Suite 1105 Dover, DE 19904
Phone:	(302) 659-2237	**Phone:**	(302) 734-8173
Fax:	(302) 659-6855	**Fax:**	(302) 734-5380
Web Address:	dema.delaware.gov/		

TABLE 25. – Delaware – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
08/09/00	A1	Interstate 95 from Maryland to Interstate 495 [southwest of Wilmington]	P
08/09/00	A2	Interstate 495 from Interstate 95 [southwest of Wilmington] to Interstate 95 [northeast of Wilmington]	P
08/09/00	A2A	Interstate 295 from Interstate 95 [Southwest of Wilmington] to New Jersey	P
08/09/00	A3	Interstate 95 from Interstate 495 [Northeast of Wilmington] to Pennsylvania	P

TABLE 26. – State: District of Columbia

State Agency:	DC Dept. of the Environment	**FMCSA:**	DC FMCSA Field Office
POC:	Mary Begin Toxic Substances Division	**FMCSA POC:**	DC Motor Carrier Division Administrator
Address:	1200 First Street, NE Washington, DC 20002	**Address:**	1990 K Street, NW, Suite 510 Washington, DC 20006
Phone:	(202) 481-3838	**Phone:**	(202) 219-3576
Fax:	(202) 481-3770	**Fax:**	(202) 219-3546
Web Address:	green.dc.gov		

TABLE 27. – District of Columbia – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9, i)
03/08/95	A	9th St. Expressway Tunnel from North Portal [at Madison Dr.] to South Portal [south of Independence Ave.]	0
03/08/95	B	Interstate 395 Tunnel from South Portal [south of Independence Ave.] to the most northerly portal [at K St.]	0

TABLE 28. – District of Columbia – Designated NRHM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)	FMCSA QA Comment
03/08/95	A1	Interstate 395 from Virginia to Interstate 695 [vicinity of 2nd and E St., S.W.]	A	
03/08/95	A2	Interstate 695 from Interstate 295 [vicinity of 11th and L St., S.E.] to Interstate 395 [vicinity of 2nd and E St., S.W.]	A	
03/08/95	A3	Interstate 295 from Maryland to Interstate 695 [vicinity of 11th and L St., S.E.]	A	According to Google maps, "Anacostia Freeway" is another name for "Interstate 295." Should both names be included in the route description?
03/08/95	A3	Anacostia Fwy from Interstate 295 [11th St. Bridge] to E. Capitol St.	A	According to Google maps, "Anacostia Freeway" is also called "Interstate 295." This route segment appears to be included in the larger route (see Route Order A3). Should this duplicative route be removed?
03/08/95	B	Kenilworth Ave., N.E. from E. Capitol St. to Maryland	A	According to Google maps, "DC 295" IS another name for "Kenilworth Ave., N.E." Should both names be included in the route description?

TABLE 29. – State: Florida

State Agency:	FL Dept. of Highway Safety & Motor Vehicles	**FMCSA:**	FL FMCSA Field Office
POC:	Artez Lester	**FMCSA POC:**	FL Motor Carrier Division Administrator
Address:	2400 Apalachee Pkwy.	**Address:**	545 John Knox Rd., Room 102
	Tallahassee, FL 32399		Tallahassee, FL 32303
Phone:	(850) 617-2287	**Phone:**	(850) 942-9338
Fax:		**Fax:**	(850) 942-9680
Web Address:	www.flhsmv.gov		

TABLE 30. – Florida – Restricted HM routes

Designation Date	Route Order	Route Description	City	Restriction(s) (1,2,3,4,5,6,7,8,9,i)
02/14/95	A	Tampa central business area [Bounded on the east by Ybor Channel, on the west by the Hillsborough River, and on the north by a line running along Scott Street east to Orange Ave., south to Cass St., east to the Seaboard Cost Line Railroad, northeast to Adamo Drive, and on the south by Garrison Channel. * State-maintained highways other than Florida Ave. and Kennedy Blvd. are exceptions to this restriction *]		0
02/14/95	B1	Kennedy Blvd. [Tampa] from Crosstown Expressway to Hillsborough River [Use Crosstown Expressway to Hyde Park Ave. and Davis Island Exit No. 5 to all points west.]	Tampa	0
02/14/95	B2A	Florida Ave. [Tampa] from Crosstown Expressway to Scott Street [Use Crosstown Expressway to 22nd St. North, thence north along 22nd Street to Interstate 4 to either Interstate 275 or points east.]	Tampa	0

TABLE 31. – State: Georgia

State Agency:	GA Dept. of Public Safety	**FMCSA:**	GA FMCSA Field Office
POC:	Cpt. Bruce Bugg Motor Carrier Compliance Div.	**FMCSA POC:**	GA Motor Carrier Division Administrator
Address:	320 Chester Ave., SE Atlanta, GA 30316	**Address:**	Two Crown Center 1745 Phoenix Blvd., Suite 380 Atlanta, GA 30349
Phone:	(404) 463-3880	**Phone:**	(678) 284-5130
Fax:	(770) 357-8867	**Fax:**	(678) 284-5146
Web Address:	dps.georgia.gov/		

TABLE 32. – Georgia – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
03/14/95	A	Georgia Highway 400 between its origin at I-85 and Exit 2 (Lenox Road / Buckhead Loop), due to a tunnel underneath an office building. The restriction applies to hazardous materials that require placarding.	0

TABLE 33. – State: Hawaii

State Agency:	No Agency Designated	**FMCSA:**	HI FMCSA Field Office
POC:		**FMCSA POC:**	HI Motor Carrier Division Administrator
Address:		**Address:**	300 Ala Moana Blvd. Room 3-239 Box 50226 Honolulu, HI 96850
Phone:		**Phone:**	(808) 541-2790
Fax:		**Fax:**	(808) 541-2702

No designated or restricted routes as of 03/30/2015

TABLE 34. – State: Idaho

State Agency:	ID State Police	**FMCSA:**	ID FMCSA Field Office
POC:	Cpt. Bill Reese	**FMCSA POC:**	ID Motor Carrier Division Administrator
Address:	P.O. Box 700 700 S. Stratford Dr. Meridian, ID 83680	**Address:**	3200 N. Lakcharbor Lane Suite 161 Boise, ID 83703
Phone:	(208) 884-7220	**Phone:**	(208) 334-1842
Fax:	(208) 884-7192	**Fax:**	(208) 334-1046
Web Address:	www.isp.idaho.gov/cvs/index.html		

TABLE 35. – Idaho – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
01/01/85	A	US 95 [northbound] from Oregon to Missile Base Road [US Ecology waste site] Northbound hazardous waste transporters are directed to turn right from US 95 onto Sommer Camp Rd. (STC-3710) to its junction with State 78. Turn right on SH78 to its junction with Missile Base Rd. and follow to the US Ecology waste site.	Mountain Home	Elmore	A
01/01/85	B	Interstate 84 from Exit 99 to Missile Base Rd. [US Ecology waste site] Transporters are to exit at Exit 99 onto I-84 Business Loop (AKA Old Oregon Trail Road & Bennett Road) to its intersection with old US 30 (You will follow I-84B the entire time and go over an overpass. The road names will change). Turn Right and follow Old US 30 and go approximately 3/4 mile to Hamilton Rd. Turn right and follow Hamilton for 3 miles and turn south onto State 51 until its junction with State 78. Turn right on SH78 and continue to Grandview. The US Ecology Waste site is approximately 10.5 miles past Grandview. Exit State 78 onto Missile Base Rd. and follow to US Ecology waste site.	Mountain Home	Elmore	A

TABLE 36. – State: Idaho

State Agency:	Fort Hall Reservation	**FMCSA:**	ID FMCSA Field Office
POC:	Dept. of Public Safety	**FMCSA POC:**	ID Motor Carrier Division Administrator
Address:	P.O. Box 306 Fort Hall, ID 83203	**Address:**	3200 N. Lakeharbor Lane, Suite 161 Boise, ID 83703
Phone:	(208) 237-0137	**Phone:**	(208) 334-1842
Fax:	(208) 237-0049	**Fax:**	(208) 334-1046
Web Address:	www.shoshonebannocktribes.com		

TABLE 37. – Idaho – Designated NRHM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
01/12/95	C	Interstate 15 [within the Fort Hall Reservation] [Designation by Shoshone-Bannock Tribes. Only valid within Fort Hall Reservation.]	A

TABLE 38. – State: Illinois

State Agency:	IL DOT	**FMCSA:**	IL FMCSA Field Office
POC:	Tom Wise Division of Traffic Safety	**FMCSA POC:**	IL Motor Carrier Division Administrator
Address:	1340 North 9th St. P.O. Box 19212 Springfield, IL 62794-9212	**Address:**	3250 Executive Park Dr. Springfield, IL 62703
Phone:	(217) 785-1181	**Phone:**	(217) 492-4608
Fax:	(217) 782-9159	**Fax:**	(217) 492-4986
Web Address:	www.dot.state.il.us		

TABLE 39. – Illinois – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
02/10/86	A1	W. State St. from Meridian Rd. to Kilburn Ave. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A

TABLE 39. – Illinois – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
02/10/86	A2A	Springfield - Riverside St. from W. State St. to Interstate 90 [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A2B	S. Pierpont from W. State St. to Montague Rd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A2C	Kilburn Ave. from Auburn St. to W. State St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A2D	US 20 [Business Route throughout the City of Rockford] [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A3A-1.0	Auburn St. from Springfield St. to Rock River [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A3A-2.0	IL 251 [throughout the City of Rockford] [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A3A-3.0	Forest Hills Rd. from N. Second St. to Riverside Blvd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A3A-4.0	Alpine Rd. from Bypass 20 to Riverside Blvd. [There is a section of Alpine Rd. that is an unmarked state highway but it is on the NHS so it should be OK - Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A

TABLE 39. – Illinois – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
02/10/86	A3A-5.0	Mulford Rd. from Sandy Hollow Rd. to Riverside Blvd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A3B	Montague Rd. from S. Pierpont to Bypass 20 [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A3B-1.0	Preston St. from Tay to S. Pierpont [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A3C-1.0	Whitman St. from N. Second St. to Kilburn Ave. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A3D	First Ave. from Kishwaukee St. to Longwood [Primary Rockford Hazmat route as per City ordinance 1986- 18-0 which amended Chapter 11 with Routing.]	Rockford	Winnebago	A
02/10/86	A4A-1.0-A	N. Main St. from Riverside Blvd. to Auburn St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A4A-2.0-A	College Ave. from Rock River to Kishwaukee St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A4A-2.0-B	Fifteenth Ave. from S. Main St. to Kishwaukee St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A4A-2.0-C	Blackhawk Park from Magnolia St. to Kishwaukee St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A

TABLE 39. – Illinois – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
02/10/86	A4A-2.0-D	Kishwaukee St. from Harrison Ave. to Airport Drive including bypass 20 [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A4A-5.0	Sandy Hollow Rd. from Kishwaukee St. to Mulford Rd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A4B-1.0	Tay from Cedar St. to Preston St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A4B-1.0-A	Central Ave. from Auburn Street to Riverside Blvd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A4D-1.0	Charles St. from East State Street to Alpine Rd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A5A-2.0-A	Morgan St. from S. Main St. to Rock River [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A5A-2.0-B1	Seminary St. from Harrison Ave. Fifteenth Ave. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11, with Article VII, Division 1, Hazardous Materials Routing."	Rockford	Winnebago	A
02/10/86	A5A-5.0-A	20th St. from Sandy Hollow Rd. to 23rd Ave. underpass [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A

TABLE 39. – Illinois – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
02/10/86	A5B-1.0	Cedar St. from S. Main St. to Tay [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A5D-1.0-A	E. State St. from Second St. to Interstate 90 [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A6A-2.0-A	S. Main St. from Morgan St. to Bypass 20 [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A6A-5.0-A	23rd Ave. from 11th St. to 20th St. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A
02/10/86	A7A-2.0-A1	Harrison Ave. from S. Main St. to Mulford Rd. [Primary Rockford Hazmat route as per City ordinance 1986-18-0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.]	Rockford	Winnebago	A

TABLE 40. – State: Indiana

State Agency:	IN DOT	**FMCSA:**	IN FMCSA Field Office
POC:	Commissioner Curtis A. Wilcy	**FMCSA POC:**	IN Motor Carrier Division Administrator
Address:	IN Gov. Center North 100 N. Senate Ave., Room N755 Indianapolis, IN 46204-2249	**Address:**	575 N. Pennsylvania St., Room 261 Indianapolis, IN 46204
Phone:	(317) 232-5526	**Phone:**	(317) 226-7474
Fax:	(317) 232-0238	**Fax:**	(317) 226-5657
Web Address:	www.in.gov/indot		

TABLE 41. – Indiana – Restricted HM routes

Designation Date	Route Order	Route Description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
06/19/89	A1	Interstate 70 [within Indianapolis I-465 beltway]	Indianapolis	0
06/19/89	A2A	Interstate 65 [within Indianapolis I-465 beltway]	Indianapolis	0

TABLE 42. – Indiana – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
06/19/89	A	Interstate 465 [around the city of Indianapolis]	Indianapolis	A

TABLE 43. – State: Iowa

State Agency:	IA DOT, Motor Vehicle Enforcement	**FMCSA:**	IA FMCSA Field Office
POC:	Maj. Lance Evans	**FMCSA POC:**	IA Motor Carrier Division Administrator
Address:	6310 SE Convenience Blvd. Ankeny, IA 50021	**Address:**	105 6th St. Ames, IA 50010
Phone:	(515) 237-3214	**Phone:**	(515) 233-7400
Fax:	(515) 237-3387	**Fax:**	(515) 233-7494
Web Address:	www.iowadot.gov		

TABLE 44. – Iowa – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
07/18/88	A1	Interstate 680 from Nebraska to Interstate 80 [Use I-680 and I-80 in lieu of I-29 in the Council Bluffs area when heading north/south per 49 CFR 397.103(b). Use I-680 in lieu of I-80 in the Council Bluffs area when heading east/west per IA-NE coordination.]	P
07/18/88	A2A	Interstate 29 from Missouri to Interstate 80 [I-80 and I-680 are used in lieu of I-29 in the Council Bluffs area when heading North/South per 49 CFR 397.103(b)]	P
07/18/88	A2B	Interstate 80 from Interstate 29 to Illinois [Use I-280 or I-80 in the Quad cities. Use I-80 in lieu of I-235 in the Des Moines area. Use I-680 in lieu of I-80 in the Council Bluffs area per IA-NE coordination when heading east/west. Use I-80 and I-680 in the Council Bluffs area in lieu of I-29 when heading north/south]	P
07/18/88	A3B-1.0	Interstate 680 from Interstate 80 to Interstate 29 [Used in lieu of I-29 in the Council Bluffs area per 49 CFR 397.103(b)]	P
07/18/88	A3B-2.0	Interstate 35 from Minnesota to Missouri [Stay on I-35/I-80 in lieu of I-235 in the Des Moines area per 49 CFR 397.103(b)]	P
07/18/88	A3B-3.0	Interstate 280 from Interstate 80 to Illinois [Use I-280 or I-80 in Quad cities area.]	P
07/18/88	A4B-1.0	Interstate 29 from Nebraska to Interstate 680 [I-80 and I-680 are used in lieu of I-29 in the Council Bluffs area when heading North/South per 49 CFR 397.103(b)]	P

TABLE 45. – State: Kansas

State Agency:	KS Div. of Emergency Mgmt.	**FMCSA:**	KS FMCSA Field Office
POC:	Harry Heintzelman Technological Hazards Section	**FMCSA POC:**	KS Motor Carrier Division Administrator
Address:	2800 SW Topeka Blvd. Topeka, KS 66611	**Address:**	1303 SW First American Place, Suite 200 Topeka, KS 66604
Phone:	(785) 274-1408	**Phone:**	(785) 271-1260
Fax:	(785) 274-1426	**Fax:**	(877) 547-0378
Web Address:	www.kansastag.gov/kdem		

No designated or restricted routes as of 03/30/2015

TABLE 46. – State: Kentucky

State Agency:	KY Transportation Cabinet	**FMCSA:**	KY FMCSA Field Office
POC:	Brian Bevin	**FMCSA POC:**	KY Motor Carrier Division Administrator
Address:	200 Mero St. Frankfort, KY 40601	**Address:**	330 West Broadway, Room 124 Frankfort, KY 40601
Phone:	(502) 564-9900 x. 4136	**Phone:**	(502) 223-6779
Fax:	(502) 564-4138	**Fax:**	(502) 223-6767
Web Address:	transportation.ky.gov/Pages/default.aspx		

TABLE 47. – Kentucky – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/15/13	A	Interstate 75 from Interstate 275 to Ohio.	0

TABLE 48. – Kentucky – Designated NRHM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
07/15/13	A	Interstate 275 from Interstate 75 to Ohio.	A

TABLE 49. – State: Louisiana

State Agency:	LA State Police	**FMCSA:**	LA FMCSA Field Office
POC:	Sgt. Brad Yates Transportation and Environmental Safety Section	**FMCSA POC:**	LA Motor Carrier Division Administrator
		Address:	5304 Flanders Drive, Suite A Baton Rouge, LA 70808
Address:	P.O. Box 66614 Baton Rouge, LA 70896		(225) 757-7640
Phone:	(225) 925-6113	**Phone:**	(225) 757-7636
Fax:	(225) 925-4048	**Fax:**	
Web Address:	www.lsp.org/tess.html		

TABLE 50. – Louisiana – Restricted HM routes

Desig-nation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
03/01/95	A	Tunnel Boulevard Tunnel [in Terrebonne Parish (Houma)]	0
03/01/95	B	Harvey Tunnel [of Jefferson Parish on US90-B]	0
03/01/95	C	State 73 [In Ascension Parish] from Interstate 10 to State 74 and within 300 yards or less of any building used as a public or private elementary or secondary school except for carriers making local deliveries on this portion of State 73 [R.S. 32:1521 Motor Vehicles - Traffic Regulations]	0
08/01/99	D	No carrier shall transport hazardous materials on any route in Caddo or Bossier Parish within three hundred yards or less of any building used as a public or private elementary or secondary school, except for (1) carriers making local pickups or deliveries, (2) carriers using the route to reach a local pickup or delivery point, (3) carriers traveling to or from their terminal facilities, (4) carriers using the route to reach maintenance or service facilities within the boundaries of the parishes, or (5) on prescribed routes. [R.S. 32:1521.E and F Motor Vehicles -Traffic Regulations] See http://legis.la.gov/lss/lss.asp?doc=88111	0
08/01/99	E	US 171 from State 3132 to US 80 [R.S. 32:1521 Motor Vehicles - Traffic Regulations]	0
08/01/99	F	State 1 from State 526 to Interstate 220 [R.S. 32:1521 Motor Vehicles - Traffic Regulations]	0
08/01/99	G	US 71 from Interstate 220 to Interstate 20 [R.S. 32:1521 Motor Vehicles - Traffic Regulations]	0

TABLE 51. – Louisiana – Designated NRHM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
08/01/99	A1	US 79 from Texas to Interstate 20 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A2A	US 80 from Texas to City of Greenwood [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A2B	Interstate 20 from Texas to Caddo-Bossier [parish boundary] [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A3B	Interstate 20 from Bossier-Caddo [parish boundary] to Bossier-Webster [parish boundary] [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A3B-1.0	State 526 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A3B-2.0	Interstate 220 from Bossier-Caddo [parish boundary] to Interstate 20 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A3B-3.0	State 3132 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A3B-4.0	Interstate 49 from Caddo-DeSoto [parish boundary] to Interstate 20 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B-1.0	State 3 [Benton Road] from Arkansas to Interstate 20 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B-1.0-A	State 1 from Caddo-Red River [parish boundary] to State 526 to State 3132 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B-2.0	US 71 from Bossier-Red River [parish boundary] to Interstate 20 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B-2.0-A	State 1 from Interstate 220 to Arkansas [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B-3.0-A	State 511 [Jimmie Davis Highway] from US 71 to State 3132 [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B-3.0-B	US 171 from Caddo-DeSoto [parish boundary] to State 3132 [R.S. 32:1521 Caddo-Bossier designated route]	A

TABLE 51. – Louisiana – Designated NRHM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
08/01/99	A5B-2.0-A	State 3 from Arkansas to State 3105 [Airline Drive] to US 71 [R.S. 32:1521 Caddo-Bossier designated route	A
08/01/99	A5B-2.0-A1	US 71 from Interstate 220 to Arkansas [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A5B-2.0-A2	State 2 from State 1 to Caddo-Bossier [parish boundary] [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A6B-2.0-A2	State 2 from Caddo-Bossier [parish boundary] to Bossier-Webster [parish boundary] [R.S. 32:1521 Caddo-Bossier designated route]	A

TABLE 52. – State: Maine

State Agency:	ME State Police	**FMCSA:**	ME FMCSA Field Office
POC:	Shawn Currie	**FMCSA POC:**	ME Motor Carrier Division Administrator
Address:	Department of Public Safety 20 State House Station Augusta, ME 04330	**Address:**	Edmund S. Muskie Federal Bldg. 40 Western Ave., Room 411 Augusta, ME 04330
Phone:	(207) 624-8938	**Phone:**	(207) 622-8358
Fax:	(207) 287-5247	**Fax:**	(207) 622-8477
Web Address:	www.maine.gov/dps/msp/		

No designated or restricted routes as of 03/30/2015

TABLE 53. – State: Maryland

State Agency:	MD Trans. Authority Police	**FMCSA:**	MD FMCSA Field Office
POC:	1st Sgt. Joel Layfield	**FMCSA POC:**	MD Motor Carrier Division Administrator
Address:	2301 South Clinton Street		City Crescent Building
	Baltimore, MD 21224	**Address:**	10 S. Howard Street, Suite 2710
Phone:	(410) 575-6955		Baltimore, MD 21201
Fax:	(410) 537-1376	**Phone:**	(410) 962-2889
Web Address:	www.mdta.maryland.gov/Police/policeMain.html	**Fax:**	(410) 962-3916

State agency is responsible for all HM routes listed in Table 55 and Table 56, except for "J.F.K. Memorial Highway [I-95]" and "Interstate 495".

TABLE 54. – State: Maryland

State Agency:	MD State Highway Admin.	**FMCSA:**	MD FMCSA Field Office
POC:	David Czorapinski	**FMCSA POC:**	MD Motor Carrier Division Administrator
Address:	Motor Carrier Division	**Address:**	City Crescent Building
	7491 Connelley Dr.		10 S. Howard Street,
	Hanover, MD 21076		Suite 2710
Phone:	(410) 582-5734		Baltimore, MD 21201
Fax:	(410) 787-2863	**Phone:**	(410) 962-2889
Web Address:	sha.md.gov/Home.aspx	**Fax:**	(410) 962-3916

State agency is only responsible for the following HM routes listed in Table 55 and Table 56: "J.F.K. Memorial Highway [I-95]" and "Interstate 495".

TABLE 55. – Maryland – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/25/80	A	Harry W. Nice Memorial Bridge [US Route 301] [For specific exemptions to these restrictions, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.05)]	1,7
01/25/80	B	William Preston Lane, Jr. Memorial (Bay) Bridge [US 50/301] [For specific exemptions to these restrictions, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.05)]	1,7
01/25/80	C	Francis Scott Key Bridge [State 695] [For specific exemptions to these restrictions, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.05)]	1,7

TABLE 55. – Maryland – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/25/80	D	Baltimore Harbor Tunnel [I-895] [For specific exemptions to this restriction, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.04)]	0
01/25/80	E	Fort McHenry Tunnel [I-95] [For specific exemptions to this restriction, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.04)]	0
01/25/80	F	J.F.K. Memorial Highway [I-95]	1,7
01/25/80	G	Thomas J. Hatem Memorial Bridge [US Route 40] [For specific exemptions to these restrictions, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.05)]	1,7

TABLE 56. – Maryland – Designated NRHM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
08/16/95	A	Interstate 495 [NOTE: Restricts all vehicles carrying hazardous materials to right two lanes.]	A

TABLE 57. – State: Massachusetts

State Agency:	MA DOT	**FMCSA:**	MA FMCSA Field Office
POC:	Eileen Fenton	**FMCSA POC:**	MA Motor Carrier Division Administrator
Address:	3150 Ten Park Plaza Boston, MA 02116	**Address:**	50 Mall Road, Suite 212 Burlington, MA 01803
Phone:	(617) 973-7760	**Phone:**	(781) 425-3210
Fax:	(617) 973-8037	**Fax:**	(781) 425-3225
Web Address:	www.massdot.state.ma.us/highway/Main.aspx		

TABLE 58 – Massachussets – Restricted HM routes

Designation Date	Route Order	Route Description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
06/13/12	A	City of Boston [City Streets in Downtown Area] [Use of City Streets in the Downtown Area for the through transportation of ALL NRHM in the City of Boston is prohibited between 6:00 a.m. and 8:00 p.m. where there is neither a point of origin nor destination (delivery point) within the City. For local deliveries within Boston, use of City Streets in the Downtown Area for the transportation of NRHM is further STRICTLY PROHIBITED during the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. daily, except on Saturdays, Sundays, and legal holidays. When city streets are to be used for local deliveries, the transporter must use Major Thoroughfares to a point as close as possible to the destination and comply with 49 CFR 397.67.] Downtown Area is defined as the area bounded by and including Massachusetts Avenue at the Mass. Ave. Entrance Ramp to the Southeast Expressway, the Southeast Expressway to the Kneeland Street Ramp, along Kneeland Street to Atlantic Avenue then along a line following the waterfront to the Charles River, along the Charles River to Massachusetts Avenue and along Massachusetts Avenue to the Mass. Ave Entrance Ramp to the Southeast Expressway all as shown on the map attached and incorporated as Exhibit A to the City of Boston's Regulations Controlling the Transportation of Hazardous Materials, issued December 15, 1980.	Boston	0
12/01/95	B	Interstate 90 from Logan Airport to Massachusetts Avenue	Boston	0
11/13/94	C	Interstate 93 [Thomas P. O'Neill Tunnel] from Exit 26 [Leverett Connector] to Kneeland Street	Boston	0
11/13/94	D	Callahan Tunnel [Route 1A Northbound under Boston Inner Harbor]	Boston	0
11/13/94	E	Sumner Tunnel [Route 1A Southbound under Boston Inner Harbor]	Boston	0

TABLE 58 – Massachusscts – Rcstrictcd HM routcs

Desig-nation Date	Route Order	Route Description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/13/94	F	Charlestown Tunnel/City Square Tunnel from Interstate 93 to Charlestown	Boston	0

TABLE 59. – Massachussetts – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
06/13/12	A	[PREFERRED THROUGH ROUTE FOR ALL NRHM HAZMATS APPROACHING THE CITY OF BOSTON WITHOUT A POINT OF ORIGIN OR DESTINATION WITHIN THE CITY BETWEEN THE HOURS OF 6:00 AM AND 8:00 PM] For vehicles approaching Boston from Quincy and points south, the northbound route starts at Exit 9 on I-93 and continues as follows: Start on I-93 at Exit 9, South on I-93 to its termination at Exit 1 where the roadway continues as I-95N, North on I-95 to Exit 37A to I-93S, South on I-93 to the MA-38 ramp, South on MA-38, South on Maffa Way to Cambridge Street, East on Cambridge Street to Alford Street/MA-99, Northeast on Alford Street/MA-99, End on Alford St./MA-99 Bridge before Everett. For vehicles approaching Boston from Everett and points north, the southbound route starts on MA-99 Bridge before Everett and continues as follows: Start on Alford Street/MA-99 Bridge just before Everett, Southwest on Alford Street/MA-99, Northwest onto Main Street to Mystic Avenue/MA-38, North on the Mystic Avenue to I-93N ramp, North on I-93 to the I-95S ramp, South on I-95 to Exit 12 where the roadway continues as I-93N, North on I-93, End on I-93 at Exit 9. Hazmat through cargoes approaching from other points west, north or south, may access and join the preferred hazmat route at the nearest logical access point outside of Downtown Boston along I-93N, I-93S or I-95.	Boston	A

TABLE 59. – Massachusscttts – Dcsignatcd NRHM routcs

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
06/13/12	A	[PRESCRIBED THROUGH ROUTE FOR ALL NRHM HAZMATS APPROACHING THE CITY OF BOSTON WITHOUT A POINT OF ORIGIN OR DESTINATION WITHIN THE CITY BETWEEN THE HOURS OF 8:00 PM AND 6:00 AM] For vehicles approaching Boston from Quincy and points south, the northbound route starts at Exit 9 on I-93 and continues as follows: Start at Exit 9 on I-93, North on I-93, North on I-93 Frontage Road, Northeast on Atlantic Avenue, Northwest onto Cross Street, North on North Washington Street, Northwest on Rutherford Avenue, Northeast on Alford Street/MA-99, End on Alford Street/MA-99 Bridge just before Everett. For vehicles approaching Boston from Everett and points north, the southbound route starts on MA-99 Bridge before Everett and continues as follows: Start at the Alford Street Bridge/MA-99 just before Everett, Southwest on Alford Street/MA-99, Southeast on Rutherford Avenue, South on North Washington Street, Southwest onto John F. Fitzgerald Surface Road, South on Purchase Street, South on Surface Road, South on Albany Street, South on I-93 Frontage Road, South on I-93.	Boston	A
07/03/06	B1	Interstate 93 (north) to Frontage Rd., straight on Atlantic Ave., straight on Cross St., right on North Washington St. (northbound route)	Boston	A
06/19/06	B2	New Rutherford Ave. [North] from North Washington St. to Rutherford Ave.	Boston	A
06/19/06	B3	Rutherford Ave. [North] from New Rutherford Ave. to Main St.	Boston	A
06/19/06	B4	Main St [North] from Rutherford Ave. to Mystic Ave.	Boston	A
06/19/06	B5	Mystic Ave. [North] from Main St. to Interstate 93	Boston	A
06/19/06	B6	Interstate 93[North] from Mystic Ave. out of Boston [North]	Boston	A
06/19/06	C1	Interstate 93 [South] into Boston [Southbound] until Sullivan Sq. [Mystic Ave.]	Boston	A
06/19/06	C2	Mystic Ave. [South] from Interstate 93 to Maffa Way	Boston	A
06/19/06	C3	Maffa Way [South] from Mystic Ave. though roundabout Rutherford Ave.	Boston	A
06/19/06	C4	Rutherford Ave. [South] from Maffa Way to New Rutherford Ave.	Boston	A
06/19/06	C5	New Rutherford Ave. [South] from Rutherford Ave. to North Washington St.	Boston	A

TABLE 59. – Massachussetts – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
07/03/06	C6	North Washington St. left on John F. Fitzgerald Expressway Surface Rd., right onto Purchase St., straight on John F. Fitzgerald Expressway Surface Rd., straight on Albany St. to Route 93 (southbound route).	Boston	A

TABLE 60. – State: Michigan

State Agency:	MI State Police	**FMCSA:**	MI FMCSA Field Office
POC:	Sgt. John Holder	**FMCSA POC:**	MI Motor Carrier Division Administrator
Address:	333 South Grand Avenue P.O. Box 30634 Lansing, MI 48909	**Address:**	315 West Allegan Street, Room 219 Lansing, MI 48933
Phone:	(517) 241-0551	**Phone:**	(517) 853-5990
Fax:	(517) 241-0501	**Fax:**	(517) 377-1868
Web Address:	www.michigan.gov/msp/		

TABLE 61. – Michigan – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
04/02/14	A	Ambassador Bridge [Detroit] from Porter St. to Canada [Windsor] [Phone (313) 849-5244]	Detroit	Wayne	1,3,6.2,7,8
04/02/14	B	State Route M-10/Lodge Freeway [Detroit] from Howard St. to Woodward Ave. [Under Cobo Hall (approximately one mile)]	Detroit	Wayne	0
04/02/14	C	Windsor Tunnel [Detroit] from Jefferson Ave. to Canada [Windsor] [Phone: (313) 567-4422]	Detroit	Wayne	0
04/02/14	D	State Route M-10/Lodge Freeway [Detroit] from 8 Mile Rd [South] to Wyoming St.	Detroit	Wayne	1,2,3,5,6,8
03/08/95	E	Blue Water Bridge [I-69] [Port Huron, MI to Sarnia, Ontario. NOTE: In addition to the listed restrictions, Pyrophoric Liquids prohibited. Contact Michigan Dept. of Transportation for specific restrictions. (810) 984-3131]	Port Huron	St. Clair	1,5,7,9

TABLE 61. – Michigan – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/01/90	F	Interstate 696 [County of Oakland] from State Route M-10 to Interstate 75	Royal Oak	Oakland	1,3
10/03/98	G	State Route M-59 [Utica] [1.1 mile from either direction of the Mound Rd exit]	Utica	Macomb	1,3
03/08/95	H	Mackinac Bridge [I-75] [Mackinac City to St. Ignace. All placarded loads require an escort by the Mackinac Bridge Authority. Phone (906) 643-7600.]	Mackinac - St. Ignace	Emmet	0
03/08/95	I	International Bridge [I-75] [All placarded vehicles require an escort. Contact Operations Supervisor at (906) 635-5255 before crossing. Sault Ste. Marie, MI to Sault Ste. Marie, Ontario.]	Saulte St. Marie	Chippewa	0

TABLE 62. – State: Minnesota

State Agency:	MN DOT	**FMCSA:**	MN FMCSA Field Office
POC:	Jim Fox	**FMCSA POC:**	MN Motor Carrier Division Administrator
Address:	Oakdale Bridge Office 3485 Hadley Avenue North Oakdale, MN 55128	**Address:**	380 Jackson Street Galtier Plaza , Suite 500 St. Paul, MN 55101
Phone:	(651) 215-6330	**Phone:**	(612) 291- 6150
Fax:	(651) 366-4497	**Fax:**	(651) 291-6001
Web Address:	www.dot.state.mn.us		

TABLE 63. – Minnesota – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
03/09/95	A	Lowry Hill Tunnel [I-94] [Restricted from all hazardous material requiring the vehicle to be marked or placarded. Marked or Placarded trucks should follow signed hazmat truck routes around the tunnel.]	0

TABLE 64. – State: Mississippi

State Agency:	MS Emergency Mgmt. Agency	**FMCSA:**	MS FMCSA Field Office
	Brian Maske	**FMCSA POC:**	MS Motor Carrier Division Administrator
POC:	1 Mema Dr.	**Address:**	100 West Capitol St., Suite 1049
Address:	Pearl, MS 39208		Jackson, MS 39269
	(601) 933-6369	**Phone:**	(601) 965-4219
Phone:	(601) 933-6815	**Fax:**	(601) 965-4674
Fax:	www.msema.org		
Web Address:			

No designated or restricted routes as of 03/30/2015

TABLE 65. – State: Missouri

State Agency:	No Agency Designated	**FMCSA:**	MO FMCSA Field Office
POC:		**FMCSA POC:**	MO Motor Carrier Division Administrator
Address:		**Address:**	3219 Emerald Lane, Suite 500
Phone:			Jefferson City, MO 65109
Fax:		**Phone:**	(573) 636-3246
		Fax:	(573) 636-8901

No designated or restricted routes as of 03/30/2015

TABLE 66. – State: Montana

State Agency:	MT DOT	**FMCSA:**	MT FMCSA Field Office
POC:	Dan Kiely	**FMCSA POC:**	MT Motor Carrier Division Administrator
Address:	2701 Prospect Avenue	**Address:**	2880 Skyway Drive
	Helena, MT 59604		Helena, MT 59602
Phone:	(406) 444-7629	**Phone:**	(406) 449-5304
Fax:	(406) 444-0800	**Fax:**	(406) 449-5318
Web Address:	www.mdt.mt.gov		

No designated or restricted routes as of 03/30/2015

TABLE 67. – Montana – Yellowstone National Park

NPS:	Yellowstone National Park, NPS	**FMCSA:**	MT FMCSA Field Office
NPS POC:	Park Superintendent	**FMCSA POC:**	MT Motor Carrier Division Administrator
Address:	Yellowstone National Park PO Box 168 Yellowstone National Park, WY 82190-0168	**Address:**	2880 Skyway Drive Helena, MT 59602
Phone:	(307) 344-2115	**Phone:**	(406) 449-5304
Fax:	(307) 344-2014	**Fax:**	(406) 449-5318
Web Address:	www.nps.gov/yell/index.htm		

TABLE 68. – Montana (Yellowstone National Park) – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
09/26/94	A	US 191 from Mile Post 11 to Mile Post 31 [through Yellowstone National Park] [This route is under the jurisdiction of the U.S. National Park Service, not the State of Montana. For additional information, contact the Yellowstone Visitor Services Office at (307) 344-2115.]	0

TABLE 69. – State: Nebraska

State Agency:	NE State Patrol	**FMCSA:**	NE FMCSA Field Office
POC:	Sgt. Brad Wagner	**FMCSA POC:**	NE Motor Carrier Division Administrator
Address:	3920 West Kearney Street Lincoln, NE 68524	**Address:**	100 Centennial Mall North, Room 406 Lincoln, NE 68508
Phone:	(402) 479-4950	**Phone:**	(402) 437-5986
Fax:	(402) 479-4002	**Fax:**	(402) 437-5837
Web Address:	www.statepatrol.nebraska.gov		

TABLE 70. – Nebraska – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
08/03/88	A	Interstate 680 from Interstate 80 to Iowa [Use in lieu of I-80 in the Omaha area.]	P

TABLE 71. – State: Nevada

State Agency:	No Agency Designated	**FMCSA:**	NV FMCSA Field Office
POC:		**FMCSA POC:**	NV Motor Carrier Division Administrator
Address:		**Address:**	705 N. Plaza St., Suite 204
Phone:			Carson City, NV 89701
Fax:		**Phone:**	(775) 687-5335
		Fax:	(775) 687-8353

No designated or restricted routes as of 03/30/2015

TABLE 72. – State: New Hampshire

State Agency:	NH Dept. of Safety	**FMCSA:**	NH FMCSA Field Office
POC:	Sgt. John P. Begin	**FMCSA POC:**	NH Motor Carrier Division Administrator
	State Police – Troop G	**Address:**	70 Commercial St., Suite 102
Address:	33 Hazen Dr.		Concord, NH 03301
	Concord, NH 03305	**Phone:**	(603) 228-3112
Phone:	(603) 223-8778	**Fax:**	(603) 223-0390
Fax:	(603) 271-1760		
Web Address:	www.nh.gov/safety/		

No designated or restricted routes as of 03/30/2015

TABLE 73. – State: New Jersey

State Agency:	NJ State Police	**FMCSA:**	NJ FMCSA Field Office
POC:	Lt. Lance Tokash	**FMCSA POC:**	NJ Motor Carrier Division Administrator
Address:	3925 US Route 1	**Address:**	One Independence Way, Suite 120
	Princeton, NJ 08540		Princeton, NJ 08540
Phone:	(609) 452-2601 ext. 5913	**Phone:**	(609) 275-2604
Fax:	(609) 452-8495	**Fax:**	(609) 275-5108
Web Address:	www.njsp.org		

No designated or restricted routes as of 03/30/2015

TABLE 74. – State: New Mexico

State Agency:	NM Dept. of Homeland Security &	**FMCSA:**	NM FMCSA Field Office
	Emergency Mgmt.	**FMCSA POC:**	NM Motor Carrier Division Administrator
	Don Shainin	**Address:**	2400 Louisiana Blvd., NE, Suite 520
POC:	P.O. Box 27111		Albuquerque, NM 87110
Address:	Santa Fe, NM 87502	**Phone:**	(505) 346-7858
Phone:	(505) 476-9628	**Fax:**	(505) 346-7859

TABLE 74. – State: New Mexico

Fax:	(505) 476-9695
Web Address:	www.nmdhsem.org

TABLE 75. – New Mexico – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
04/30/99	A	Southern Route to WIPP facility: From the Texas – New Mexico border [MP 0.000] north on US 285 through Loving to the Junction on US 285 and US 62/180 [MP 31.180] in Carlsbad; east on US 62/180 to the WIPP north access road [MP 64.857]. If and when a south Carlsbad Relief Route is available, it shall be used instead of the route through the city. Currently posted "truck routes" shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials).		P
01/01/14	B	Negotiated Alternate Route A to WIPP facility: An alternate Southern Route departing US 285 at the inspection point west of Loving, traveling north on NM 31 to the junction with NM 128 (also known as the Jal Highway), proceeding east on NM 128 to the South Access Road, north on the South Access Road, terminating at the WIPP facility (reduces the designated route length by approximately 25 miles). [Shall terminate on or before 12/31/2014, unless earlier terminated by 30-day written notice.]		P
01/01/14	C	Negotiated Alternate Route B to WIPP facility: An alternate Southern Route beginning at the TX/NM border on Interstate 20 at Big Spring, TX, proceeding west on TX/NM 176 to the junction with NM 18, continuing south on NM 18 to Jal, NM and turning west on NM 128 to the WIPP South Access Road, terminating at the WIPP facility (reduces the designated route length by approximately 93 miles). [Shall terminate on or before 12/31/2014, unless earlier terminated by 30-day written notice.]		P

TABLE 75. – New Mexico – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
04/30/99	D	Western Route to WIPP facility: From the Arizona – New Mexico border [MP 0.000] east on I-40 through Gallup, Thoreau, Grants, Albuquerque and Moriarty to the junction of I-40 and US 285 [MP 218.128], Exit 218 at Clines Corners; south on US 285 through Encino, Vaughn, Roswell (along the Roswell Relief Route) [MP 119.930] and Artesia to the junction of US 285 and NM 200 North of Carlsbad [38.940] East on NM 200 (Carlsbad Relief Route) to the Junction of US 62/180 east of Carlsbad [38.789], east on US 62/180 to the WIPP north access road [MP 64.652]. Relief Routes are available; they shall be used instead of the route through each respective city. Currently posted "truck routes" shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials).		P
04/30/99	E	Los Alamos National Laboratory to WIPP facility: From the Los Alamos National Laboratory in Los Alamos County Tech Area 54, [MP 0.000] east on the Los Alamos Truck Route to the junction of the Los Alamos Truck Route and NM 4; east on NM 4 to the junction of NM 4 and NM 502; [MP 68.186] east on NM 502 to the junction of NM 502 [18.081] and US 84/285 at Pojoaque; south on US 84/285 [MP 181.251] to the junction of US 84/285 and NM 599; [MP 167.443] south on NM 599 to the junction of NM 599 and I-25; north on I-25 to the junction of I-25 and US 285 [MP 292.185], Exit 290]; south on US 285 through Clines Corners, Encino, Vaughn, Roswell (along the Roswell Relief Route) and Artesia to the junction of US 285 and NM 200 North of Carlsbad [38.940] East on (NM 200 Carlsbad Relief Route) to the Junction of US 62/180 east of Carlsbad [38.789], east on US 62/180 to the WIPP north access. Relief Routes are available; they shall be used instead of the route through each respective city. Currently posted "truck routes" shall not be used, except for the Los Alamos Truck Route as stated above. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials).		P

TABLE 75. – New Mexico – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
04/30/99	F	Northern Route to WIPP facility: From the Colorado – New Mexico border [MP 462.124] south on I-25 through Raton, Springer, and Las Vegas to the junction of I-25 and US 285 [MP292.185], Exit 290 near Santa Fe; south on US 285 through Clines Corners, Encino, Vaughn, Roswell (along the Roswell Relief Route) [MP 119.930] and Artesia to the junction of US 285 and NM 200 North of Carlsbad [38.940] East on NM 200 (Carlsbad Relief Route) to the Junction of US 62/180 east of Carlsbad [38.789], east on US 62/180 to the WIPP north access road [MP 64.652]. Relief Routes are available; they shall be used instead of the route through each respective city. Currently posted "truck routes" shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials).		P
01/01/14	G	Negotiated Alternate Route C to WIPP Facility: An alternate Northern Route departing US 285 at the intersection of the WIPP Relief Route (also known as the Loop Road) north of Carlsbad traveling east to the junction of US 62/180, continuing east on US 62/180 to NM 31, which heads south to NM 128, and then proceeding east on NM 128 to the South Access Road, terminating at the WIPP site (increases the designated route length by approximately 10 miles). [Shall terminate on or before 12/31/2014, unless earlier terminated by 30-day written notice.]		P
04/30/99	H	Eastern Route to WIPP facility: From the Texas – New Mexico border [MP 373.530] west on I-40 through Tucumcari to the junction of I-40 and US 54 [MP 276.836], Exit 275 at Santa Rosa; west on US 54 through Pastura to the junction of US 54 and US 285 at Vaughn; south on US 285 through Roswell (along the Roswell Relief Route) [MP 119.930] and Artesia to the junction of US 285 and NM 200 North of Carlsbad [38.940] East on (NM 200 Carlsbad Relief Route) to the Junction of US 62/180 east of Carlsbad [38.789], east on US 62/180 to the WIPP north access road [MP 64.857].		P

TABLE 75. – New Mexico – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
		Relief Routes are available; they shall be used instead of the route through each respective city. Currently posted "truck routes" shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials)		

TABLE 76. – New Mexico – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
02/18/91	A1	Interstate 10 [within Las Cruces city Limits]	Las Cruces	A
02/18/91	A2	Interstate 25 [within Las Cruces city Limits]	Las Cruces	A
02/18/91	A3A	US 70 from East City Limits [Las Cruces near Organ] to Interstate 25	Las Cruces	A

TABLE 77. – State: New York

State Agency:	New York City Fire Dept.	**FMCSA:**	NY FMCSA Field Office
POC:	Sandy Camacho Bureau of Operations	**FMCSA POC:**	NY Motor Carrier Division Administrator
Address:	9 Metro Tech Center Brooklyn, NY 11201	**Address:**	Leo W. O'Brien Federal Bldg. Clinton Avenue & N. Pearl St. Albany, NY 12207
Phone:	(718) 999-2464	**Phone:**	(518) 431-4145
Web Address:	www.nyc.gov/html/fdny/html/home2.shtml	**Fax:**	(518) 431-4140

Note: New York City Fire Department already established a specific route ordering approach for designated NRHM routes (i.e., NYC Route 1, NYC Route 2, etc.). As a result, FMCSA chose not to include an FMCSA route order column in Table 79.

TABLE 78. – New York – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/06/95	A	City of New York Hazmat Restrictions [For shipments of Hazardous Cargo through the City without pickup or delivery within the City, to piers, airports, and shipping terminals, hazardous cargo transportation prohibited by City, State, Federal law or regulation shall not be permitted to enter or pass through New York City, except where specifically authorized by authorized governmental agencies and the Fire Commissioner. Such shipments shall conform to routes, times, and safety conditions specified by the Fire Commissioner. (Such designated routes are listed here in the FMCSA National Hazardous Material Route Registry.) Motor Vehicles conforming to Fire Department specifications and under Fire Department permit may be used to transport allowable Hazardous Cargo in accordance with Chapter 4 of Title 27 Administrative Code and the rules and regulations of the Fire Commissioner without conformance to the routing, time, escorts, and other restrictions and such "permitted" vehicles must be used for deliveries for storage and/or use or for pickup in the City. Hazardous cargo shipments shall transit the City only during non-rush hours. Shipments of explosives are permitted only during daylight hours, except that shipments at night may be allowed in individual cases for escorted shipments as pursuant to Administrative Code 27-4019(b). Times for shipments are as follows: Monday through Friday: For explosives, and prohibited materials for which specific permission has been given by Fire Department: 10:00 A.M. to 3:00 P.M. and 7:00 P.M. to 6:00 A.M. For all other - hazardous cargo: 9:00 A.M. to 4:00 P.M. and -6:00 P.M. to 7:00 A.M. Saturday, Sunday, and Holidays: As traffic conditions permit, consistent with the rules and regulations of government agencies and/or authorities having jurisdiction.]	New York	All	0
01/06/95	B	Verrazano Bridge [Contact the FDNY (718) 403-1580 for more information.]	New York (Staten Island & Brooklyn)	Richmond & Kings	1

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	City of New York Escort Rendezvous Points [Escorts by a fully manned fire department engine company shall be required for all permitted Class "A", Class "B", and Class "C" explosives (over 50 pounds in weight) from point of entry into the City until its exit from the City pursuant to 27-4034(j) Administrative Code of the City of New York. The fire commissioner reserves the right to require escorts for any hazardous cargo shipment when he deems necessary. Notification of arrival of explosives shipments shall be made 48 hours in advance by calling the notification desk in the chief of department's office (718) 403-1580. Shipments from North Shore Long Island: Meet at safety area of Westbound Long Island Expressway (I-495) on the right side between Lakeville Road and Little Neck Parkway. Shipments from South Shore Long Island: Meet at northwest corner of intersection of Sunrise Highway (State 27) between Hook Creek Blvd. and 246th Street. From Upstate New York or New England via New England Thruway (I-95): exit at Connors Street exit, proceed on New England Thruway Service Road to Connors Street to meet Fire Department escort. From Upstate New York and New England via New York Thruway (I-87): exit into Service Area of Major Deegan Expressway located between Westchester County line and the East 233rd street exit of the expressway, to meet Fire Department escort. From NJ via Goethals, Bayonne, Outerbridge Crossing, and George Washington Bridges: Meet at Adm. Bldg - Toll Plaza. From J.F.K. International Airport: Meet in front of the Major Robert Fitzgerald Building #111 on the inbound service road of the Federal Circle. From LaGuardia Airport: Meet at Marine Air Terminal P.A.N.Y.N.J. Police Building, entering at 82nd Street entrance to LaGuardia Airport.]	New York	All	B

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 1: From NJ to western Westchester County and upstate New York [George Washington Bridge (upper level) to Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge to the Major Deegan Expressway to New York Thruway (I-87). Note: Reverse routing permitted. Rendezvous with escort if required.]	Washington Heights	New York & Westchester	A
01/06/95	NYC Route 2: From NJ to eastern Westchester County, upstate New York, and New England [George Washington Bridge (upper level) to Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I-95) to Bruckner Interchange, continue on Bruckner Expressway to New England Thruway (I-95). Note: Reverse routing permitted. Rendezvous with escort if required.]		New York & Westchester	A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 3: From NJ to Nassau and Suffolk Counties [NYC Route 3(i): George Washington Bridge (upper level) via Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I-95), east on Cross Bronx Expressway (I-95) to Throgs Neck Bridge, south across Throgs Neck Bridge to Clearview Expressway (I-295) to Long Island Expressway, east on Long Island Expressway (I-495) to Nassau and/or Suffolk Counties. NYC Route 3(ii): Use either NYC Route 3(ii)A, 3(ii)B, or 3(ii)C THEN, East on Staten Island Expressway (I-278) to Verrazano Bridge, cross upper level of Verrazano Bridge to Brooklyn Queens Expressway (I-278), then east on Brooklyn Queens Expressway (I-278) to Long Island Expressway (I-495), then east on Long Island Expressway (I-495) to Nassau and/or Suffolk Counties. NYC Route 3(ii)A: Outerbridge crossing to West Shore Expressway, North on West Shore Expressway (State 440) to Staten Island Expressway (I-278). NYC Route 3(ii)B: Bayonne Bridge to Willowbrook Expressway (State 440) south to Staten Island Expressway (I-278). NYC Route 3(ii)C: Goethals Bridge to Staten Island Expressway (I-278). Note: Reverse routing permitted. Rendezvous with escort if required. Hazardous cargo requiring escort (i.e. explosives) shall use route via George Washington Bridge only to minimize travel time within the city. Explosives are prohibited on Verrazano Bridge.]		Nassau & Suffolk	A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 4: From Upstate NY or New England to Nassau and Suffolk Counties [NYC Route 4(i): New England Thruway (I-95) (to Connors Street exit to meet escort if required), to Bruckner Expressway (I-95) to Throgs Neck Expressway (I-295), to Throgs Neck Bridge, to Clearview Expressway (I-295), to Long Island Expressway (I-495), east on Long Island Expressway to City Line. NYC Route 4(ii): New York State Thruway (I-87) south to Major Deegan Expressway (I-87), to Cross Bronx Expressway (I-95), east to Bruckner Expressway (I-278) to Throgs Neck Bridge, to Clearview Expressway (I-295), to Long Island Expressway (I-495), east on Long Island Expressway to City Line. Note: See NYC Route 25 for alternate routes. Reverse routing permitted. Rendezvous with escort if required.]		Nassau & Suffolk	A
01/06/95	NYC Route 5: From NJ to LaGuardia Airport via Goethals Bridge [Goethals Bridge to Staten Island Expressway (I-278) to Verrazano Narrows Bridge (upper level) to Brooklyn Queens Expressway (I-278) to Astoria Blvd. (exit 39), east to 82nd Street then north on 82nd Street to LaGuardia Airport. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			A
01/06/95	NYC Route 6: From NJ to LaGuardia Airport via Outerbridge Crossing [Outerbridge Crossing to West Shore Expressway (State 440) to Staten Island Expressway (I-278) east to Verrazano Narrows Bridge (upper level) to Brooklyn Queens Expressway (I-278) to Astoria Blvd. (exit 39), east to 82nd Street then north on 82nd Street to LaGuardia Airport. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			A

TABLE 79. – New York – Designated NRHM routes

Designation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 7: From NJ to LaGuardia Airport via George Washington Bridge [George Washington Bridge (upper level) via Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I-95), east on Cross Bronx Expressway (I-95) to Throgs Neck Bridge, south across Throgs Neck Bridge to Clearview Expressway (I-295) to Long Island Expressway (I-495), west on L.I.E. (I-495) to Van Wyck Expressway (I-678), north on Van Wyck Expressway (I-678) to Northern Blvd. (25A), west on Northern Blvd. to Astoria Blvd. West on Astoria Blvd to 82nd Street, north on 82nd Street to LaGuardia Airport. Note: See NYC Route 25 for alternate routes. Reverse routing permitted. Rendezvous with escort if required.]			A
01/06/95	NYC Route 8: From Long Island to LaGuardia Airport [NYC Route 8(i): Long Island Expressway (I-495) West to Van Wyck Expressway (I-678), North to Northern Blvd. (25-A), West to Astoria Blvd., Astoria Blvd. to 82nd Street, North on 82nd Street to LaGuardia Airport. NYC Route 8(ii): Long Island Expressway (I-495) West to Brooklyn Queens Expressway (I-278) East to Astoria Blvd. (Exit 39) East to 82nd Street, North on 82nd to LaGuardia Airport. NYC Route 8(iii): West on Sunrise Highway (State 27) to North Conduit Blvd. to Van Wyck Expressway (I-678), North on Van Wyck Expressway (I-678) to Northern Blvd. (25-A), West to Astoria Blvd., Astoria Blvd. to 82nd Street, North on 82nd Street to LaGuardia Airport. NYC Route 8(iv): West on Sunrise Highway (State 27) to North Conduit Blvd. to Van Wyck Expressway (I-678), North on Van Wyck Expressway (I-678) to Long Island Expressway (I-495), West to Brooklyn Queens Expressway (I-278), East to Astoria Blvd. (Exit 39), East to 82nd Street, North on 82nd Street to LaGuardia Airport. Note: Reverse routing permitted. Rendezvous for escort if required.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 9: From New England or upper New York State to LaGaurdia Airport [NYC Route 9(i): New England Thruway (I-95) south take to LaGuardia Airport (to Connors Street exit to meet escort, if required), to Bruckner Expressway (I-95) to Throgs Neck Expressway (I-295), via Throgs Neck Bridge to Clearview Expressway (I-295) to Long Island Expressway (I-495), west to Brooklyn Queens Expressway (I-278) east, to Astoria Blvd. (exit 39), east to 82nd Street, then north on 82nd Street to LaGuardia Airport. NYC Route 9(ii): New York State Thruway (I-87) south to Major Deegan Expressway (I-87) to Cross Bronx Expressway (I-95) east to Bruckner Expressway (I-278) to Throgs Neck Bridge, to Clearview Expressway (I-295), to Long Island Expressway (I-495) west, to Brooklyn Queens Expressway (I-278) east, to Astoria Blvd. (Exit 39), east to 82nd Street, then north on 82nd Street to LaGuardia Airport. Note: See NYC Route 25 for alternate routes. Reverse routing permitted. Rendezvous with escort if required.]			A
01/06/95	NYC Route 10: From New Jersey to J.F.K. International Airport via Goethals Bridge [From New Jersey via Goethals Bridge to Staten Island Expressway (I-278) to Verrazano-Narrows Bridge (upper level), Brooklyn Queens Expressway (I-278) east to Long Island Expressway (I-495), east to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678) to J.F.K. International Airport. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			A

TABLE 79. – New York – Designated NRHM routes

Designation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 11: From New Jersey to J.F.K. International Airport via Outerbridge Crossing [From New Jersey via Outerbridge Crossing to West Shore Expressway (State 440) to Staten Island Expressway (I-278) to Verrazano-Narrows Bridge (upper level), to Brooklyn Queens Expressway east (I-278) to Long Island Expressway (I-495), East on Long Island Expressway (I-495) to Van Wyck Expressway (I-678), South on Van Wyck Expressway (I-678) to J.F.K. International Airport. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			A
01/06/95	NYC Route 12: From New Jersey to J.F.K. International Airport via George Washington Bridge (upper level) [From New Jersey via George Washington Bridge (upper level), via Washington Expressway (without detouring onto City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I-95), east on Cross Bronx Expressway (I-95), to Throgs Neck Bridge, south across Throgs Neck Bridge to Clearview Expressway (I-295) to Long Island Expressway (I-495), west to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678) to J.F.K. International Airport. Note: See NYC Route 25 for alternate routes. Reverse routing permitted. Rendezvous with escort if required.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 13: From New England and upper New York State to J.F.K. International Airport [NYC Route 13(i): New England Thruway (I-95), south (to Connors Street exit to meet escort, if required) to Bruckner Expressway (I-95), to Throgs Neck Expressway (I-295), via Throgs Neck Bridge to Clearview Expressway (I-295), to Long Island Expressway (I-495) west on Long Island Expressway (I-495) to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678), to J.F.K. International Airport. NYC Route 13(ii): New York State Thruway (I-87) south to Major Deegan Expressway (I-87) to Cross Bronx Expressway (I-95), east to Bruckner Expressway (I-278) to Throgs Neck Bridge, to Clearview Expressway (I-295) to L.I. Expressway (I-495) west to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678) to J.F.K. Airport. Note: See NYC Route 25 for alternate routes. Reverse routing permitted. Rendezvous with escort if required.]			A
01/06/95	NYC Route 14: From Long Island to J.F.K. International Airport [NYC Route 14(i): West on Long Island Expressway (I-495) to Van Wyck Expressway (I-676), south on Van Wyck Expressway (I-678) to J.F.K. International Airport. NYC Route 14(ii): West on Sunrise Highway (State 27) to North Conduit Blvd. to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678) to J.F.K. International Airport. NYC Route 14(iii): West on Sunrise Highway (State 27) to North Conduit Blvd. to Rockaway Blvd., or 150th Street, to J.F.K. International Airport. Note: Reverse routing permitted. Rendezvous with escort if required.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 15: From New Jersey to Staten Island Piers [NYC Route 15(i): From New Jersey via Bayonne Bridge Plaza via Willowbrook Expressway (State 440) to Staten Island Expressway (I-278), west on Staten Island Expressway to Western Avenue, north on Western Avenue to Richmond Terrace, east on Richmond Terrace to Northside Piers, or Staten Island Expressway, east to Bay Street Exit, then local streets to east side piers. NYC Route 15(ii): From Goethals Bridge Plaza via Staten Island Expressway (I-278) to Forest Avenue, north on Forest Avenue to Goethals Road North, west on Goethals Road North to Western Avenue, north on Western Avenue to Northside Piers, or Staten Island Expressway east to Bay Street exit, then local streets to east side piers. NYC Route 15(iii): From Outerbridge Crossing via West Shore Expressway (State 440) and Staten Island Expressway (I-278), west on Staten Island Expressway to Western Avenue, north on Western Avenue to Richmond Terrace, then local streets for Northside piers, or Staten Island Expressway east to Bay Street exit, then local streets to east side piers. Note: Reverse routing permitted. Rendezvous with escort if required.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 16: From New Jersey to Brooklyn Piers [NYC Route 16(i): From Bayonne Bridge, south via Willowbrook Expressway (State 440) to Staten Island Expressway (I-278), east to Verrazano-Narrows Bridge (upper level) to Brooklyn Queens Expressway (I-278), east on Brooklyn Queens Expressway (I-278), east on Brooklyn Queens Expressway (I-278) to nearest exit to location of pier then local streets to pier. NYC Route 16(ii): From New Jersey via Goethals Bridge to Staten Island Expressway (I-278) to Verrazano-Narrows Bridge (upper level), to Brooklyn Queens Expressway (I-278), east on Brooklyn Queens Expressway (I-278) to nearest exit to location of pier then local streets to pier. NYC Route 16(iii): From New Jersey via Outerbridge Crossing to West Shore Expressway (State 440) to Staten Island Expressway (I-278) to Verrazano-Narrows Bridge (upper level) , to Brooklyn Queens Expressway (I-278), east on Brooklyn Queens Expressway (I-278) to nearest exit to location of pier, local streets to pier. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			A
01/06/95	NYC Route 17(i): From New Jersey to Manhattan Piers via George Washington Bridge [NYC Route 17(i): From New Jersey via George Washington Bridge (upper level), exit at 178th Street and Fort Washington Avenue, east on 178th Street to Amsterdam Avenue, south on Amsterdam Avenue to Cathedral Parkway (110th Street), east on 110th Street to Columbus Avenue, south on Columbus Avenue to west 57th Street, west on 57th Street to 11th Avenue, south on 11th Avenue to 55th Street, west on 55th Street to 12th Avenue, 12th Avenue north or south to pier location. Note: Reverse routing permitted. Rendezvous with escort if required. In area of 12th Street, 12th Avenue becomes West Street.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 17(ii)A and 17(ii)B: From New Jersey to Manhattan Piers via Lincoln Tunnel [NYC Route 17(ii)A: Lincoln Tunnel to west side piers north of Lincoln Tunnel: From Lincoln Tunnel, exit at Dyer Avenue (40th Street) north on Dyer Avenue to 41st Street, west (left) on 41st Street, to 12th Avenue (right turn at 12th Avenue adjacent to elevated structure of West Side Highway, continue north on 12th Avenue to piers. Return NYC Route 17(ii)A: Return route to Lincoln Tunnel: South on 12th Avenue (at 43rd Street, move to left traffic lane to exit at 42nd Street), east (left turn) at 42nd Street on block to 11th Avenue, turn south (right) at 11th Avenue, continue south on 11th Avenue for two blocks (follow signs to Lincoln Tunnel), east (left) on 40th Street to Lincoln Tunnel entrance at Galvin Avenue. NYC Route 17(ii)B: Lincoln Tunnel to west side piers south of Lincoln Tunnel: From Lincoln Tunnel exit at Dyer Avenue (40th Street) north on Dyer Avenue to 41st Street, west (left) on 41st Street to 12th Avenue, south (left) on 12th Avenue (under elevated structure of West Side Highway to southbound traffic lane of 12th Avenue) continue south on 12th Avenue and/or West Street to piers. Return NYC Route 17(ii)B: Return route to Lincoln Tunnel: North on West Street to 12th Avenue, north on 12th Avenue to 40th Street, east on 40th Street across 11th Avenue to Galvin Avenue entrance to Lincoln Tunnel. Note: In area of 12th Street, 12th Avenue becomes West Street.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 17(ii)C and 17(ii)D: From New Jersey to Manhattan Piers via Holland Tunnel [NYC Route 17(ii)C: Holland Tunnel to west side piers north of Holland Tunnel: Exit from Holland Tunnel at Hudson Street, north (right turn) on Hudson Street to Canal Street, west (left turn) on Canal Street to West Street, north (right turn) on West Street, continue north on West Street and/or 12th Avenue, to piers. Return NYC Route 17(ii)C: Return route to Holland Tunnel: South on 12th Avenue and continue south on West Street to Canal Street, east (left turn) on Canal Street to Hudson Street, then north (left turn) at Hudson Street to Holland Tunnel entrance. NYC Route 17(ii)D: Holland Tunnel to west side piers south of Holland Tunnel: Exit from Holland Tunnel at Hudson Street, north (right turn) on Hudson Street to Canal Street, west (left turn) on Canal Street to West Street, north (right turn) on West Street to west Houston Street, make "U" turn from north bound traffic lane under elevated West Side Highway to south bound traffic lane of West Street, continue south on West Street to piers. Return NYC Route 17(ii)D: North on West Street to Canal Street, east (right turn) on Canal Street to Hudson Street, then north (left turn) on Hudson Street to Holland Tunnel entrance. Note: In area of 12th Street, 12th Avenue becomes West Street.]	Manhattan	New York	A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 17(ii)E: From New Jersey, via George Washington Bridge, Lincoln or Holland Tunnels to lower east side (East River) piers [Utilize routes 17(ii)A through 17(ii)D, continue south on 12th Avenue or West Street, south on West Street to Battery Park Underpass (head room 12' 11"), enter Battery Park Underpass and exit on South Street, continue north on South Street and/or marginal street under elevated F.D.R. Drive to location of pier Return route: Proceed south on marginal street under elevated F.D.R. Drive and/or South Street to Battery Park Underpass, enter Battery Park Underpass and exit on West Street, proceed north on West Street and/or 12th Avenue, continue as per routes 17(ii)A through 17(ii)D to Lincoln and Holland Tunnels respectively, and, for George Washington Bridge, proceed north on 12th Avenue to 57th Street, east on 57th Street to Amsterdam Avenue, north on Amsterdam Avenue to 179th Street, west on 179th Street to George Washington Bridge. Note: Rendezvous with escort if required. In area of 12th Street, 12th Avenue becomes West Street.]			A
01/06/95	NYC Route 18(i): From New England to Manhattan piers [South on New England Thruway (I-95) (to Connors Street exit to meet escort if required), to Bruckner Expressway (I-278), to Willis Avenue and Third Avenue exit on 135th Street, west on 135th Street Third Avenue, south on Third Avenue across 3rd Avenue Bridge to 129th Street, east on 129th Street to Second Avenue, south on Second Avenue to East 125th Street. Return route: From Manhattan Piers to upstate New York, Westchester County, and New England. Reverse NYC Route 18(i) to 12th Avenue, north to West 57th Street, then east on West 57th Street to Amsterdam Avenue, north on Amsterdam Avenue to 125th Street, east to 1st Avenue, north on 1st Avenue to Willis Avenue Bridge, across Willis Avenue Bridge to Bruckner Blvd., Bruckner Blvd. to 138th Street entrance to Bruckner Expressway (I-278), east and north on Bruckner Expressway (I-278) to New England Thruway (I-95), then New England Thruway (I-95) north to City line. Note: Rendezvous with escort if required.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 18(ii): From Westchester County or upstate New York to Manhattan piers [New York Thruway (I-87), south to Major Deegan Expressway (I-87), Major Deegan Expressway, (I-87) south to 138th Street exit, service road to Third Avenue, south on 3rd Avenue, across 3rd Avenue Bridge to east 129th Street, east on 129th Street to Second Avenue, south on Second Avenue to east 125th Street. Then, west on 125th Street to Amsterdam Avenue, south on Amsterdam Avenue to Cathedral Parkway (110th Street) east on 110th Street to Columbus Avenue, south on Columbus Avenue to west 57th Street, west on 57th Street to 11th Avenue, south on 11th Avenue to west 55th Street, west on west 55th Street to 12th Avenue north or south to pier location. For lower East River piers, continue south on 12th Avenue to West Street, south on West Street around Battery Park (do not use Battery Under-Pass) to South Street, north on marginal streets under the elevated F.D.R. Drive to location of pier. Return route: Reverse NYC Route 18(ii) to 12th Avenue, then north to West 57th Street, then east on west 57th Street to Amsterdam Avenue, north on Amsterdam Avenue to 125th Street, east on 125th Street to 1st Avenue, north on 1st Avenue to Willis Avenue Bridge, across Willis Avenue Bridge, Willis Avenue to Major Deegan Expressway (I-87), Major Deegan Expressway north to New York Thruway (I-87), then north to City line. Note: Rendezvous with escort if required.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 19: From New England, upper New York State and Westchester County to Staten Island Piers [NYC Route 19(i): South on New England Thruway (I-95) (to Connors Street exit to meet escort if required) to Bruckner Expressway (I-95) to Throgs Neck Expressway (I-295) via Throgs Neck Bridge to Clearview Expressway (I-295) to Long Island Expressway (I-495), west on Long Island Expressway (I-495) to Brooklyn Queens Expressway (I-278), west to Verrazano-Narrows Bridge (upper level) to Staten Island Expressway (I-278) to Bay Street exit for eastside piers, or west to Western Avenue, north to Richmond Terrace, then local streets to northside piers. NYC Route 19(ii): New York State Thruway (I-87) south to Major Deegan Expressway (I-87) (exit into "service area" of Expressway, located between Westchester County line and east 233rd Street exit of the Expressway, to rendezvous with escort, if required) to Cross Bronx Expressway (I-95), east on Cross Bronx Expressway (I-95) to Throgs Neck Bridge, to Clearview Expressway (I-295) to Long Island Expressway (I-495), west to Brooklyn Queens Expressway (I-279), west to Verrazano-Narrows Bridge (upper level), to Staten Island Expressway (I-278) , exit at Bay Street for eastside piers, or continue on Staten Island Expressway (I-278) to Western Avenue, north on western Avenue to Richmond Terrace, then local streets to northside piers. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 20: From New England, Westchester County and upstate New York to Brooklyn piers [NYC Route 20(i): South on New England Thruway (I-95) (to Connors Street exit to meet escort if required) to Bruckner Expressway (I-95) to Throgs Neck Expressway (I-295) via Throgs Neck Bridge to Expressway (I-495), west on Long Island Expressway (I-495) to Brooklyn Queens Expressway (I-278) west on Brooklyn Queens Expressway (I-278) to nearest exit to pier location. Route from nearest expressway exit to pier via local streets NYC Route 20(ii): From New York State Thruway (I-87), south to Major Deegan Expressway (I-87) , (exit into "service area" of expressway, located between Westchester County line and east 233rd Street exit of the Expressway, to rendezvous with escort, if required) to Cross Bronx Expressway (I-95), east on Cross Bronx Expressway (I-95) to Throgs Neck Bridge, south to Clearview Expressway (I-295), to Long Island Expressway, west on Long Island Expressway (I-495) to Brooklyn Queens Expressway, west on Brooklyn Queens Expressway (I-278) to nearest exit to pier location, then via local streets to pier. Note: Reverse routing permitted. Rendezvous with escort if required.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 21: From Long Island (Nassau or Suffolk) to Brooklyn and Staten Island piers [Long Island Expressway (I-495) west to Brooklyn Queens Expressway (I-278) , then west on Brooklyn Queens Expressway (I-278), then either: NYC Route 21(i)A: Continue to nearest exit for Brooklyn piers location NYC Route 21(i)B: Continue west on Brooklyn Queens Expressway (I-278) to Verrazano Bridge (upper level), cross bridge to Staten Island Expressway (I-278), exit at Bay Street for Staten Island eastside piers (utilizing local streets) , or continue west on Staten Island Expressway (I-278) to Western Avenue, north on Western Avenue to Richmond Terrace, then local streets for northside Staten Island piers. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			A
01/06/95	NYC Route 22: From Long Island (Nassau or Suffolk) to Manhattan piers [East on Long Island Expressway (I-495) to Clearview Expressway (I-295), north on Clearview Expressway (I-295) across Throgs Neck Bridge to Bruckner Expressway (I-278), west on Bruckner Expressway (I-278) continuing as per NYC route 18(i) and 18(ii) to Manhattan piers. Return routing: From Manhattan piers to Long Island. Use return route for 18(i) to Bruckner Expressway (I-278), east on Bruckner Expressway (I-278) to Throgs Neck Expressway (I-295) south on Throgs Neck Expressway (I-295), over Throgs Neck Bridge, south on Clearview Expressway (I-295) to Long Island Expressway (I-495), then east on Long Island Expressway (I-495) to Nassau and Suffolk Counties. Note: Rendezvous with escort if required.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 23(i): From New Jersey to Howland Hook Truck Terminal, Staten Island [NYC Route 23(i)A: From New Jersey via Bayonne Bridge Plaza via Willowbrook Expressway (State 440) south to Staten Island Expressway (I-278), north on Western Avenue, east to Howland Hook Terminal. NYC Route 23(i)B: From New Jersey via Outerbridge Crossing, north on West Shore Expressway (State 440) to Staten Island Expressway (I-278), west on Staten Island Expressway (I-278) to Western Avenue, north on Western Avenue, east to Howland Hook Terminal. NYC Route 23(i)C: From New Jersey via Goethals Bridge to Staten Island Expressway (I-278) to Forest Avenue, north on Forest Avenue to Goethals Road North, west on Goethals Road North to Western Avenue, north on Western Avenue, then east to Howland Hook Terminal. Note: Reverse routing permitted. Rendezvous with escort if required.]			A
01/06/95	NYC Route 23(ii): From New England, upper New York State and Westchester County to Howland Hook Truck Terminal, Staten Island [Use NYC Routes 19(i) and 19(ii) except that entrance to Howland Hook Terminal is east from Western Avenue. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			A

TABLE 79. – New York – Designated NRHM routes

Designation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 23(iii): From Nassau County and Suffolk County to Howland Hook Truck Terminal, Staten Island [West on Long Island Expressway (I-495) to Brooklyn Queens Expressway (I-278), then west on Brooklyn Queens Expressway (I-278) to Verrazano Bridge, cross upper level of Verrazano Bridge, then west on Staten Island Expressway (I-278) to Western Avenue, north on Western Avenue, then east to Howland Hook Terminal. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			A
01/06/95	NYC Route 23(iv): From Airports to Howland Hook Truck Terminal, Staten Island [NYC Route 23(iv)A: From J. F. Kennedy Airport, north on Van Wyck Expressway (I-678) to Long Island Expressway (I-495), then west on Long Island Expressway continuing as per NYC Route 23(iii). NYC Route 23(iv)B: From LaGuardia Airport, south on 82nd Street to Astoria Blvd., west on Astoria Boulevard to Brooklyn Queens Expressway (I-278), then west on Brooklyn Queens Expressway (I-278), continuing as per NYC Route 23(iii). Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 24: Truck and Railroad Terminal in Bushwick area, Brooklyn and Maspeth area, Queens [Utilize NYC Routes 3(i) or 3(ii) from New Jersey, NYC Routes 4(i) or 4(ii) from upstate New York, New England or Westchester County, C-3 Island Expressway (I-495), then Long Island Expressway (I-495) to Grand Avenue exit (westbound) or Maurice Ave. exit (eastbound), then to Grand Avenue (and Grand Street), east or west as required. Note: Reverse routing permitted. Rendezvous with escort if required.]			A

TABLE 79. – New York – Designated NRHM routes

Desig-nation Date	Route Description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 25: Alternate hazmat routes in lieu of the Throgs Neck Bridge [For vehicles not carrying explosives, alternate routes utilizing the Whitestone Bridge or the Triboro Bridge may be used in lieu of the Throgs Neck Bridge specified in NYC Routes 4(ii), 7(i), 9(ii), 12(i), 13(ii), 19(ii), and 20(ii), as follows: NYC Route 25(i): Cross Bronx Expressway (I-95) to Hutchinson River Parkway, south on Hutchinson River Parkway over Whitestone Bridge, and continue south on Whitestone Expressway (I-678) - THEN either: NYC Route 25(i)A: to Astoria Blvd., west on Astoria Blvd. to 82nd Street, north on 82nd Street to LaGuardia Airport. NYC Route 25(i)B: to Van Wyck Expressway (I-678), south on Van Wyck Express way (I-676) to J.F. Kennedy Airport. NYC Route 25(i)C: to Van Wyck Expressway (I-678), south to Long Island Expressway (I-495), west on Long Island Expressway (I-495) to Brooklyn Queens Expressway (I-278), west on Brooklyn Queens Expressway (I-278) to Brooklyn or Staten Island piers as per NYC Routes (19) or (20). NYC Route 25(ii): South on Major Deegan Expressway (I-87) from Cross Bronx Expressway or Upstate New York, to Triboro Bridge, across Triboro Bridge to Queens, exit and proceed east on Astoria Blvd. - THEN either: NYC Route 25(ii)A: to 82nd Street, north on 82nd Street to LaGuardia Airport. NYC Route 25(ii)B: to Brooklyn Queens Expressway (I-278), west on Brooklyn Queens Expressway (I-278) to Long Island Expressway (I-495), east on Long Island Expressway (I-495) to Van Wyck Expressway (I-678), south on Van Wyck Expressway (I-678) to J.F.K. Airport. NYC Route 25(ii)C: to Brooklyn Queens Expressway (I-278), west on Brooklyn Queens Expressway (I-278) to Brooklyn or Staten Island Piers as per NYC Routes (19) or (20). Note: Reverse routing permitted. Rendezvous with escort if required.]			A

TABLE 80. – State: North Carolina

State Agency:	NC State Hwy. Patrol	**FMCSA:**	NC FMCSA Field Office
POC:	Herbert G. Tucker, Jr.	**FMCSA POC:**	NC Motor Carrier Division Administrator
Address:	1142 Southeast Maynard Rd. Cary, NC 27511	**Address:**	310 Bern Ave., Suite 468 Raleigh, NC 27601
Phone:	(919) 319-1523	**Phone:**	(919) 856-4378
Fax:	(919) 319-1534	**Fax:**	(919) 856-4369
Web Address:	www.nccrimecontrol.org/SHP		

No designated or restricted routes as of 03/30/2015

TABLE 81. – State: North Dakota

State Agency:	ND Highway Patrol	**FMCSA:**	ND FMCSA Field Office
POC:	Col. James Prochniak	**FMCSA POC:**	ND Motor Carrier Division Administrator
Address:	600 East Blvd. Ave., Dept 504 Bismarck, ND 58505	**Address:**	1471 Interstate Loop Bismarck, ND 58503
Phone:	(701) 328-2455	**Phone:**	(701) 250-4346
Fax:	(701) 328-1717	**Fax:**	(701) 250-4389
Web Address:	www.nd.gov/ndhp/		

No designated or restricted routes as of 03/30/2015

TABLE 82. – State: Ohio

State Agency:	Public Utilities Comm. of OH	**FMCSA:**	OH FMCSA Field Office
POC:	Dan Fisher 180 East Broad St.	**FMCSA POC:**	OH Motor Carrier Division Administrator 200 N. High St.,
Address:	Columbus, OH 43215 (614) 752-7991	**Address:**	Room 609 Columbus, OH 43215
Phone:	(614) 728-2133		(614) 280-5657
Fax:	www.puco.ohio.gov/puco/	**Phone:**	(614) 280-6875
Web Address:		**Fax:**	

TABLE 83. – Ohio – Restricted HM routes

Designation Date	Route Order	Route Description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/01/96	A	Any other highway or state or local road not otherwise designated for the transportation of hazardous materials by the routing designation [in Northeastern Ohio]		0

TABLE 83. – Ohio – Restricted HM routes

Desig-nation Date	Route Order	Route Description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/03/86	B	City of Lorain [Hazardous materials transportation in the City of Lorain is prohibited where there is neither a point of origin or destination within the City on the following routes: State Route 57, State Route 611, State Route 58, US Route 6, and any city streets.]	Lorain	0
05/04/92	C	City of Cleveland [City Streets] [Hazardous materials transportation in the City of Cleveland is prohibited where there is neither a point of origin nor delivery point with the City unless the point of origin or delivery is within one mile of the City limits and the use of the city streets is the safest and most direct route and the shortest distance of travel. Downtown streets are restricted from hazmat transportation between 7 AM and 6PM daily, except on the weekend. When city streets are to be used, the transporter must use interstate highways to a point as close as possible to the destination.]	Cleveland	0
10/14/93	D	City of Cambridge [Hazardous materials transportation in the City of Cambridge is prohibited where there is neither a point of origin or destination within the City on the following routes: US Route 40, US Route 22, State Route 209, and any City streets.]	Cambridge	0
07/01/96	E1	Interstate 90 from Interstate 271 [in Lake County] to Interstate 80/90 [in Lorain County]	Lorain	0
07/01/96	E2A	Interstate 71 from Interstate 80 to Interstate 90 [in Cuyahoga County]		0
07/01/96	E2B	Interstate 490 from Interstate 90 to Interstate 77 [in Cuyahoga County]		0
07/01/96	E2C	Interstate 77 from Interstate 80 to Interstate 90 [in Cuyahoga County]		0
07/01/96	E2D	State 2 from State 44 to Interstate 90 [in Lake County]		0
07/01/96	E3D	State 44 from State 2 to Interstate 90 [in Lake County]		0
07/01/96	F	Interstate 480 from Interstate 271 to Interstate 480N [in Cuyahoga County] - Cleveland	Cleveland	0

TABLE 84. – Ohio – Designated HRCQ/RAM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
09/09/88	A	State-Wide [Preferred routes for high route controlled quantities of radioactive materials (HRCQ of RAM) are, "Interstate System highways, including interstate system bypasses or Interstate System beltways" as per 49 CFR Part 397]		P

TABLE 85. – Ohio – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
04/06/85	A1	Interstate 270 [Columbus Outerbelt] [Shipments which do not have the destination within the City of Columbus, but as a throughway.]	Columbus	A
04/06/85	A2A	Broad St. [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus]	Columbus	A
04/06/85	A2B	Interstate 70 [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus]	Columbus	A
04/06/85	A2C	State 33 [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus]	Columbus	A
04/06/85	A2D	State 161 [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus]	Columbus	A
04/06/85	A2E	High St. [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus]	Columbus	A
04/06/85	A2F	Interstate 71 [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus]	Columbus	A
04/06/85	A3B-1.0	Interstate 670 from Interstate 70 to Interstate 270 [Only for the delivery of NRHM within the City of Columbus]	Columbus	A
04/06/85	A3B-2.0	State 315 [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus]	Columbus	A
10/14/93	B1	Interstate 70 [in the City of Cambridge] [For hazardous material shipments which have neither a point of origin or destination within the City of Cambridge.]	Cambridge	A

TABLE 85. – Ohio – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
10/14/93	B2	State 209 [Southgate Parkway in the City of Cambridge] [for destination within City only]	Cambridge	A
10/14/93	B3A	US 40 [Wheeling Ave. in the City of Cambridge] [for destination within City only]	Cambridge	A
10/14/93	B3B	US 22 [Wheeling Ave. in the City of Cambridge] [for destination within City only]	Cambridge	A
10/14/93	B4A-1.0	County 35 [Old 21/Clark/Byesville Rd. in the City of Cambridge] [for destination within City only]	Cambridge	A
10/14/93	B4A-2.0	Interstate 77 [in the City of Cambridge] [For hazardous material shipments which have neither a point of origin or destination within the City of Cambridge.]	Cambridge	A
10/14/93	B4B	North Second St. [in the City of Cambridge] [for destination within City only]	Cambridge	A
10/14/93	B5B-1.0	Steubenville Ave. [in the City of Cambridge] [for destination within City only]	Cambridge	A
11/03/86	C1	US 6 [in the city limits of Lorain] [for destination within City only]	Lorain	A
11/03/86	C2A	State 611 [in the city limits of Lorain] [for destination within City only]	Lorain	A
11/03/86	C2B	State 58 [in the city limits of Lorain] [for destination within City only]	Lorain	A
11/03/86	C2C	State 57 [in the city limits of Lorain] [for destination within City only]	Lorain	A
11/03/86	C3B-1.0	Cooper Foster Park Rd. [in the City of Lorain] [for destination within City only]	Lorain	A
11/03/86	C4B-1.0	Middle Ridge Rd. [in the City of Lorain] [for destination within City only]	Lorain	A
11/03/86	C5B-1.0	State 2 [in the City of Lorain] [For hazardous material shipments which have neither a point of origin nor destination within the City of Lorain.]	Lorain	A

TABLE 85. – Ohio – Designated NRHM routes

Designation Date	Route Order	Route Description	City	Designation(s) (A,B,I,P)
11/03/86	C5B-1.0	Interstate 90/State Route 2 [around the City of Lorain] [For hazardous material shipments which have neither a point of origin or destination within the City of Lorain.]	Lorain	A
07/01/96	D1	Interstate 80 [and I80/I90 Ohio Turnpike] from Gate 13 [in Portage County] to Lorain/Erie County Line		A
07/01/96	D2	Interstate 480 from Interstate 80 [Gate 13 in Portage County] to Interstate 271 [in Summit County]		A
07/01/96	D2A	Interstate 480N from Interstate 271 to Interstate 480 [in Cuyahoga County]		A
07/01/96	D2B	Interstate 71 from Interstate 80 [in Cuyahoga County] to Interstate 271 [in Summit County]		A
07/01/96	D2C	Interstate 77 from Interstate 80 [in Cuyahoga County] to Interstate 271 [in Summit County]		A
07/01/96	D3A	Interstate 480 from Interstate 480N [in Cuyahoga County] to Interstate 80 [in Lorain County] – Cleveland	Cleveland	A
07/01/96	D3B	Interstate 271 from Interstate 90 [in Lake County] to Interstate 71 [in Medina County] - Northeastern Ohio		A
07/01/96	D4B	Interstate 90 from Lake/Ashtabula county line to Interstate 271 [in Lake County]		A
01/29/90	D4B-1.0	Bedford from Erieway Facility [at 33 Industry Drive] [Proceed on Industry Dr, turn right on Northfield Rd, turn left on Alexander Rd., to I271 access road. Alternatively, from Northfield Rd, turn right on Forbes Rd, turn right on Broadway Rd. to I-271.]	Bedford	A
11/01/94	E1	US 20 [Center Ridge Rd. in the City of Westlake]	Westlake	A,B
11/01/94	E2A	State 252 [Columbia Rd. in the City of Westlake]	Westlake	A,B
11/01/94	E3A-1.0	State 254 [Detroit Rd. in the City of Westlake]	Westlake	A,B
11/01/94	E3A-2.0	Interstate 90 [in the City of Westlake]	Westlake	A

TABLE 86. – State: Oklahoma

State Agency:	OK DOT	**FMCSA:**	OK FMCSA Field Office
POC:	Harold Smart	**FMCSA POC:**	OK Motor Carrier Division Administrator
Address:	200 NE 21st St Oklahoma City, OK 73105	**Address:**	300 N. Meridian Suite 106 North Oklahoma City, OK 73107
Phone:	(405) 521-2861	**Phone:**	(405) 605-6047
Fax:	(405) 521-2865	**Fax:**	(405) 605-6176
Web Address:	www.okladot.state.ok.us/		

Table 87. – Oklahoma – Restricted HM routes

Desig-nation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/29/97	A	Oklahoma City and Tulsa [Carriers transporting hazardous material cargo should avoid traveling through large metropolitan areas during times of the day when congestion is expected. These carriers should also avoid construction zones when possible. Construction information can be accessed by calling the OK Department of Transportation at (405) 521-2554.]	0
07/29/97	B	Interstate 40 [in Oklahoma City] from Interstate 44 to Interstate 35 is banned.	0

TABLE 88. – Oklahoma – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	Desig-nation(s) (A,B,I,P)
07/29/97	A	All Interstates [All hazardous material shipments moving through Oklahoma should remain on Interstate routes, when possible.]	A
07/29/97	B1	Interstate 44 [Southwest of Oklahoma City] from Interstate 40 to Interstate 240 [Use to bypass section of I-40 running through downtown Oklahoma City]	A
07/29/97	B2	Interstate 240 [South of Oklahoma City] from Interstate 44 to Interstate 40 [Southeast of Oklahoma City] [Use to bypass section of I-40 running through downtown Oklahoma City]	A
07/29/97	C	Interstate 244 [Tulsa] from Interstate 44 [West of Tulsa] to Interstate 44 [East of Tulsa] [Use to bypass downtown Tulsa]	A

TABLE 89. – State: Oregon

State Agency:	OR DOT	**FMCSA:**	OR FMCSA Field Office
POC:	Jess Brown	**FMCSA POC:**	OR Motor Carrier Division Administrator
Address:	550 Capitol Street NE Salem, OR 97301	**Address:**	The Equitable Center 530 Center Street NE, Suite 440 Salem, OR 97301
Phone:	(503) 378-6336		
Fax:	(503) 378-3567	**Phone:**	(503) 399-5775
Web Address:	www.oregon.gov/odot/Pages/index.aspx	**Fax:**	(503) 316-2580

TABLE 90. – Oregon – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/01/94	A	US 26 from Interstate 405 to State 217 [includes Vista Ridge Tunnel] Restrictions apply to any quantity of hazardous material required to be marked or placarded in accordance with 49 CFR 177.823.	Portland	Multnomah	0
11/01/94	B	Arrowhead Truck Plaza on Route 331 [at the MP 216 Interstate 84 interchange 4 miles east of Pendleton (on tribal land)] overnight parking prohibited.		Umatilla	1,7
11/01/94	C	Wildhorse Casino parking lot on Route 331 [at the MP 216 Interstate 84 interchange 4 miles east of Pendleton adjacent to the Arrowhead Truck Plaza (on tribal land)] prohibits parking of all classes of hazardous material in the casino parking lot		Umatilla	0

TABLE 91. – Oregon – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
01/01/00	A	Kittridge Ave. Overpass [Portland] from US 30 [NW St. Helens Ave.] to NW Front Ave. and the Northwest Portland Industrial Area	Portland	Multnomah	A

TABLE 92. – State: Pennsylvania

State Agency:	PA DOT	**FMCSA:**	PA FMCSA Field Office
POC:	Kenneth Thornton	**POC:**	PA Motor Carrier Division Administrator
Address:	Chief Motor Carrier Division P.O. Box 8210 Harrisburg, PA 17105	**Address:**	215 Limekiln Road, Suite 200 New Cumberland, PA 17070
Phone:	(717) 787-0459	**Phone:**	(717) 614-4060
Fax:	(717) 787-7839	**Fax:**	(717) 614-4066
Web Address:	www.dot.state.pa.us/		

State agency is responsible for all HM routes listed in Table 94, except for those routes on the Pennsylvania Turnpike.

TABLE 93. – State: Pennsylvania

State Agency:	PA Turnpike Commission	**FMCSA:**	PA FMCSA Field Office
POC:	Kenneth Slippey	**POC:**	PA Motor Carrier Division Administrator
Address:	P.O. Box 67676 Harrisburg, PA 17106	**Address:**	215 Limekiln Road, Suite 200 New Cumberland, PA 17070
Phone:	(717) 939-9551	**Phone:**	(717) 614-4060
Web Address:	www.paturnpike.com/	**Fax:**	(717) 614-4066

State agency is only responsible for HM routes listed in Table 94on the Pennsylvania Turnpike.

TABLE 94. – Pennsylvania – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4, 5,6,7,8,9,i)
01/01/50	A	Liberty Tunnel [in Allegheny County] from Carson St. to Saw Mill Run Blvd. [(1) Explosives 1.1 to 1.6, (2) Blasting Agents, (3) Flammable Gas, (4) Flammable, (5) Flammable Solids, and (6) Flammable Solid W. prohibited.]		Allegheny	1,2,3,4,5,6
01/01/58	B	Interstate 376 [Fort Pitt Tunnels in Pittsburgh] [(1) Explosives 1.1 to 1.6, (2) Blasting Agents, (3) Flammable Gas, (4) Flammable, (5) Flammable Solids, and (6) Flammable Solid W. prohibited.]	Pittsburgh		1,2,3,4,5,6

TABLE 94. – Pennsylvania – Restricted HM routes

Desig-nation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4, 5,6,7,8,9,i)
01/01/52	C	Interstate 376 [Squirrel Hill Tunnels in Pittsburgh] from Exit 8 to Exit 9 [(1) Explosives 1.1 to 1.6, (2) Blasting Agents, (3) Flammable Gas, (4) Flammable, (5) Flammable Solids, and (6) Flammable Solid W. prohibited.]	Pittsburgh		1,2,3,4,5,6
07/22/89	D	US 30 [West - Descending Laurel Mountain in Somerset/ Westmoreland Counties] [Descending Laurel Mountain into the Village of Laughlintown (to protect Ligonier Municipal Reservoir). The "recommended" alternate route is south on US 219 to I-76 (PA Turnpike), west on I-76 to New Stanton.]		Somerset and Westmoreland	0
01/01/40	E	Interstate 70/76 [Allegheny Tunnel - Somerset County] from Exit 110 to Exit 146 [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)] For additional information, visit the Pennsylvania Turnpike website: www.paturnpike.com/trucking/placard.aspx#top		Somerset	1,2,3,4,5,6,7,8,i
01/01/40	F	Interstate 76 [Tuscarora Tunnel - Franklin/ Huntingdon Counties] from Exit 180 to Exit 189 [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)] For additional information, visit the Pennsylvania Turnpike website: www.paturnpike.com/trucking/placard.aspx#top		Franklin and Huntingdon	1,2,3,4,5,6,7,8,i

TABLE 94. – Pennsylvania – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4, 5,6,7,8,9,i)
01/01/40	G	Interstate 76 [Blue Mountain Tunnel and Kittatinny Tunnel - Franklin County] from Exit 189 to Exit 201 [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)] For additional information, visit the Pennsylvania Turnpike website: www.paturnpike.com/trucking/placard.aspx#top		Franklin	1,2,3,4,5,6,7,8,i
09/15/93	H	US 11 [Cumberland County] from the intersection of Allen Rd. and SR 465 (at Segment 0360/Offset 2119) to Interstate 76/PA Turnpike (at Segment 0510/Offset 0000)		Cumberland	0
09/15/93	I	SR 74 [Cumberland County] from Fairfield St. (at Segment 0170/Offset 0000) to N. College St. (at Segment 0210/Offset 0000)		Cumberland	0
09/15/93	J	SR 641 [Cumberland County] from Interstate 81 (at Segment 0440/Offset 3196) to N. College St. (at Segment 0470/Offset 0000)		Cumberland	0
09/15/93	K	SR 34 [Cumberland County] from Noble Blvd./Lamberton Middle School (at Segment 0270/Offset 0000) to Carlisle Springs Rd./ N. Hanover St. split (at Segment 0300/Offset 0000)		Cumberland	0
11/03/94	L	SR 3009/River Rd. [Dauphin County] (at Segment 0210/Offset 0720) to Country Club Rd. (at Segment 0221/Offset 1382) just before SR 443		Dauphin	0
09/09/93	M	SR 39 [Dauphin County] from Terrace Dr. (at Segment 0030/Offset 0000) to SR 81 (at Segment 0210/Offset 0000) just past the Travel Center of America Truck Stops"		Dauphin	0
09/09/93	N	US 22 [Dauphin County] from SR 39 (at Segment 0420/Offset 0000) to Interstate 83 (at Segment 0571/Offset 0000)		Dauphin	0

TABLE 94. – Pennsylvania – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4, 5,6,7,8,9,i)
03/21/94	O	SR 4020 [Lancaster County] from Esbenshade Rd./ SR 230 (at Segment 0010/Offset 0000) to Mcgovernville Rd./Route 741 (at Segment 0130/Offset 0000)		Lancaster	0
01/01/65	P	Interstate 476 [Northeast Extension of PA Turnpike at Lehigh Tunnel] from Exit 56 to Exit 74 [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)] For additional information, visit the Pennsylvania Turnpike website: www.paturnpike.com/trucking/placard.aspx#top		Carbon and Lehigh	1,2,3,4,5,6,7,8,i

TABLE 95. – State: Rhode Island

State Agency:	RI Dept. of Environmental Management	**FMCSA:**	RI FMCSA Field Office
POC:	Mark Dennen	**FMCSA POC:**	RI Motor Carrier Division Administrator
Address:	Office of Waste Mgt. 235 Promenade Street Providence, RI 02908	**Address:**	20 Risho Avenue, Suite E East Providence, RI 02914
Phone:	(401) 222-2797 ext. 7112	**Phone:**	(401) 431-6010
Fax:	(401) 222-3812	**Fax:**	(401) 431-6019
Web Address:	www.dem.ri.gov/		

TABLE 96. – Rhode Island – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/18/84	A1	Old Plainfield Pike [in Foster & Scituate] from Route 102 to Route 12 [Scituate]	0
07/18/84	A2A	Route 12 [in Scituate and Cranston] from Route 14 [Scituate] to Route 116 [Scituate]	0
07/18/84	A3A	Route 116 [in Scituate & Smithfield] from Scituate Ave. [Scituate] to Snake Hill Rd. [Smithfield]	0

TABLE 96. – Rhode Island – Restricted HM routes

Desig-nation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/18/84	A3A-1.0	Route 102 [in Scituate and Foster] from Route 94 [Foster] to Snake Hill Road [Glocester]	0
07/18/84	A4A-1.0	Route 94 [in Foster] from Route 101 to Route 102 [Scituate]	0
07/18/84	A4A-1.0-A	Route 14 [in Scituate] from Route 102 to Route 116	0
07/18/84	A5A-1.0	Route 101 [in Foster, Glocester, and Scituate] from Route 94 [Foster] to Route 6 [Scituate]	0
07/18/84	A5A-1.0-A	Central Pike [in Scituate and Foster] from Route 94 [Foster] to Route 102 [Scituate]	0
07/18/84	A5A-1.0-B	Route 6 [in Scituate, Johnston, & Foster] from Route 94 [Foster] to Hopkins Avenue [Johnson]	0
07/18/84	A6A-1.0-B1	Danielson Pike [in Scituate] from Route 6 to Route 6	0
07/18/84	A6A-1.0-C	Rocky Hill Road & Peeptoad Road [in Scituate] from Route 101 to Route 116 [Sawmill Road]	0
07/18/84	B	Route 295 [in Smithfield and Lincoln] from Exit 8 [Douglas Pike - Smithfield] to Exit 9 [Route 146 - Lincoln]	0
07/18/84	C	Reservoir Road [in its entirety in Smithfield and North Smithfield]	0
07/18/84	D	Route 120 [in Cumberland] from Mendon Road to Massachusetts	0
07/18/84	E	Reservoir Road [in Cumberland] from Route 114 to Massachusetts	0
07/18/84	F	North Main Road [in Jamestown] from Route 138 to East Shore Road	0
07/18/84	G1	Bliss Mine Road [in its entirety in Newport & Middletown]	0
07/18/84	G2	Miantonami Ave. [in Middletown] from Bliss Mine Road to Valley Road	0
07/18/84	G3A	Valley Road [in Middletown] from Miantonami Avenue to Route 138	0
07/18/84	G4A	Aquidneck Ave [in Middletown] from Wave Avenue to Valley Road	0
07/18/84	G5A	Wave Avenue [in its entirety in Middletown]	0
07/18/84	H1	Serpentine Road [in its entirety in Warren]	0
07/18/84	H2A	School House Road [in Warren] from Birch Swamp Road to Long Lane	0

TABLE 96. – Rhode Island – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/18/84	I1	Burchard Road [in its entirety in Little Compton]	0
07/18/84	I2	Peckham Road [in Little Compton] from Route 77 to Burchard Road	0
07/18/84	I3	Route 77 [in Little Compton and Tiverton] from Peckham Road [Little Compton] to Route 179 [Tiverton]	0
07/18/84	I4	Neck Road [in its entirety in Tiverton]	0

TABLE 97. – State: South Carolina

State Agency:	No Agency Designated	**FMCSA:**	SC FMCSA Field Office
POC:		**FMCSA POC:**	SC Motor Carrier Division Administrator
Address:		**Address:**	1835 Assembly St., Suite 1253
Phone:			Columbia, SC 29201
Fax:		**Phone:**	(803) 765-5414
		Fax:	(803) 765-5413

No designated or restricted routes as of 03/30/2015

TABLE 98. – State: South Dakota

State Agency:	Motor Carrier Services	**FMCSA**	SD FMCSA Field Office
POC:		**FMCSA POC:**	SD Motor Carrier Division Administrator
Address:	118 West Capitol Ave.	**Address:**	1410 E. Highway 14
	Pierre, SD 57501		Suite B
Phone:	(605) 773-4578		Pierre, SD 57501
Fax:	(605) 773-7144	**Phone:**	(605) 224-8202
Web Address:	dps.sd.gov/enforcement/highway_patrol/default.aspx	**Fax:**	(605) 224-1766

No designated or restricted routes as of 03/30/2015

TABLE 99. – South Dakota - Badlands National Park

NPS:	Badlands National Park, NPS	**FMCSA:**	SD FMCSA Field Office
NPS POC:	Park Superintendent	**FMCSA POC:**	SD Motor Carrier Division Administrator
	25216 Ben Reifel Road	**Address:**	1410 E. Highway 14, Suite B
Address:	P.O. Box 6		Pierre, SD 57501
	Interior, SD 57750	**Phone:**	(605) 224-8202
Phone:	(605) 433-5361	**Fax:**	(605) 224-1766
Fax:	(605) 433-5404		
Web Address:	www.nps.gov/badl/index.htm		

TABLE 100. – South Dakota (Badlands National Park) – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6, 7,8,9,i)
01/17/97	A	Badlands National Park -- Park road between the Northeast Entrance to the Interior Entrance [Northeast Entrance/SD-240 to the intersection with SD-377 to SD-377/Interior Entrance] [This route is under the jurisdiction of the U.S. National Park Service, not the State of South Dakota. For additional information, contact the Badlands National Park at (605) 433-5361.]	0

TABLE 101. – State: Tennessee

State Agency:	TN DOT	**FMCSA:**	TN FMCSA Field Office
POC:	Alan Durham	**FMCSA POC:**	TN Motor Carrier Division Administrator
Address:	James K. Polk Bldg. 505 Deaderick St., Suite 400 Nashville, TN 37243	**Address:**	640 Grassmere Park Suite 111 Nashville, TN 37211
Phone:	(615) 741-2848/(615) 741-5616	**Phone:**	(615) 781-5781
Fax:	(615) 741-2508	**Fax:**	(615) 781-5780
Web Address:	www.tdot.state.tn.us/		

TABLE 102. – Tennessee – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
05/15/87	A	Interstate 40 [Through City of Knoxville] from Exit 385 [intersection with I-75/I-640 west of Knoxville] to Exit 393 [intersection with I-640 east of Knoxville] [Prohibition does not apply to hazardous material shipments originating at or destined to the City of Knoxville and to service points of US 129 in Blount County as verified by appropriate shipping papers, or shipments to be interlined with other carriers or to be transferred to other vehicles of the same carrier at facilities in these areas, or to vehicles which need emergency repair or warranty work performed at authorized dealers in these areas.]	0
10/18/96	B	Cumberland Gap Tunnel [US 25E / State Route 32] [Trucks that display a hazardous material placard are required to stop at the Cumberland Gap Tunnel inspection lanes. After stopping in the lane, a CGTA operator requests information from the driver such as Trucking Company name and address, DOT #, Truck license #, Truck Order # or bill of lading, origin and destination of goods, and driver's name and signature. The operator then performs a walk around inspection of the truck and looks for possible hazardous material leaks. Trucks transporting Class 1 Explosives are prohibited and are turned around at the tunnel. For further information, contact John R. Burke (cgta@vaughnmelton.com) at 606-248-0996.]	1

TABLE 103. – Tennessee – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
08/03/88	A	Interstate 640/I-75 from Interstate 40 [exit 385 West of Knoxville] to Interstate 40 [exit 393 East of Knoxville] [In lieu of I-40 in the Knoxville area].	P

TABLE 104. – State: Texas

State Agency:	TX Dept. Public Safety	**FMCSA:**	TX FMCSA Field Office
	Josh Verastique	**FMCSA POC:**	TX Motor Carrier Division Administrator
POC:	P O Box 4087	**Address:**	903 San Jacinto Blvd., Suite 101
Address:	Austin, Texas 78773-0001		Austin, TX 78701
Phone:	(512) 416-3122	**Phone:**	(512) 916-5440
Web Address:	www.txdot.gov/	**Fax:**	(512) 916-5482

TABLE 105. – Texas – Restricted HM routes

Desig-nation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
12/12/97	A	International Bridges I & II [Laredo]	Laredo	Webb	0
06/28/01	B1	Interstate 35 [Bexar County] from the IH 35/IH 10 interchange to the IH 10/IH 35/US 90 interchange	San Antonio	Bexar	0
06/28/01	B2A	Interstate 10 [Bexar County] from the Fredericksburg/ Woodlawn interchange to the IH 10/IH 35 interchange	San Antonio	Bexar	0
06/28/01	B2B	Interstate 35 [Bexar County] from IH 35/IH 37/US 281 interchange to IH 10/IH 35 interchange	San Antonio	Bexar	0
06/28/01	B3B	Interstate 37 [Bexar County] from the IH 35/IH 37/US 281 interchange to the IH 37/Durango St. interchange	San Antonio	Bexar	0
03/04/70	C1	Holcombe Boulevard [Houston] from Main St. to South Braeswood Boulevard	Houston	Harris	0
03/04/70	C2	South Braeswood Boulevard [Houston] from Holcombe Boulevard to Cambridge St.	Houston	Harris	0
03/04/70	C3	Cambridge St. [Houston] from South Braeswood Boulevard to Main St.	Houston	Harris	0
03/04/70	C4	Main St. [Houston] from Cambridge St. to Holcombe Boulevard	Houston	Harris	0
03/04/70	D1	Interstate 45 [Houston] from Franklin St. to US 59	Houston	Harris	0
03/04/70	D2	US 59 [Houston] from Interstate 45 to Buffalo Bayou	Houston	Harris	0

TABLE 105. – Texas – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
10/13/83	E1	Interstate 45 [Galveston, Galveston County] from State 342 to West City Limits [During a 30-hour hurricane warning only. See City of Galveston code for more information.]	Galveston	Galveston	0
10/13/83	E2	State 342 (61st. St.) [Galveston, Galveston County] from Broadway Ave. to Seawall Blvd. [During a 30-hour hurricane warning only. See City of Galveston code for more information.]	Galveston	Galveston	0
10/13/83	F	North of Church St. [Galveston, Galveston County] from 14th Street to 2nd Street [See City of Galveston code for special restrictions/more information.]	Galveston	Galveston	0
01/25/84	G	Transportation of hazardous materials in vehicles bearing placards required by the U.S. Department of Transportation is prohibited for all tunnel delivery areas within the city of Dallas.	Dallas	Dallas	0
01/25/84	H1	Interstate 30 (East RL Thornton Freeway) [Dallas] from Interstate 35 E to Malcolm X Blvd. Overpass	Dallas	Dallas	0
01/25/84	H2A	Interstate 45 Elevated (Julius Schepps Freeway) [Dallas] from Lamar Underpass to Bryan St. Underpass [No operator of a motor vehicle transporting hazardous material scheduled for delivery to or from a Dallas Terminal shall transport those materials on any street or highway, or segment of a street or public highway designated as "Prohibited Hazardous Materials Area"]	Dallas	Dallas	0
01/25/84	H3A-1.0	Interstate 345 (Central Expressway) [Dallas] from Interstate 45 (Julius Schepps Freeway) to Bryan Street	Dallas	Dallas	0
01/25/84	I	Spur 366 (Woodall Rodgers Freeway) [Dallas] from US 75 to Interstate 35E	Dallas	Dallas	0

TABLE 105. – Texas – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
10/10/95	J	Loop 335 [Amarillo] from West Amarillo Blvd to City Limits (7 pm to 7 am)	Amarillo	Potter/ Randall	0
10/10/95	K	US 60/US 87/US 287 (Taylor and Filmore St. only) [Amarillo] from Interstate 40 to Loop 335	Amarillo	Potter/ Randall	0

TABLE 106. – Texas – Designated HRCQ/RAM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
07/09/12	A	Big Spring, TX to Pecos, TX to Carlsbad, NM to WIPP North Access Road (Current New Mexico designated route)			P
07/09/12	B	Big Spring, TX to Andrews, TX to FM 115 to intersection with FM 128 in Texas to SR 128 in New Mexico to WIPP South Access Road			P
07/09/12	C	Big Spring, TX to Monahans, TX to Kermit, TX to Jal, NM to WIPP South Access Road			P
07/09/12	D	Big Spring, TX to Andrews, TX to Eunice, NM to Hobbs, NM to WIPP North Access Road			P
07/09/12	E	Big Spring, TX to Andrews, TX to Eunice, NM to Jal, NM to WIPP South Access Road			P

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
10/16/90	A1	Farm to Market 2061 [Edinburg] from Owassa Road to Farm to Market 1925 [Through only]	Edinburg	Hidalgo	A
10/16/90	A2	Farm to Market 1925 [Edinburg] from Bus. US 281 to Farm to Market 2061 [Through only]	Edinburg	Hidalgo	A
10/16/90	A2A	State 107 [Edinburg] from State 336 to Farm to Market 2061 [Through only]	Edinburg	Hidalgo	A
10/16/90	A3	Bus. US 281 [Edinburg] from its North intersection with US 281 to Farm to Market 1925 [Through only]	Edinburg	Hidalgo	A
10/16/90	A3A	Bus. US 281 [Edinburg] from Farm to Market 1925 to its South intersection with US 281 [Local destination only]	Edinburg	Hidalgo	A
10/16/90	A4	US 281 [Edinburg] from its North intersection with Bus. US 281 to Owassa Road [Through only]	Edinburg	Hidalgo	A
10/16/90	A4A-1.0	Chapin Street [Edinburg] from Bus. US 281 to US 281 [Local destination only]	Edinburg	Hidalgo	A
10/16/90	A4A-2.0	Farm to Market 2128 [Edinburg] from Bus. US 281 to US 281 [Local destination only]	Edinburg	Hidalgo	A
10/16/90	A4A-3.0	McIntyre St. [Edinburg] from 12th Ave. to 10th Ave. [Local destination only.]	Edinburg	Hidalgo	A
10/16/90	A5A	Farm to Market 2128 [Edinburg] from Tower Road to US 281 [Through only]	Edinburg	Hidalgo	A
10/16/90	A5A-3.0	10th Ave. [Edinburg] from McIntyre to Cano Street [Local destination only]	Edinburg	Hidalgo	A
10/16/90	A5B	State 107 [Edinburg] from Tower Road to US 281 [Through only]	Edinburg	Hidalgo	A
10/16/90	A6A-3.0	Cano St. [Edinburg] from 10th Ave. to 12th Ave. [Local destination only.]	Edinburg	Hidalgo	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
10/16/90	A6A-3.0-A	State 107 [Edinburg] from 12th Ave. to US 281 [Local destination only]	Edinburg	Hidalgo	A
10/16/90	A7A-3.0	12th Ave. [Edinburg] from McIntyre to Cano Street [Local destination only]	Edinburg	Hidalgo	A
10/16/90	A8A-3.0-B	State 107 [Edinburg] from Farm to Market 2061 to 10th Ave. [Local destination only]	Edinburg	Hidalgo	A
04/15/81	B1	US 83 [Harlingen] from Southeast City Limits to West City Limits	Harlingen	Cameron	A
04/15/81	B2A	Spur 54 [Harlingen] from US 77 to US 83	Harlingen	Cameron	A
04/15/81	B3A-1.0	US 77 [Harlingen] from Northwest City Limits to Southeast City Limits	Harlingen	Cameron	A
04/15/81	B4A-1.0-A	Farm to Market 1479 (Rangerville Road) [Harlingen] from Southwest City Limits to US 77/83	Harlingen	Cameron	A
04/15/81	B4A-1.0-B	Loop 206 (Tyler St.) [Harlingen] from US 77 / US 83 to West City Limits	Harlingen	Cameron	A
04/15/81	B4A-1.0-C	Farm to Market 106 (Harrison St.) [Harlingen] from US 77 to West City Limits	Harlingen	Cameron	A
04/15/81	B4A-1.0-D	Bus. US 77 [Harlingen] from North City Limits to South City Limits	Harlingen	Cameron	A
04/15/81	B5A-1.0-D1	Loop 499 (Ed Carey Dr.) [Harlingen] from Bus. US 77 N to US 77/83	Harlingen	Cameron	A
04/15/81	B5A-1.0-D2	Commerce St. [Harlingen] from Bus. US 77 N to Bus. US 77 S	Harlingen	Cameron	A
04/15/81	B5A-1.0-D3	Farm to Market 507 (Morgan Blvd.) [Harlingen] from Rio Hondo Rd. to Bus. US 77	Harlingen	Cameron	A
04/15/81	B5A-1.0-D3A	25th St. [Harlingen] from Rio Hondo Rd. to North City Limits	Harlingen	Cameron	A
04/15/81	B5A-1.0-D3B	Rio Hondo Rd. [Harlingen] from 25th Street	Harlingen	Cameron	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
		to East City Limits			
04/15/81	B5A-1.0-D4	Farm to Market 106 (Harrison St.) [Harlingen] from East City Limits to Bus. US 77	Harlingen	Cameron	A
12/12/97	C	SH 255 (Camino Columbia Toll Road) [Laredo] from Interstate 35 to International Bridge III	Laredo	Webb	A
12/28/93	D1	Interstate 10 [El Paso] from East City Limits to North City Limits	El Paso	El Paso	A
12/28/93	D2A	Trowbridge Dr. [El Paso] from Interstate 10 to Delta Dr.	El Paso	El Paso	A
12/28/93	D2B	Airway Blvd [El Paso] from Interstate 10 to US 62/180	El Paso	El Paso	A
12/28/93	D3A	Delta Dr. [El Paso] from Trowbridge Dr. to Fonseca Dr.	El Paso	El Paso	A
12/28/93	D3B	US 62/180 (Montana Ave.) [El Paso] from East City Limits to Airway Blvd.	El Paso	El Paso	A
12/28/93	D4A	Fonesca Dr. [El Paso] from Delta Dr. to Loop 375	El Paso	El Paso	A
12/28/93	D4B	Loop 375 (Joe Battle Blvd.) [El Paso] from Interstate 10 to US 62/180	El Paso	El Paso	A
12/28/93	D5B	Loop 375 (Americas Ave.) [El Paso] from Border Highway (Loop 375) to Interstate 10	El Paso	El Paso	A
12/28/93	D5B-1.0	Farm to Market 659 [El Paso] from East City Limits to Loop 375 N (Americas Ave.) [Its North intersection with LP 375 (Americas Ave.)]	El Paso	El Paso	A
12/28/93	D6B	Loop 375 (Border Highway) [El Paso] from US 54 (Patriot Freeway) to Loop 375 (Americas Ave.)	El Paso	El Paso	A
12/28/93	D6B-2.0	Farm to Market 659 [El Paso] from LP 375	El Paso	El Paso	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
		(Border Highway) to South City Limits [International boundary at Ysleta Port of entry Zaragoza Bridge]			
12/28/93	D7B	US 54 [El Paso] from New Mexico to South Loop 375	El Paso	El Paso	A
12/28/93	D7B-3.0	Interstate 110 [El Paso] from Cordova Port-of-Entry to Interstate 10	El Paso	El Paso	A
12/28/93	D8B-4.0	Fred Wilson Dr. [El Paso] from Airport Rd. to US 54	El Paso	El Paso	A
12/28/93	D9B-4.0-A	Railroad Dr. [El Paso] from Dyer St. (SP 478) to Fred Wilson Dr.	El Paso	El Paso	A
12/28/93	D9B-4.0-B	Marshall Rd. [El Paso] from Fred Wilson Dr. to Railroad Dr.	El Paso	El Paso	A
12/28/93	D10B-4.0-A	Spur 478 (Dyer Rd.) [El Paso] from Railroad Dr. to US 54 N	El Paso	El Paso	A
10/24/95	E1	Interstate 20 [Odessa] from Southwest City Limits to Southeast City Limits	Odessa	Ector	A
10/24/95	E2A	Loop 338 [Odessa] from South City Limits to North City Limits	Odessa	Ector	A
06/14/83	F1	Interstate 20 [Midland] from East City Limits to West City Limits	Midland	Midland	A
06/14/83	F2A	Loop 250 [Midland] from Interstate 20 to Fairgrounds Rd.	Midland	Midland	A
06/14/83	F2B	Midkiff Rd. [Midland] from Interstate 20 to Loop 250	Midland	Midland	A
06/14/83	F2C	Cotton Flat Rd. [Midland] from Interstate 20 to Bus. I 20/ US 80	Midland	Midland	A
06/14/83	F2D	State 349 [Midland] from Interstate 20 to South City Limits	Midland	Midland/ Martin	A
06/14/83	F3A	Fairgrounds Rd. [Midland] from South City	Midland	Midland	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
		Limits to Loop 250			
06/14/83	F3A-1.0	Farm to Market 868 (Midland Dr.) [Midland] from Bus. SR 158 to Loop 250	Midland	Midland	A
06/14/83	F3A-2.0	State 349 [Midland] from Loop 250 to North City Limits	Midland	Midland/ Martin	A
06/14/83	F3C-1.0	Garfield St. [Midland] from Bus. SH 158 to Florida Ave.	Midland	Midland	A
06/14/83	F3E-1.0	Scharbauer Rd. [Midland] from State 349 to Golf Course Rd.	Midland	Midland	A
06/14/83	F4E-1.0	Golf Course Rd. [Midland] from Scharbauer Dr. to State 158	Midland	Midland	A
10/01/91	G1	US 67 [San Angelo] from Southwest City Limits to Loop 306 W	San Angelo	Tom Green	A
10/01/91	G2	Loop 306 [San Angelo] from US 67 N to US 87/US 277	San Angelo	Tom Green	A
10/01/91	G3	US 87 [San Angelo] from loop 306 to South City Limits	San Angelo	Tom Green	A
06/28/01	H1	Interstate 35 [Bexar County] from South IH 410 to Atascosa/Bexar county line	San Antonio	Bexar	A
06/28/01	H2A	Interstate 410 [Bexar County] Entire Highway	San Antonio	Bexar	A
06/28/01	H3A-1.0	US 90 [Bexar County] from West IH 410 to the Medina/Bexar county line	San Antonio	Bexar	A
06/28/01	H3A-2.0	Interstate 10 [Bexar County] from North IH 410 to the Kendall/Bexar county line	San Antonio	Bexar	A
06/28/01	H3A-3.0	US 281 [Bexar County] from North IH 410 to the Comal/Bexar county line	San Antonio	Bexar	A
06/28/01	H3A-4.0	Interstate 35 [Bexar County] from North IH 410 to the Guadalupe/Bexar county line	San Antonio	Bexar	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
06/28/01	H3A-5.0	Interstate 10 [Bexar County] from East IH 410 to the Guadalupe/ Bexar county line	San Antonio	Bexar	A
06/28/01	H3A-6.0	US 87 [Bexar County] from East IH 410 to the Wilson/Bexar County line	San Antonio	Bexar	A
06/28/01	H3A-7.0	US 181 [Bexar County] from IH 410 to the Wilson/Bexar county line	San Antonio	Bexar	A
06/28/01	H3A-8.0	Interstate 37 [Bexar County] from IH 410 to Atascosa/Bexar county line	San Antonio	Bexar	A
06/28/01	H3A-9.0	US 281 [Bexar County] from South IH 410 to the Atascosa/ Bexar county line	San Antonio	Bexar	A
06/28/01	H3A-10.0	State 16 [Bexar County] from South IH 410 to the Atascosa/ Bexar county line	San Antonio	Bexar	A
01/08/93	I1	Interstate 35 [New Braunfels] from North City Limits to South City Limits	New Braunfels	Comal	A
01/09/93	I2A	Loop 337 [New Braunfels] from Interstate 35 N to Interstate 35 S	New Braunfels	Comal	A
10/07/82	J1	US 77 [Victoria] from West City Limits to North City Limits	Victoria	Victoria	A
10/07/82	J2A	Bus. US 59 [Victoria] from US 77 (downtown) to John Stockbauer Rd.	Victoria	Victoria	A
10/07/82	J2B	Loop 463 [Victoria] from US 87 to US 77	Victoria	Victoria	A
10/07/82	J3A	John Stockbauer Rd. [Victoria] from US 59 to Bus. US 59	Victoria	Victoria	A
10/07/82	J3A-1.0	State 185 [Victoria] from Bus. US 59 to South City Limits	Victoria	Victoria	A
10/07/82	J4A-2.0	US 59 [Victoria] from US 87 to East City Limits	Victoria	Victoria	A
10/07/82	J5A-2.0	US 87 [Victoria] from South City Limits to Northwest City Limits	Victoria	Victoria	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
06/28/93	K1	Farm to Market 609 [La Grange] from West City Limits to Bus. US 71	La Grange	Fayette	A
06/28/93	K2	Bus. US 71 [La Grange] from West City Limits to Farm to Market 609	La Grange	Fayette	A
06/28/93	L1	State 71 [La Grange] from East City Limits to West City Limits	La Grange	Fayette	A
06/28/93	L2	US 77 [La Grange] from North City Limits to State 71	La Grange	Fayette	A
08/06/90	M	US 59 [Rosenberg] from South City Limits to North City Limits	Rosenberg	Fort Bend	A
08/06/90	N	State 36 [Rosenberg] from 3400 Block to 4300 Block [This segment of State 36 is on the South side of town.]	Rosenberg	Fort Bend	A
08/06/90	O	State 36 [Rosenberg] from 500 Block [to US 90, 900 block only] to Farm to Market 529 [This segment of State 36 is to the Northwest side of town.]	Rosenberg	Fort Bend	A
01/21/87	P	US 90A [Stafford] from West City Limits to East City Limits	Stafford	Fort Bend	A
01/21/87	Q	US 59 [Stafford] from West City Limits to North City Limits	Stafford	Fort Bend/ Harris	A
03/25/91	R1	Farm to Market 518 [Pearland] from West City Limits to East City Limits	Pearland	Brazoria	A
03/25/91	R2A	State 35 [Pearland] from North City Limits to South City Limits	Pearland	Brazoria	A
03/04/70	S	Interstate 610 [Houston] Entire Highway	Houston	Harris	A
02/22/72	T	State 225 [Deer Park] from East City Limits to West City Limits	Deer Park	Harris	A
05/25/82	U1	State 6 [Santa Fe] from West City Limits to East City Limits	Santa Fe	Galveston	A

TABLE 107. – Texas – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
05/25/82	U2A	Farm to Market 1764 [Santa Fe] Entire highway within city limits	Santa Fe	Galveston	A
05/25/82	U2B	Farm to Market 646 [Santa Fe] from North City Limits to South City Limits	Santa Fe	Galveston	A
10/13/83	V1	Interstate 45 [Galveston, Galveston County] from West City Limits to Farm to Market 188 [Teichman Rd.] [See City of Galveston code for special restrictions/more information.]	Galveston	Galveston	A
10/13/83	V2	State 275 (Port Industrial Blvd. and Harborside Drive) [Galveston, Galveston County] from Interstate 45 to 9th St. [See City of Galveston code for special restrictions/more information.]	Galveston	Galveston	A
10/13/83	V3A	51st St./Seawolf Pkwy. [Galveston, Galveston County] from State 275 (Harborside Drive) to 1/4 mile south of Seawolf Park [See City of Galveston code for special restrictions/more information.]	Galveston	Galveston	A
10/13/83	W1	State 342 (61st St.) [Galveston, Galveston County] from Broadway Ave. to Seawall Blvd. [See City of Galveston code for special restrictions/more information.]	Galveston	Galveston	A
10/13/83	W2	Broadway Ave. [Galveston, Galveston County (entire length)] [See City of Galveston code for special restrictions/more information.]	Galveston	Galveston	A
03/01/72	X1	State 146 [Texas City, Galveston County] from North City Limits to South City Limits	Texas City	Galveston	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
03/01/72	X2A	Loop 197 [Texas City, Galveston County] from South City Limits to 2nd Ave. S.	Texas City	Galveston	A
03/01/72	X2B	Farm to Market 519 [Texas City, Galveston County] from State 146 to Loop 197	Texas City	Galveston	A
03/01/72	X2C	5th Ave. [Texas City, Galveston County] from State 146 to 14th St.	Texas City	Galveston	A
03/01/72	X2D	Farm to Market 1764 [Texas City, Galveston County] from Interstate 45 to State 146	Texas City	Galveston	A
03/01/72	X3A	2nd Ave. [Texas City, Galveston County] from Loop 197 to Bay St.	Texas City	Galveston	A
03/01/72	X3A-1.0	4th Ave. [Texas City, Galveston County] from Loop 197 to 10th St.	Texas City	Galveston	A
03/01/72	X3B-1.0	Grant Ave. [Texas City] from 5th Ave. South to FM 519/SH 341	Texas City	Galveston	A
03/01/72	X3C	14th St. [Texas City, Galveston County] from Loop 197 to 5th Ave. S.	Texas City	Galveston	A
03/01/72	X4A-1.0	10th St. [Texas City, Galveston County] from S. 4th Ave. to S. 6th Ave.	Texas City	Galveston	A
01/11/94	Y1	Interstate 45 [Dickinson] from Northwest City Limits to Southeast City Limits	Dickinson	Galveston	A
01/10/91	Y2	Interstate 45 [League City] from Northwest City Limits to Southeast City Limits	League City	Galveston	A
01/11/94	Y3A	Farm to Market 646 [Dickinson/League City] from Interstate 45 east to eastern City Limit [Dickinson].	Dickinson/ League City	Galveston	A
01/11/94	Y4A-1.0	Farm to Market 1266 [Dickinson] from Farm to Market 646 to Farm to Market 517	Dickinson	Galveston	A
05/21/92	Z1	Interstate 35 [Temple] from North City Limits to Southwest City Limits	Temple	Bell	A

TABLE 107. – Texas – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
05/21/92	Z2A	Loop 363 [Temple] Entire Highway	Temple	Bell	A
07/07/81	AA1	State 36 [Brenham] from South City Limits to US 290	Brenham	Washington	A
07/07/81	AA2A	US 290 [Brenham] from East City Limits to West City Limits	Brenham	Washington	A
07/07/81	AB1	Farm to Market 577 [Brenham] from East City Limits to BS 36	Brenham	Washington	A
07/07/81	AB2	Bus. US 36 [Brenham] from North City Limits to Farm to Market 577	Brenham	Washington	A
07/07/81	AB2A	State 105 [Brenham] from Northeast City Limits to Farm to Market 577	Brenham	Washington	A
07/07/81	AB2B	Farm to Market 2935 [Brenham] from North City Limits to Farm to Market 577	Brenham	Washington	A
12/17/84	AC1	State 159 [Hempstead] from State 6 / Bus. US 290 to South City Limits	Hempstead	Waller	A
12/17/84	AC2A	Farm to Market 1887 [Hempstead] from State 159 to South City Limits	Hempstead	Waller	A
12/17/84	AC2B	State 6 / Bus US 290 [Hempstead] from North City Limits to East City Limits	Hempstead	Waller	A
12/17/84	AC3B-1.0	St. Mary's St. [Hempstead] from State 6 / Bus US 290 to Blasengane Rd.	Hempstead	Waller	A
12/17/84	AC3B-2.0	Farm to Market 1488 [Hempstead] from Bus. US 290/SH 6 to East City Limits	Hempstead	Waller	A
12/17/84	AC4B-1.0	Blasengane Rd. [Hempstead] from St. Mary's St. to US 290	Hempstead	Waller	A
09/28/87	AD1	State 146 [Mont Belvieu] from North City Limits to South City Limits	Mont Belvieu	Chambers	A
09/28/87	AD2A	Loop 207 [Mont Belvieu] from north SR 146 to South SR 146	Mont Belvieu	Chambers	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
09/28/87	AD3A-1.0	Farm to Market 565 [Mont Belvieu] from Loop 207 to East City Limits	Mont Belvieu	Chambers	A
09/23/82	AE1	Interstate 45 [Conroe] from North City Limits to South City Limits	Conroe	Montgomery	A
09/23/82	AE2A	Loop 336 [Conroe] Entire highway within city limits	Conroe	Montgomery	A
08/01/91	AF1	Interstate 10 [Beaumont] from East City Limits to West City Limits	Beaumont	Jefferson	A
08/01/91	AF2A	US 69/96/287 [Beaumont] from North City Limits to Southeast City Limits	Beaumont	Jefferson	A
08/01/91	AF2B	US 90 [Beaumont] from West City Limits to Interstate 10	Beaumont	Jefferson	A
08/01/91	AF3A-1.0	Spur 380 (Railroad Ave.) [Beaumont] from US 69/ US96/US287 (Cardinal Dr.) to Washington Blvd	Beaumont	Jefferson	A
08/01/91	AF3A-2.0	State 105 [Beaumont] from West City Limits to US 69/96/287	Beaumont	Jefferson	A
08/01/91	AF4A-1.0	Washington Blvd. [Beaumont] from Spur 380 to Irving St.	Beaumont	Jefferson	A
08/01/91	AF5A-1.0	Irving St. [Beaumont] from Washington Blvd. to Madison St.	Beaumont	Jefferson	A
08/01/91	AF6A-1.0	Madison St. [Beaumont] from Irving St. to Grove St.	Beaumont	Jefferson	A
01/16/78	AG1	Farm to Market 2110 [Crockett] from Southwest City Limits to Loop 304 SW	Crockett	Houston	A
01/16/78	AG2	Loop 304 [Crockett] Entire highway	Crockett	Houston	A
01/16/78	AG3A	State 7/21 [Crockett] from West City Limits to Loop 304 W	Crockett	Houston	A
01/16/78	AG3B	Farm to Market 2076 [Crockett] from West City Limits to Loop 304 W	Crockett	Houston	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
01/16/78	AG3C	Farm to Market 229 [Crockett] from Northwest City Limits to Loop 304 NW	Crockett	Houston	A
01/16/78	AG3D	US 287/State 19 [Crockett] from North City Limits to Loop 304 N	Crockett	Houston	A
01/16/78	AG3E	Farm to Market 2022 [Crockett] from Northeast City Limits to NE Loop 304	Crockett	Houston	A
01/16/78	AG3F	State 21 [Crockett] from Northeast City Limits to Loop 304 NE	Crockett	Houston	A
01/16/78	AG3G	State 7 [Crockett] from East City Limits to Loop 304 E	Crockett	Houston	A
01/16/78	AG3H	US 287 [Crockett] from Southeast City Limits to Loop 304 E	Crockett	Houston	A
01/16/78	AG3I	Farm to Market 2712 [Crockett] from South City Limits to Loop 304 S	Crockett	Houston	A
01/16/78	AG3J	State 19 [Crockett] from South City Limits to Loop 304 S	Crockett	Houston	A
08/16/88	AH1	US 59 [Lufkin] from South City Limits to South Loop 287	Lufkin	Angelina	A
09/23/88	AH2	Loop 287 [Lufkin] Entire highway	Lufkin	Angelina	A
08/16/88	AH3A	State 94 [Lufkin] from West City Limits to West Loop 287	Lufkin	Angelina	A
08/16/88	AH3B	State 103 [Lufkin] from West City Limits to West Loop 287	Lufkin	Angelina	A
08/16/88	AH3C	US 69 [Lufkin] from Northwest City Limits to Northwest Loop 287	Lufkin	Angelina	A
08/16/88	AH3D	US 59 [Lufkin] from North City Limits to North Loop 287	Lufkin	Angelina	A
09/23/88	AH3E	State 103 [Lufkin] from East City Limits to East Loop 287 US 59/69	Lufkin	Angelina	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
09/23/88	AH3F	US 69 [Lufkin] from Southeast City Limits to East Loop 287	Lufkin	Angelina	A
09/20/77	AI1	US 59 [Nacogdoches] from South City Limits to Loop 224 S	Nacogdoches	Nacogdoches	A
09/20/77	AI2	Loop 224 [Nacogdoches] Entire Highway	Nacogdoches	Nacogdoches	A
09/20/77	AI3A	State 7 [Nacogdoches] from West City Limits to Loop 224 W	Nacogdoches	Nacogdoches	A
09/20/77	AI3B	State 21 [Nacogdoches] from West City Limits to Loop 224 W	Nacogdoches	Nacogdoches	A
09/20/77	AI3C	US 59 [Nacogdoches] from North City Limits to Loop 224 N	Nacogdoches	Nacogdoches	A
09/20/77	AI3D	State 7 [Nacogdoches] from East City Limits to Loop 224 E	Nacogdoches	Nacogdoches	A
09/20/77	AI3E	State 21 [Nacogdoches] from East City Limits to Loop 224 E	Nacogdoches	Nacogdoches	A
08/22/88	AJ1	US 96 [Center] from North City Limits to South City Limits	Center	Shelby	A
08/22/88	AJ2A	State 7 [Center] from West City Limits to US 96	Center	Shelby	A
08/22/88	AJ2B	State 87 [Center] from West City Limits to US 96	Center	Shelby	A
08/22/88	AK1	Loop 500 [Center] from US 96 S to East State 7	Center	Shelby	A
08/22/88	AK2A	State 87 [Center] from East City Limits to Loop 500	Center	Shelby	A
11/01/94	AL1	US 377 [Benbrook] from North City Limits to South City Limits	Benbrook	Tarrant	A
03/06/79	AL2	US 377 [Fort Worth] from Southwest City Limits to Interstate 20	Fort Worth	Tarrant	A

TABLE 107. – Texas – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
11/01/94	AL2A	Farm to Market 2871 [Benbrook] from West City Limits to US 377	Benbrook	Tarrant	A
09/06/84	AL3A-1.0	Interstate 20/820 [Benbrook] from East City Limits to West City Limits	Benbrook	Tarrant	A
03/06/79	AL4A-1.0	Interstate 820 [Fort Worth] Entire highway [To include: Benbrook, Haltom, Hurst, Lake Worth, N. Richland Hills, Signaw]	Fort Worth	Tarrant	A
07/01/86	AL4A-1.0	Interstate 820 [Haltom] from West City Limits to East City Limits	Haltom	Tarrant	A
09/09/86	AL4A-1.0	Interstate 820 [Hurst] from West City Limits to Southwest City Limits	Hurst	Tarrant	A
10/14/86	AL4A-1.0	Interstate 820 [Lake Worth] from South City Limits to East City Limits	Lake Worth	Tarrant	A
08/25/86	AL4A-1.0	Interstate 820 [North Richland Hills] from West City Limits to East City Limits	North Richland Hills	Tarrant	A
11/15/86	AL4A-1.0	Interstate 820 [Saginaw] from West City Limits to East City Limits	Saginaw	Tarrant	A
03/06/79	AL5A-1.0-A	Interstate 30 [Fort Worth] from West City Limits to West Interstate 820	Fort Worth	Tarrant	A
03/06/79	AL5A-1.0-B	State 199 (Jacksboro Hwy) [Fort Worth/Lake Worth] from Northwest City Limits of Fort Worth to Interstate 820 NW	Fort Worth/ Lake Worth	Tarrant	A
03/06/79	AL5A-1.0-C	Interstate 35 W [Fort Worth] from North City Limits to North Interstate 820	Fort Worth	Tarrant	A
08/25/86	AL5A-1.0-D	State 26 [North Richland Hills (entire highway within city limits)]	North Richland Hills	Tarrant	A
03/06/79	AL5A-1.0-E	Interstate 30 [Fort Worth] from East City Limits to East Interstate 820	Fort Worth	Tarrant	A
03/06/79	AL5A-1.0-F	State 180 [Fort Worth] from Interstate 820	Fort Worth	Tarrant	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
		to East City Limits			
09/02/86	AL5A-1.0-G	Interstate 20 [Forest Hill] from East City Limits to West City Limits	Forest Hill	Tarrant	A
09/02/86	AL5A-1.0-H	Interstate 20 [Arlington] from East City Limits to West City Limits	Arlington	Tarrant	A
03/06/79	AL6A-1.0-H	Interstate 20 [Fort Worth] from East City Limits to West City Limits	Fort Worth	Tarrant	A
03/06/79	AL7A-1.0-H1	Interstate 35 W [Fort Worth] from South City Limits to Interstate 20	Fort Worth	Tarrant	A
04/22/91	AM	US 287 [Mansfield] Entire Highway	Mansfield	Tarrant/ Johnson	A
01/01/76	AN1	Interstate 35E [Lancaster] from North City Limits to South City Limits	Lancaster	Dallas	A
01/25/84	AN2	Interstate 35 E [Dallas] from South City Limits to Interstate 20	Dallas	Dallas	A
11/14/94	AN3A	Interstate 20 [Balch Springs] from East City Limits to South City Limits	Balch Springs	Dallas	A
01/25/84	AN3A	Interstate 20 [Dallas] Entire Length within City Limits	Dallas	Dallas	A
08/18/86	AN3A	Interstate 20 [Duncanville] from East City Limits to West City Limits	Duncanville	Dallas	A
02/09/87	AN3A	Interstate 20 [Hutchins] from West City Limits to East City Limits	Hutchins	Dallas	A
01/01/76	AN3A	Interstate 20 [Lancaster] from West City Limits to East City Limits	Lancaster	Dallas	A
01/25/84	AN4A-1.0	US 67 [Dallas] from Interstate 20 to South City Limits	Dallas	Dallas	A
01/25/84	AN4A-2.0	Spur 408 [Dallas] from Interstate 20 to Loop 12	Dallas	Dallas	A

TABLE 107. – Texas – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
01/25/84	AN4A-3.0	State 342 [Dallas] from Interstate 20 to South City Limits	Dallas	Dallas	A
01/25/84	AN4A-4.0	Interstate 45 [Dallas] from Southeast City Limits to Interstate 20	Dallas	Dallas	A
01/25/84	AN4A-5.0	US 175 [Dallas] from South City Limits to Interstate 20	Dallas	Dallas	A
08/18/86	AN5A-1.0	US 67 [Duncanville] from East City Limits to South City Limits	Duncanville	Dallas	A
01/25/84	AN5A-2.0	Loop 12 [Dallas] from Spur 408 to South City Limits of Irving	Dallas	Dallas	A
01/25/84	AN5A-2.0-A	Spur 303 [Dallas] from Spur 408 to West City Limits	Dallas	Dallas	A
02/09/87	AN5A-4.0	Interstate 45 [Hutchins] from North City Limits to South City Limits	Hutchins	Dallas	A
06/20/91	AN6A-2.0	Loop 12 [Irving] from North City Limits to South City Limits	Irving	Dallas	A
01/25/84	AN6A-2.0-B	State 180 [Dallas] from Loop 12 to West City Limits	Dallas	Dallas	A
01/25/84	AN6A-2.0-C	Interstate 30 [Dallas] from West City Limits to Loop 12	Dallas	Dallas	A
01/25/84	AN7A-2.0	Loop 12 [Dallas] from North City Limits of Irving to Interstate 35 E	Dallas	Dallas	A
01/25/84	AN8A-2.0	Interstate 35 E [Dallas] from North City Limits to LP 12	Dallas	Dallas	A
01/25/84	AN8A-2.0-D	Spur 348 (Northwest Highway) [Dallas] from Loop 12 to West City Limits	Dallas	Dallas	A
01/25/84	AN9A-2.0-E	Interstate 635 [Dallas] Entire highway within Dallas City Limits	Dallas	Dallas	A
11/01/94	AN10A-2.0-E	Interstate 635 [Garland] from Southwest City Limits to South City Limits	Garland	Dallas	A

TABLE 107. – Texas – Designated NRHM routes

Designation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
01/25/84	AN10A-2.0-E1	State 289 (Preston Rd.) [Dallas] from Interstate 635 to North City Limits	Dallas	Dallas	A
01/25/84	AN10A-2.0-E2	US 75 [Dallas] from North City Limits to Interstate 635 N	Dallas	Dallas	A
08/06/90	AN11A-2.0-E	Interstate 635 [Mesquite] from North City Limits to South City Limits	Mesquite	Dallas	A
11/14/94	AN12A-2.0-E	Interstate 635 [Balch Springs] from North City Limits to Interstate 20	Balch Springs	Dallas	A
03/28/96	AO1	US 62/82 [Lubbock] from Southwest City Limits to Loop 289 SW	Lubbock	Lubbock	A
03/28/96	AO2	Loop 289 (Lubbock) from W. US 62/82, North, East, South, & West to South Interstate 27/87	Lubbock	Lubbock	A
03/28/96	AO3A	State 114 [Lubbock] from West City Limits to Loop 289 W	Lubbock	Lubbock	A
03/28/96	AO3B	US 84 [Lubbock] from Northwest City Limits to Loop 289 N	Lubbock	Lubbock	A
03/28/96	AO3C	US 62/82 /SH 114 [Lubbock] from Northeast City Limits to Loop 289 NE	Lubbock	Lubbock	A
03/28/96	AO3D	US 84 [Lubbock] from Southeast City Limits to Loop 289 S	Lubbock	Lubbock	A
03/28/96	AO3E	Interstate 27 [Lubbock] from North City Limits to South City Limits	Lubbock	Lubbock	A
09/09/86	AP1	Interstate 27/ US 87/ US 60 [Amarillo] from South City Limits to Interstate 40	Amarillo	Potter/ Randall	A
10/10/95	AP2	US 60/US 87/US 287 (Buchanan and Pierce St. only) [Amarillo] from Loop 335 to Interstate 40 [7 p.m. to 7 a.m.]	Amarillo	Potter/ Randall	A
09/09/86	AP2A	Interstate 40 [Amarillo] from East City Limits to West City Limits	Amarillo	Potter/ Randall	A

TABLE 107. – Texas – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	City	County	Designation(s) (A,B,I,P)
09/09/86	AP3A	Loop 335 [Amarillo] from Dumas Dr. [(US 87/US 287)] to West City Limits	Amarillo	Potter/ Randall	A
09/09/86	AP3A-1.0	Loop 335 [Amarillo] from NE 24th Ave. to Interstate 40	Amarillo	Potter/ Randall	A
09/09/86	AP3B	Loop 335 [Amarillo] from Dumas Dr. [US 27/US 287] to East City Limits	Amarillo	Potter/ Randall	A
09/09/86	AP4A-1.0-A	US 60 [Amarillo] from East City Limits to Loop 335 E	Amarillo	Potter/ Randall	A
09/09/86	AQ1	BI 40 [Amarillo] from West City Limits to Farm to Market 1719	Amarillo	Potter/ Randall	A
09/09/86	AQ2	Farm to Market 1719 [Amarillo] from North City Limits to BI 40	Amarillo	Potter/ Randall	A

TABLE 108. – State: Utah

State Agency:	UT DOT		**FMCSA:**	UT FMCSA Field Office
POC:	Lane Murphy		**POC:**	UT Motor Carrier Division Administrator
Address:	Motor Carrier Division South 2700 West P.O. Box 148240 Salt Lake City, UT 84114-8240	4501	**Address:**	310 East 4500 South, Suite 102 Salt Lake City, UT 84107
Phone:	(801) 965-4508		**Phone:**	(801) 288-0360
Fax:	(801) 965-4211		**Fax:**	(801) 288-8867
Web Address:	www.udot.utah.gov/			

TABLE 109. – Utah – Designated HRCQ/RAM routes

Desig-nation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
07/01/97	A1	Interstate 80 from Interstate 84 to Wyoming	P
07/01/97	A2	Interstate 84 from Interstate 15 to Interstate 80 [Note: The Perry Port of Entry on I-15/I-84 is a designated safe haven for radioactive materials in transit.]	P
07/01/97	A3	Interstate 15 from Idaho to Interstate 84	P

TABLE 110. – Utah – Designated NRHM routes

Desig-nation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
07/01/97	A	All Interstates [The Utah Department of Transportation states that all Interstate routes in the State are designated NRHM routes.]	A

TABLE 111. – State: Vermont

State Agency:	VT Emergency Mgmt. Division	**FMCSA:**	VT FMCSA Field Office
POC:	William E. Irwin, Sc.D., CHP	**POC:**	VT Motor Carrier Division Administrator
Address:	108 Cherry St. Burlington, VT 05402	**Address:**	87 State St., Room 305 P.O. Box 338 Montpelier, VT 05601
Phone:	(802) 863-7238	**Phone:**	(802) 828-4480
Fax:	(802) 865-7745	**Fax:**	(802) 828-4581
Web Address:	vem.vermont.gov/		

TABLE 111. – State: Vermont

No designated or restricted routes as of 03/30/2015

TABLE 112. – State: Virginia

State Agency:	VA DOT	**FMCSA:**	VA FMCSA Field Office
POC:	John Scrivani	**POC:**	VA Motor Carrier Division Administrator
Address:	1221 East Broad St. Richmond, VA 23219	**Address:**	400 North 8th St., Suite 750 Richmond, VA 23219
Phone:	(804) 786-2848	**Phone:**	(804) 771-8585
Fax:	(804) 225-4979	**Fax:**	(804) 771-8670
Web Address:	virginiadot.org/		

TABLE 113. – Virginia – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/15/95	A	East River Mountain Tunnel - Interstate 77 [Phone: (276) 928-1994] Highway Route Controlled Quantities (HRCQ) of high level radioactive material is not allowed	7
11/15/95	B	Big Walker Mountain Tunnel - Interstate 77 [Phone: (276) 228-5571] Highway Route Controlled Quantities (HRCQ) of high level radioactive material is not allowed	7
05/25/85	C	Airport Tunnel (Airport Rd [State 118]) [City of Roanoke] from Trapper Cir NW to Dent Rd NW	0

TABLE 113. – Virginia – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/15/95	D	Elizabeth River Tunnel [Downtown] - Interstate 264 [Phone: (757) 494-2424]. Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1, 7 (i.e., Highway Route Controlled Quantities-HRCQ), and toxic inhalation hazard are not allowed passage through this tunnel. Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in "non-bulk". Hazmat shipper MUST abide by rules and regulations outlined in VDOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". For additional information, see www.virginiadot.org/info/resources/vdothazmat.pdf	1,2,3,4,5,6,7,8,i

TABLE 113. – Virginia – Restricted HM routes

Desig-nation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/15/95	E	Elizabeth River Tunnel [Midtown] - US 58 [Phone: (757) 683-8123] Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1, 7 (Highway Route Controlled Quantities (HRCQ)), and toxic inhalation hazard are not allowed passage through this tunnel. Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in "non-bulk". Hazmat shipper MUST abide by rules and regulations outlined in VA DOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". For additional information, see www.virginiadot.org/info/resources/vdothazmat.pdf	1,2,3,4,5,6,7,8,i
11/15/95	F	Monitor-Merrimac Memorial [Bridge/Tunnel] - Interstate 664 [Phone: (757) 247-2123] Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1,7 (i.e., Highway Route Controlled Quantities-HRCQ), and toxic inhalation hazard are not allowed passage through this tunnel. Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in non-bulk". Hazmat shipper MUST abide by rules and regulations outlined in VDOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". For additional information, see www.virginiadot.org/info/resources/vdothazmat.pdf	1,2,3,4,5,6,7,8,i

TABLE 113. – Virginia – Restricted HM routes

Desig-nation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/15/95	G	Hampton Roads Bridge-Tunnel [Interstate 64] [Phone: (757) 727-4832] Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1, 7 (i.e., Highway Route Controlled Quantities-HRCQ), and toxic inhalation hazard are not allowed passage through this tunnel. Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in "non-bulk". Hazmat shipper MUST abide by rules and regulations outlined in VDOT's "Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities". For additional information, see www.virginiadot.org/info/resources/vdothazmat.pdf	1,2,3,4,5,6,7,8,i
11/12/96	H	Chesapeake Bay Bridge - Tunnel [Phone: (757) 331-2960] The jurisdiction for this bridge and tunnel falls under the Chesapeake Bay Bridge and Tunnel District, which maintains its own regulations on hazardous materials.] Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 (Inhalation Hazard only) are not allowed passage in any quantity. Classes 2.1., 2.2, 3, 4.1, 4.2, 5.1, 5.2, 6.1, 7, 8, and 9 are prohibited in limited circumstances. For additional information on route restrictions, see www.cbbt.com/hazmat.html	1,2,3,4,5,6,7,8,9,i

TABLE 114. – Virginia – Designated NRHM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
07/31/95	A	Interstate 495 [** Restricted to right lanes only **]	A

TABLE 115. – State: Virginia

State Agency:	Dept. of Emergency Mgmt.	**FMCSA:**	VA FMCSA Field Office
POC:	Brian Iverson	**POC:**	VA Motor Carrier Division Administrator
Address:	10501 Trade Court Richmond, VA 23236	**Address:**	400 North 8th St., Suite 750 Richmond, VA 23219
Phone:	(804) 897-9953	**Phone:**	(804) 771-8585
Fax:	(804) 897-6576	**Fax:**	(804) 771-8670
Web Address:	www.vaemergency.gov/		

TABLE 116. – Virginia – HRCQ/RAM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
03/11/94	A	US 460 from West Virginia to State 100 [Pearisburg]	P
03/11/94	B1	US 220 Alt. from US 460 to Interstate 81	P
03/11/94	B2	US 460 from State 726 [Mt. Athos Rd. in Lynchburg] to US 220 Alt.	P
03/11/94	B3	State 460 from Interstate 85 to State 726 [Mt. Athos Rd. in Lynchburg]	P
03/11/94	B4	Interstate 85 from Interstate 95 to State 460	P
03/11/94	C1	US 58 from Portsmouth to Interstate 95	P
03/11/94	C2A	US 460 from US 1 [in Petersburg] to US 58 [North of Suffolk]	P
03/11/94	C2B	State 10 from State 156 to State 58	P
03/11/94	C3B	State 156 from State 5 to State 10	P
03/11/94	C3B-1.0	US 17/US 258 from Interstate 64 to State 10	P
03/11/94	C4B	State 5 from State 155 [in Charles City] to State 156	P

TABLE 116. – Virginia – HRCQ/RAM routes

Designation Date	Route Order	Route Description	Designation(s) (A,B,I,P)
03/11/94	C5B	State 155 from Interstate 64 to State 5 [at Charles City]	P
03/11/94	D	US 29 from Interstate 66 to Interstate 64	P
03/11/94	E1	US 522 from State 208 to Interstate 64	P
03/11/94	E2	State 208 from US 522 to US 1	P
03/11/94	E3	US 1 from State 208 to Interstate 95 [At Four Mile Fork]	P

TABLE 117. – State: Washington

State Agency:	WA DOT Commercial Vehicle Services	**FMCSA:**	WA FMCSA Field Office
POC:	Ann Ford, Commercial Vehicle Services Administrator	**POC:**	WA Motor Carrier Division Administrator
Address:	PO Box 47367 Olympia, WA 98504-7367	**Address:**	2424 Heritage Court, SW, Suite 302 Olympia, WA 98502
Phone:	(360) 705-7341	**Phone:**	(360) 753-9875
Fax:	(360) 704-6350	**Fax:**	(360) 753-9024
Web Address:	wsdot.wa.gov/CommercialVehicle/		

TABLE 118. – Washington – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
1990	A	I-90 [Seattle] MP 3 - 6 Flammable loads cannot be transported through the Mercer Island tunnel or the tunnel on the west side of Lake Washington when the sprinkler systems are not operational or being tested	Seattle	King	3
1989	B	I-5 [Seattle] MP 164 Flammable loads cannot be transported through the tunnel under convention center when the sprinkler systems are not operational or being tested"	Seattle	King	3

TABLE 119. – State: West Virginia

State Agency:	WV DOT, District 6	**FMCSA:**	WV FMCSA Field Office
POC:	David Sada	**POC:**	WV Motor Carrier Division Administrator
Address:	1 DOT Drive Moundsville,WV 26041-1605	**Address:**	700 Washington St. East Geary Plaza, Suite 205 Charleston, WV 25301
Phone:	(304) 843-4032	**Phone:**	(304) 347-5935
Fax:	(304) 843-4059	**Fax:**	(304) 347-5617
Web Address:	www.transportation.wv.gov/Pages/default.aspx		

TABLE 120. – West Virginia – Restricted HM routes

Designation Date	Route Order	Route Description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
12/06/66	A	Wheeling Tunnel (at I-70)	1,3,4

TABLE 121. – State: Wisconsin

State Agency:	WI DOT	**FMCSA:**	WI FMCSA Field Office
POC:	Mark Gottlieb	**POC:**	WI Motor Carrier Division Administrator
Address:	Office of the Secretary P.O. Box 7910 Madison, WI 53707	**Address:**	1 Point Place, Suite 101 Madison, WI 53719
Phone:	(608) 266-1114	**Phone:**	(608) 662-2010
Fax:	(608) 266-9912	**Fax:**	(608) 829-7540
Web Address:	www.dot.state.wi.us		

No designated or restricted routes as of 03/30/2015

TABLE 122. – State: Wyoming

State Agency:	WY Highway Patrol	**FMCSA:**	WY FMCSA Field Office
POC:	Capt. Scot Montgomery	**POC:**	WY Motor Carrier Division Administrator
Address:	5300 Bishop Blvd Cheyenne, WY 82009	**Address:**	1637 Stillwater Avenue, Suite F Cheyenne, WY 82009
Phone:	(307) 777-4312	**Phone:**	(307) 772-2305
Fax:	(307) 777-4282	**Fax:**	(307) 772-2905
Web Address:	www.whp.dot. state.wy.us/wydot		

TABLE 123. – Wyoming – Restricted HM routes

Designation Date	Route Order	Route Description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
04/12/94	A	City of Cheyenne [City Ordinance: Hazardous materials and radioactive materials may not be transported by motor vehicle within the City of Cheyenne except for the purpose of making pickups and/or deliveries within the City, unless such routing is consistent with 49 CFR 397.7 or 49 CFR 177.825. Motor vehicles carrying hazardous and/or radioactive materials which are making local pickups and/or deliveries must be operated over the safest and most direct route to and from the origination and destination point. Such routes shall not pass through residential areas unless there is no practical alternative.]	Cheyenne	Laramie	0

End of National Hazardous Materials Route Registry

[FR Doc. 2015–09701 Filed 4–28–15; 8:45 am]
BILLING CODE 4910–EX–C

FEDERAL REGISTER

Vol. 80 Wednesday,
No. 82 April 29, 2015

Part III

Tennessee Valley Authority

Privacy Act of 1974: Republication of Notice of Systems of Records; Notice

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974: Republication of Notice of Systems of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of republication of systems of records; notice of proposed new system of records.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4), the Tennessee Valley Authority (TVA) is republishing in full a notice of the existence and character of each TVA system of records.

In accordance with the Privacy Act of 1974, the TVA is providing notice that it is retiring one system of records notice, TVA–8, Employee Alleged Misconduct Investigatory Files, from its inventory because the records are no longer relevant and have been disposed of in accordance with regular retention and disposal schedules. See appendix A.

TVA has transitioned from The Human Resource Information System (HRIS) to a new application, People Lifestyle Unified System (PLUS), which is reflected in TVA's current SORN's submission.

TVA is correcting minor typographical and stylistic errors in previously existing notices and has updated those notices to reflect current organizational structure. Also, updates are being made to show any changes to system locations; managers and addresses; categories of individuals and records; procedures and practices for storing, retrieving, accessing, retaining, and disposing of records.

DATES: Submit comments on or before May 29, 2015.

ADDRESSES: Address all comments concerning this notice to Christopher A. Marsalis, Senior Privacy Program Manager Enterprise Information Security & Policy, TVA, 400 West Summit Drive (WT 5D), Knoxville, TN 37902–1499.

FOR FURTHER INFORMATION CONTACT: Christopher A. Marsalis at (865) 632–2467 or *camarsalis@tva.gov*.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4), TVA is today republishing a notice of the existence and character of each of its systems of records in order to make available in one place in the **Federal Register** the most up-to-date information regarding these systems.

TVA is also correcting minor typographical and stylistic errors in the previous existing systems. In addition, TVA is updating the system locations; managers and addresses; notification; categories of individuals covered; categories of records; storage policies and practices; retention and disposal; record access; and contesting record procedures. These changes are necessary to reflect TVA's current organizational structure, current technology, and procedural changes.

This document gives notice that the following TVA systems of records below are in effect:

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TVA–1

SYSTEM NAME:

Apprentice Training Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Human Resource Information Systems, TVA, Knoxville, TN 37902–1499; Computer Operations, TVA, Chattanooga, TN 37402–2801; all TVA locations where apprentices are employed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA apprentices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment, qualifications, and evaluation information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; National Apprenticeship Act of 1937, 50 Stat. 664.

PURPOSE:

The purpose of this system is to facilitate registration for, participation in, and the completion and documentation of apprenticeship training sponsored by TVA in support of its mission. Records in this system will be used to: Determine eligibility for, and the effectiveness of, TVA apprenticeship programs; and facilitate the compilation of statistical information about TVA's apprenticeship training programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

To the Bureau of Apprenticeship and Training, the Veterans' Administration, Tennessee Valley Trades and Labor Council, and the State and local Government agencies for reporting and evaluation purposes.

To respond to a request from a Member of Congress regarding the status of an apprentice.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA employee: Job description, dates of employment, reason for separation.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of

discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by name, craft, job code, union code, and Social Security number.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Talent Sourcing & Support Services, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, craft, and location of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. Federal contracts, or access to classified information to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualification for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; General Aptitude Test Battery scores from S\state employment security office; references from employers, military and educational institutions; and evaluations from joint committee on apprenticeship.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing and examination material would compromise the objectivity of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–2

SYSTEM NAME:

Personnel Files—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Human Resources, HR Services, TVA, Knoxville, TN 37902–1499; Human Resource Information Systems, TVA, Knoxville, TN 37902–1499; area human resources offices throughout TVA; Information Technology, TVA, Chattanooga, TN 37402–2801; National Personnel Records Center, St. Louis, MO 63118. Security/suitability investigatory files are located separately from other records in this system. Duplicate or certain specified temporary information may be maintained by human resources officers, supervisors, and administrative officers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA employees, some contractors, applicants for employment, and applicants for employment by TVA contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Equal Employment Opportunity Act of 1972, Public Law 92–261, 86 Stat. 103; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; various sections of title 5 of the United States Code related to employment by TVA.

PURPOSE:

The purpose of this system is to provide a repository of personnel records, performance reports, events, developments, contract arrangements and other significant matters relating to an employee's employment with TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose test results to State employment services.

To a State employment security office in response to a request relating to a former employee's claim for unemployment compensation.

To respond to a request from a Member of Congress regarding the status of an employee, former employee, or applicant.

To refer, where there is an indication of a violation or potential violation of

law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request from any pertinent source directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information, as requested, to a prospective employer of a TVA or former TVA employee: Job descriptions, dates of employment, and reasons for separation.

To provide an official of Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

To provide information to TVA contractors engaged in making suitability determinations for their prospective employees under TVA contracts.

To contractors and subcontractors engaged at TVA's direction in providing support services to TVA in connection with mailing materials to TVA employees or other related services.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information necessary to support a claim for life insurance benefits under Federal Employees' Group Life Insurance to Office of Federal Employees' Group Life Insurance.

To transfer information regarding claims for health insurance benefits to health insurance carrier.

To union representatives in exercising their responsibilities under TVA collective-bargaining agreements.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To TVA contractors and subcontractors engaged at TVA's direction in studies and evaluation of TVA personnel management and benefits; or the investigation of nuclear safety, reprisal, or other matters involving TVA personnel practices or policies; or the implementation of TVA personnel policies.

To provide pertinent information to local school districts and other Government agencies in order to study TVA project impacts and to aid school districts in qualifying for assistance under Public Law 81–874 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To commemorate the month and day of employee birthday anniversaries.

To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) The disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically in the People Lifecycle Unified System (PLUS), Enterprise Content Management (ECM) or on microfiche. Duplicate or certain specified temporary information may be maintained by human resources officers, supervisors, and administrative offices in a locked, secured location.

RETRIEVABILITY:

Records are indexed by name and Employee Identification Number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. Access to systems storing these records must be approved by the Senior Manager of Employee Relations Support Services. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Talent Acquisition, Deployment and Support, HR Services, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the Manager, TVA Service Center, TVA, Knoxville, TN 37902–1499. Requests should include the individual's full name, job title, and

date of birth. A Social Security number is not required but may expedite TVA's response; however, an Employee Identification Number may be included.

Current employees should address inquiries also to their supervisors or the TVA Service Center.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Manager, TVA Service Center, TVA, Knoxville, TN 37901–1499. In addition, current employees may present requests for access to their supervisors or the personnel officer of the employing division. Requests should include the individual's full name, job title, and date of birth. A Social Security number is not required but may expedite TVA's response; however, an Employee Identification Number may be included. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or access to classified information to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Manager, TVA Service Center, TVA, Knoxville, TN 37902–1499.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; educational institutions; former employers; and other reference sources; State employment services; supervisors and other TVA personnel or personnel records; medical officers; other Federal agencies.

In addition to the above sources, security/suitability investigatory files contain information from law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3) and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–5

SYSTEM NAME:

Discrimination Complaint Files—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

TVA Equal Opportunity Compliance Staff, Knoxville, TN 37902–1499. Duplicate copies may be maintained in the files of the TVA organization where the complaint originated.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, or applicants who have received counseling or filed complaints of discrimination based on race, color, religion, sex, national origin, age, reprisal, disability or genetic information

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to a decision or determination made by TVA or the Equal Employment Opportunity Commission affecting an individual. The records consist of the complaint, letters or notices to the individual, record of hearings when received from the Equal Employment Opportunity Commission, materials placed into the record to support the decision or determination, affidavits or statements, testimonies of witnesses, investigative reports, and related correspondence, opinions, and recommendations. Also, if the case is appealed to the Federal District Court of Appeals, the records will contain a copy of the complaint on file with the Federal District Court.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 11478; 42 U.S.C. 2000e–16; 29 U.S.C. 633a; Title VII of the Civil Rights Act of 1964; Age Discrimination in Employment Act of 1967; Rehabilitation Act of 1973; Genetic Information Nondiscrimination Act of 2008.

PURPOSE:

The purpose of this system is to assist in the documentation of complaints, letters, notices, materials placed into the record to support the decision or determination, affidavits or statements, testimonies of witnesses, investigative reports, related correspondence, opinions, and recommendations to individuals regarding potential or alleged violations of equal employment opportunity statutes and regulations and to maintain records relating to a decision or determination made by TVA or the Equal Employment Opportunity Commission affecting an individual. Records in this system will be used for: Initiating, counseling, investigating, and adjudicating equal employment opportunity complaints and to resolve issues related to alleged discrimination because of race, color, religion, sex, national origin, age, physical or mental disability, and sexual orientation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

If a hearing is requested and/or an administrative appeal is filed with the Equal Employment Opportunity Commission, a copy of the complaint file, containing a record of investigations and a correspondence file of each complaint, is forwarded to the Equal Employment Opportunity Commission.

To the counselee's or complainant's representative.

To respond to a request from a Member of Congress regarding the status of a complaint.

To the parties of complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule,

regulations, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery.

In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To TVA consultants, contractors, and subcontractors who are engaged in studies and evaluation of TVA's administration of its Equal Employment Opportunity program or who are providing support services to the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) The disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are kept in file folders.

RETRIEVABILITY:

Records in this system are indexed by name.

SAFEGUARDS:

Access to and use of these records is limited to those personnel whose official duties require such access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of TVA Equal Opportunity Compliance, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals who have filed discrimination complaints are aware of that fact. However, inquiries may be addressed to the system manager named above. Individuals should provide their full name, the approximate date of their complaint, and their employing organization, if employed.

RECORD ACCESS PROCEDURES:

Individuals who have filed a discrimination complaint have been provided a copy of the record. However, an individual may gain access to a copy of their official complaint record by writing the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals who have filed a discrimination complaint have had an opportunity during the complaint procedure to timely amend their record. TVA management has the same opportunity during the complaint procedure to timely amend the applicable record. However, requests for amendment or correction of items not involving the complaint procedure may be addressed to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA personnel and other records; and witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–6

SYSTEM NAME:

Work Injury Illness System—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

TVA Safety Programs, TVA, Chattanooga, TN 37402–2801. Accident reports may also be maintained in the file of the employing organization.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and Staff Augmented contractors who have sustained a work-related injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to the accident, injury, or illness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 12196; Occupational Safety and Health Act of 1970, Public Law 93–237, 87 Stat. 1024.

PURPOSE:

The purpose of this system is to assist in compliance with the Occupational Safety and Health Act and to provide a repository of documentation of work related accidents, injuries, illnesses, and health related exposures in the workplace.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To an injured employee's representative.

To the Department of Labor as required by the Occupational Safety and Health Act.

To the Office of Workers' Compensation Programs in relation to an individual's claim for compensation.

To respond to a request from a Member of Congress regarding the status of an employee.

To provide information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purpose of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such

violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) The disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on automated data storage devices and in file folders.

RETRIEVABILITY:

Records are indexed by name, date of injury, and Employee Identification Number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Safety Process Support, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, date of birth, and approximate date of injury.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA medical records; witnesses of accidents and inquires, including appraisers of property damage.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–7

SYSTEM NAME:

Employee Accounts Receivable—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Financial Services. TVA, Knoxville, TN 37902–1499; Office of the General Counsel, TVA, Knoxville, TN 37902–1499.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees who: Authorize a payment for specified purposes in their behalf; receive overpayment of earnings; receive duplicate payments; or are otherwise indebted to TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information concerning indebtedness and repayment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; 5 U.S.C. Chapter 55.

PURPOSE:

The purpose of this system is to create a record of employees and former employees who are indebted to TVA . The records in this system will be used to assist in the tracking and collection of debts owed to TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on printouts, invoices, microfiche, and posting documents.

RETRIEVABILITY:

Records are indexed by payroll number, Social Security number, badge number, name, or invoice number.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Disbursement Services, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and employing organization. Provisions of the Social Security number is not required, but may expedite TVA's response and may prevent the erroneous retrieval of records for another individual with the same name.

RECORD ACCESS PROCEDURES:

Individuals who seek access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in the system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; TVA payroll records; TVA disbursement voucher records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–9

SYSTEM NAME:

Health Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

TVA HR Health & Safety, Chattanooga, TN 37402–2801; all TVA medical facilities; Computer Operations, TVA, Chattanooga, TN 37402–2801; National Personnel Records Center, St. Louis, MO 63118; District Offices, Office of Workers' Compensation Programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for TVA employment, employees, former employees, official visitors, contractual assignees to TVA, interns, externs, employees of TVA contractors, and other Federal agencies who are examined under contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health information pertinent to an individual's employment, official visit, or contractual work with TVA or other Federal agencies, including the basic Clinical Medical Record, Worker's Compensation and Rehabilitation claims and case files, Psychological and Fitness for Duty files including alcohol and drug testing information, clinical information received from outside sources, and information relative to an employee's claim for medical disability retirement. Health information includes paper documents, x-rays, microfiche, microfilm, and/or any automatic data processing media, regardless of the form or process by which it is maintained.

PURPOSE:

The purpose for this system is to maintain records concerning individual's medical records and treatments. Records in this system are used to: Determine fitness for duty; verify an employee's eligibility for certain services, evaluate an employee's claim for disability retirement or other separation actions; and prepare analytical and statistical studies and reports related to the health of TVA employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; 5 U.S.C. 7902; Federal Employees' Compensation Act, 5 U.S.C. chapter 81, 5 U.S.C. chapter 87 (Medical information relating to life insurance program); 5 U.S.C. 3301; Occupational Safety and Health Act of 1970, Public Law 93–237, 87 Stat. 1024, Public Law 91–616, Federal Civilian Employee Alcoholism Program and Public Law 92–255, Drug Abuse among Federal Civilian Employees, which are amended in regard to confidentiality of records by Public Law 93–282; Public health laws (State and Federal) related to the reporting of health hazards, communicable diseases or other epidemiological information; Energy Reorganization Act of 1974, Public Law 93–438, 88 Stat. 1233; 49 CFR part 382 Subpart D.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Compensation claim records are used for adjudicating claims and providing therapy. Appropriate information is exchanged with physicians, hospitals, and rehabilitation agencies approved by the Office of Workers' Compensation Programs for service to injured employees.

Alcohol, drug testing and psychological fitness for duty records may be exchanged with a physician or treatment center working with an employee, or in accordance with the provisions of Public Law 93–282.

Information in the Health Records System provided to officials of other Federal agencies responsible for other Federal benefit programs administered by Office of Workers' Compensation Programs. Retired Military Pay Centers, Veterans' Administration, Social Security Administration, and private contractors engaged in providing benefits under Federal contracts.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, the issuance of a security clearance, the reporting of an investigation of an employee, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

To respond to a request from a Member of Congress regarding an employee.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority or a court of competent jurisdiction.

To transfer information regarding claims for health insurance or disability benefits to the health insurance carrier or plan participant.

To request information from a Government agency or private

individual, if necessary, to obtain information relevant to a TVA decision within the purposes of this system of records.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To TVA consultants, contractors, and subcontractors who are engaged in studies and evaluation of TVA's administration of its medical and employee benefits program or who are providing support sources to the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To provide information to private physicians and other health care professionals or facilities designated by an employee.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Health information includes paper documents, x-rays, microfiche, microfilm, and/or any automatic data processing media, regardless of the form or process by which it is maintained.

RETRIEVABILITY:

Records are indexed by name, Social Security number, date of birth, and/or case number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. All filing systems are locked when unattended.

Remote access facilities are secured through physical and system-based safeguards. Special instructions governing the medical staff employees assure the confidentiality of health records.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with TVA rules and regulations approved by the Archivist of the United States. Retention schedules specify the length of time various records are kept. Active clinical medical records are kept indefinitely. Specific retention schedules for various components of the records systems are contained in the Comprehensive Records Schedule (CRS) which has been approved by the National Archives and Records Administration (NARA) for use by Health Services. These dispositions are mandatory unless TVA requests a revision from NARA. Items in this CRS should be cited as the disposition authority for transferring or destroying any records.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Occupational Health & Nursing Services, Chattanooga, TN 37402–2801. Inquiries and requests for psychological fitness for duty and alcohol & drug testing records should be sent to Manager, Non-Nuclear Fitness for Duty, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals should address inquiries to the system manager named above. Individuals should provide their full name, Employee Identification Number (EIN) or social security number, date of birth, employing organization, and date of last employment, and employee compensation case number, if any.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact or address their inquiries to the system manager named above. Inquiries should be specific as to which component of the health records system is to be accessed. If inquiries are not specific to a particular component of the health records, it will be assumed the access is directed toward the individual's clinical medical record.

CONTESTING RECORDS PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA medical staff; private physicians and medical institutions; Office of Workers' Compensation Programs; TVA personnel records; other health agencies and departments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–11

SYSTEM NAME:

Payroll Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Financial Services, TVA, Knoxville, TN 37902–1499; garnishment files are located at the Office of the General Counsel, TVA, Knoxville, TN 37902–1499; duplicate copies of some records may also be maintained in the files of the employing organization; National Personnel Records Center, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees and personal service contractors selected for certain training programs and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, pay, leave, and debt claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Internal Revenue Code; Fair Labor Standards Act, 29 U.S.C. Chapter 8; 5 U.S.C. Chapter 63.

PURPOSE:

The purpose of this system is to facilitate the facilitate fiscal operations for payroll, attendance, leave, insurance, tax, retirement and cost accounting programs. Records in this system will be used to: Generate W–2 forms, wage and tax statement, reports of withholding and contributions; facilitate the compilation of statistical information about TVA's payroll; and prepare comprehensive payroll related reports to other Federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To report earnings and other required information to Federal, State, and local taxing authorities as required by law.

To report earnings to the Civil Service Retirement System for members of that system.

To transmit payroll deduction information to financial institutions and employee organizations.

To report earnings to courts when garnishments are served or in bankruptcy or wage earner proceedings.

To report earnings to the Department of Housing and Urban Development, State welfare agencies, and State employment security offices where an individual has made a claim for benefit with such agency.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To disclose to any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information necessary to support a claim for life insurance benefits under Federal Employee's Group Life Insurance to Office of Federal Employee's Group Life Insurance.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To transfer information regarding claims for health insurance benefits to health insurance carriers.

To TVA contractors and subcontractors engaged in studies and evaluations of TVA payroll and personnel management.

To union representatives exercising their responsibilities under TVA collective bargaining agreements.

To report earnings to the Department of Housing and Urban Development, and State welfare agencies where an individual makes a claim for benefits, and to report earnings to State employment security offices in both manual and automated form for use by these offices in determining unemployment benefits.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

To the Office of Child Support Enforcement for release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in an optical scanned electronic file.

RETRIEVABILITY:

Records are primarily indexed by name. They may also be retrieved by reference to employing organization, date of end of pay period, Social Security or badge number, year of birth, or job title.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Disbursement Services, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, employing organization, and date of last employment. The Social Security number is also required to expedite TVA's response and prevent the erroneous retrieval of records for another individual with the same name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information on them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information on them in this system of records should contact the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA personnel records; employee's supervisor for report of hours worked.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–12

SYSTEM NAME:

Travel History Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Financial Services, TVA, Knoxville, TN 37902–1499. Duplicate copies of certain records may also be maintained in the files of the employing organization.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA employees who traveled on official business and filed travel expense vouchers, applied for a travel advance, or transferred between official stations; recently-hired employees who filed for reimbursement of relocation expenses; candidates for TVA positions who filed for reimbursement of travel expenses; and contractors with which there is an employer/employee relationship (*i.e.,* personal services contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel advance requests, travel expense vouchers and supporting documentation, travel charge card program records and reports, and travel orders. Records supporting relocation expense claims also include real estate sales agreements and settlements, Federal Truth-In Lending disclosure statements, lease agreements, receipts for loss of rental deposit, and relocation income tax allowance documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; 5 U.S.C. 5701–5709, and related Federal travel regulations.

PURPOSE:

The purpose of this system is to facilitate the planning and arrangement of official TVA travel, obtain travel authorizations, maintain documentation on TVA employees on travel or being provided travel by TVA, and assist in the generation of travel expense reports. Records in this system will also be used to support relocation expense claims and generate travel vouchers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding the status of an employee, former employee, or applicant.

To TVA contractors and subcontractors engaged at TVA's direction that are providing support services to TVA's travel charge card program.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a (b)(12): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media, hard-copy printouts, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by name and Social Security number.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Security will be provided by physical, administrative, and computer system safeguards. Files are kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Disbursement Services, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and Social Security number.

RECORD ACCESS PROCEDURES:

Individuals who seek access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name and Social Security number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above. Requests should include the individual's full name and Social Security number.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA disbursement voucher

records; TVA application for travel advance; travel charge card program records and reports.

TVA–13

SYSTEM NAME:

Employment Applicant Files—TVA.

SYSTEM LOCATION:

HR System Administration and Reporting, Chattooga TN 37402.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment including former employees seeking reemployment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; 5 U.S.C. 3101.

PURPOSE:

The purpose of this system is to provide documentation and records on TVA applicants for employment. Records in this system will be used to rate and rank applicants for employment, facilitate in the determination of individuals' eligibility and evaluate qualifications for employment at TVA, and to facilitate the compilation of statistical information about TVA's application process

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an individual's application.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request from any pertinent source, directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring of an employee, the issuance of a security clearance, or other decision within the purposes of this system or records.

To disclose test results to State employment services.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To provide information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Information is stored electronically in the People Lifecycle Unified System (PLUS), Enterprise Content Management (ECM) or on microfiche. Duplicate or certain specified temporary information may be maintained by human resources officers, supervisors, and administrative offices in a locked, secured location.

RETRIEVABILITY:

Records are indexed by name and Employee Identification number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. Access to systems storing these records must be approved by the Senior Manager of Employee Relations Support Services. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Human Resource System Administration and Reporting TVA, 1101 Market Street, Chattanooga, TN 3740202801

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the Senior Manager, Employee Relations Support Services, TVA, Knoxville, TN 37902–1499. Requests should include the individual's full name, Social Security number, date of birth, and approximate date of application.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information on them in this system of records should contact the Senior Manager, Employee Relations Support Services, TVA, Knoxville, TN 37902–1499. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to Manager, TVA Service Center, TVA, Knoxville, TN 37902–1499.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; educational institutions, employers, and other references; State employment services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–14

SYSTEM NAME:

Grievance Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Labor Relations Staff, TVA, Knoxville, TN 37902–1499. Original correspondence on the initial grievance steps below the Labor Relations level is maintained in the organization in which the grievance originated. Original correspondences on grievance appeals to the corporate level are maintained in the files of the Labor Relations office.

Duplicate copies of such correspondence are also maintained in the files of the organization concerned with the grievance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees and former employees who have formally appealed to TVA for adjustment of their grievances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Evidence and arguments relevant to the matter giving rise to the grievance and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee.

PURPOSE:

The purpose of this system is to document employee grievances, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. Records in this system will be used to assist in the initiation, consideration, and adjudication of formally filed grievances by TVA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an employee's grievance.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To request information from a Federal, State, or local agency, or private individual, if necessary, to obtain information relevant to a TVA decision within the purposes of this system of records.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices in some organizations and in file folders.

RETRIEVABILITY:

Records are indexed by name or by craft.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor Relations, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals who have filed grievances are aware of that fact. Inquiries may, however, be addressed to the system manager named above. Requests should include the individual's full name, craft, and location of employment.

RECORD ACCESS PROCEDURES:

Individuals who have filed a grievance may gain access to the official copy of the grievance record by contacting the system manager named above. Requests should include the grievant's full name, craft, and location of employment.

CONTESTING RECORD PROCEDURES:

The contest, amendment, or correction of a grievance record is permitted during the prosecution of that grievance. However, an individual may address requests for amendment or correction of items not involved in prosecution of the grievance to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA personnel records; statements and testimony of witnesses and related correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–18

SYSTEM NAME:

Employee Supplementary Vacancy Announcement Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Human Resources, Knoxville and Chattanooga, Tennessee, and Muscle Shoals, Alabama; may also be maintained in other offices that issue or receive responses to supplementary vacancy announcements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees applying for placement in positions covered by the supplementary vacancy announcement procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and supporting material submitted by employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 11478; Equal Employment Opportunity Act of 1972, Public Law 92–261, 86 Stat. 103; 5 U.S.C. 3101.

PURPOSE:

The purpose of this system is to collect, maintain, and track applications for positions covered by the supplemental vacancy announcement procedure. This procedure allows TVA employees to apply for internal vacancies that are exempt from TVA's policy that employees must be given the opportunity to apply for vacant positions before they are filled.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES AND USERS AND THE PURPOSES OF SUCH USES:

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically in the People Lifecycle Unified System (PLUS), Enterprise Content Management (ECM) or on microfiche. Duplicate or certain specified temporary information may be maintained by human resources officers, supervisors, and administrative offices in a locked, secured location.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Access to systems storing these records must be approved by the Manager of Human Resources System Administration and Support.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Human Resource System Administration and Reporting, 1101 Market Street, Chattanooga, TN 3740202801

NOTIFICATION PROCEDURE:

Individuals upon whom records are maintained in this system are aware of that fact through filing an application. However, inquiries may be addressed to the name and address to which application was submitted. Requests should include the individual's full name, position applied for, and location of job.

RECORD ACCESS PROCEDURES:

Individuals upon whom records are maintained in this system have supplied all information in this system. However, requests for access may be addressed to the name and address to which application was submitted.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the name and address to which application was submitted.

RECORD SOURCE CATEGORIES:

The individual upon whom the record is maintained.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–19

SYSTEM NAME:

Consultant and Contractor Records—TVA.

SYSTEM LOCATION:

People Lifestyle Unified System (PLUS) contains personal, employment, job, security restriction and training information. PLUS is located in HR & Accounting Solutions, TVA Knoxville, TN 37902–1499. The Contractor Workforce Management Software (IQ Navigator) for contractor time and expense reporting records is located at HR System Administration and Reporting, Chattanooga, TN 37402.

For contractors requiring unescorted access, records are located at TVA Nuclear Access Service, Chattanooga, TN 37402.

TVA business organizations for records on individuals who provide services under a TVA contract with an organization are kept in the files of that organization.

Payment records are located at the TVA Controller office: Knoxville, TN 37902–1499.

Records related to personal service contractors employed under the Comprehensive Employment and Training Act of 1973, Public Law 93–203, are located at the National Personnel Records Center, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who perform work for and/or provide services to TVA and who are not TVA employees or

volunteers. These individuals generally are the employees of a TVA supplier of services and are retained through a contract with the supplier, but in some cases may be retained directly through a contract between TVA and the individual.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each organization maintains its contracts, records of the qualifications, performance, and evaluation of the contractor, and related correspondence. For public service employment program participants, Human Resources maintains information related to job placement such as test scores, interest inventories, and supervisor's evaluations. Payment information is maintained by the Controller.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Comprehensive Employment and Training Act, Public Law 93–203, 87 Stat. 839; Executive Order 11222; Executive Order 10450; Executive Order 10577; provisions of 5 U.S.C. applicable to employment with TVA; Internal Revenue Code.

PURPOSE:

The purpose of this system is to collect and maintain records related to TVA contractors and consultants, to support TVA's fiscal operations by recording contractor and consultant time, expenses and payroll; to record contractor and consultant personal, employment, security restrictions and clearances, facility access, and training information; and to otherwise support the management of TVA's contractors and consultants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To transmit reports as requested to the Office of Personnel Management, pursuant to 5 U.S.C. 3323, Executive Orders 10577 and 10450, and other laws.

To report earnings information to the Internal Revenue Service and the Social Security Administration.

To respond to a request from a Member of Congress regarding the status of a contractor or consultant.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To transmit to the appropriate State contracting agency reports of hours worked by participants in the public service employment program, and to request reimbursement.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA consultant or personal service contractor: Job descriptions, dates of employment, and reason for separation.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are indexed by name, Social Security number, or contract number.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Service Manager, HR & Accounting Solutions, TVA, Knoxville, TN 37902–1499. Manager, HR System Administration & Reporting, TVA, Chattanooga, TN 37402.

NOTIFICATION PROCEDURE:

Individuals wishing to know if records on them are maintained in the system should address inquiries to the system manager named above. Requests shall include the individual's full name, employing or contracting organization, and whether the individual was a participant in the public service employment program. Social Security numbers are not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information on them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be

held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; educational institutions, former employers, and other reference sources; State employment services; supervisors and other TVA personnel or personnel records; medical officers; other Federal agencies.

In addition to the above sources, security/suitability investigatory files contain information from law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity of fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–21

SYSTEM NAME:

Nuclear Quality Assurance Personnel Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Nuclear Quality Assurance, TVA, Chattanooga, TN 37402–2801. Copies of records for Quality Assurance Auditors/Assessors are maintained electronically by the Manager, Corporate Quality Assurance/designee, and are submitted and maintained in the TVA Nuclear Electronic Data Management System (EDMS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees involved in quality assurance work.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to the qualifications of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Energy Reorganization Act of 1974, Public Law 93–438, 88 Stat. 1233 as implemented at Nuclear Regulatory Commission Regulatory Guides 1.58.

PURPOSE:

The purpose of this system is to collect and maintain records about TVA Nuclear Quality Assurance employees. These employees are responsible for providing confidence that the activities affecting quality during the design, construction, operation, and maintenance of TVA's nuclear facilities are accomplished in a manner to achieve compliance with TVA's established quality objectives and acceptance criteria. Information in the system is also used to respond to inspections or evaluations of the TVA Quality Assurance program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Nuclear Regulatory Commission or its authorized representatives for inspection or evaluation of TVA Quality Assurance procedures.

To respond to a request from a Member of Congress regarding the status of an employee.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic files.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

General Manager, Nuclear Quality Assurance, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Inquiries should include the individual's full name and employing organization.

RECORD ACCESS PROCEDURE:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; TVA personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from subsection (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. The exemption is pursuant to 5 U.S.C. 552a(k)(5) and TVA regulations at 18 CFR 1301.24.

TVA–22

SYSTEM NAME:

Questionnaire-Land Use Surveys in Vicinity of Proposed or Licensed Nuclear Power Plant—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Environmental Radiological Monitoring and Instrumentation, Western Area Radiological Laboratory (WARL) Facility, TVA, Muscle Shoals, AL 35662–1010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having vegetable gardens, irrigated land, dairy cows, and milk goats within a five-mile radius of a proposed or licensed nuclear plant site.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to agriculture, milk consumption, water resources, and farm product value.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; National Environmental Policy Act, Public Law 91–190, 83 Stat. 852; Energy Reorganization Act of 1974, Public Law 93–438, 88 Stat. 1233.

PURPOSE:

This system is used to collect and maintain records concerning farming, gardening, and dairy operations in the areas surrounding proposed and operating nuclear plant sites. This information is used to prepare environmental evaluations and impact statements to assess the possible effects that such a plant might have on the production of crops and livestock in the area.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records is used in developing environmental evaluations and impact statements. Certain relevant but nonsensitive information may be disclosed in these statements.

Information may also be used:

In administrative and licensing proceedings, including the presentation of evidence and disclosure to opposing counsel in the course of discovery.

To disclose to any agency of the Federal Government having oversight or review authority with regards to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfilm, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by assigned number and aerial photo number and/or name of survey participant, plant site and year of survey.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Security is provided by physical, administrative and computer system safeguards. Files are kept in secured facilities not accessible to unauthorized individuals or are locked when unattended.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Environmental Radiological Monitoring and Instrumentation, TVA, Muscle Shoals, AL 35662–1010.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained in this system are aware of that fact through response to the questionnaire. However, inquiries may be addressed to the system manager named above. Requests should include the individual's full name, address, and approximate date of survey.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above. Requests should

include the individual's full name, address, and approximate date of survey.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; he nearest resident, to a distance of 5 miles, in each of the 16 compass sectors around each TVA nuclear site; farms with dairy cows or milk goats within a five mile radius of each site and additional dairy farms used as control locations for environmental monitoring; and individuals within a five mile radius of each site with home gardens meeting the survey criteria.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–23

SYSTEM NAME:

Radiation Dosimetry Personnel Monitoring Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Nuclear Operations, TVA, Chattanooga, TN 37402–2801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and visitors who might be exposed or are exposed to radiation while in TVA installations.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Information on the magnitude of exposure at TVA installations, exposure prior to employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Energy Reorganization Act of 1974, Public Law 93–438, 88 Stat. 1233; 10 CFR parts 19, 20.

PURPOSE:

The purpose of this system is to fulfill TVA's legal obligation to record the exposure, or possible exposure, of individuals to radiation at TVA facilities and to report exposures to the Nuclear Regulatory Commission. This is information is used to maintain Occupational Dose records by the Nuclear Power Group for all persons monitored for occupational radiation exposure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Nuclear Regulatory Commission for its use in evaluating TVA radiological control measures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To health-related agencies, organizations, or professionals for the purpose of compiling vital health statistics, or conducting biomedical investigations as part of employee population health monitoring which includes routine clinical and epidemiological investigations.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfilm, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by individual name and Social Security number.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Security is provided by physical, administrative and computer system safeguards. Files are kept in secured facilities not accessible to unauthorized individuals or are locked when unattended.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Radiation Protection Oversight, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals should address inquiries to the system manager named above, or if a current employee, to the Radiological Control office at the TVA facility where employed. Requests should include the individual's full name, Social Security number and date of birth.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above, or if a current employee, to the Radiological Control office at the TVA facility where employed. Requests should include the individual's full name, Social Security number and date of birth.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual; previous licensees where the individual was monitored for radiation exposure; and TVA personnel conducting radiation monitoring programs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–26

SYSTEM NAME:

Retirement System Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Retirement Management, TVA, 400 W. Summit Hill Drive, Knoxville, TN 37902–1499.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active, retired, and former members of the TVA Retirement System; TVA employees and former employees who are members of the Civil Service Retirement System and the Federal Employees Retirement System; designated beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information; retirement, benefit, and investment information; related correspondence; and legal documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Internal Revenue Code.

PURPOSE:

The purpose of this system is to support the administration of TVA's retirement system, including the management and payment of pensions, investment accounts, and other retirement-related benefits and records. The system is used to provide retirement program registration, retirement benefit estimates, tax forms, benefit management and disbursement, and relevant information to TVA employees, former employees, and beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To report earnings to the Internal Revenue Service.

To disclose information to actuarial firms for valuation and projecting benefits.

To disclose information to the Medical Board of the TVA Retirement System for determinations related to disability retirement.

To certify insurance status to the Office of Personnel Management and the Office of Federal Employees' Group Life Insurance.

To respond to a request from a Member of Congress regarding the status of a system member.

To disclose information to auditing firms for use in auditing benefit calculations and financial statements.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision within the purpose of this system of records.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the issuance of any benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To provide the following information on retirees to the TVA Retirees Association: Names, unique identification numbers assigned by the TVA Retirement System to each retiree, addresses, dates of birth, dates of termination of employment with TVA, retirement class (member, beneficiary, Civil Service, deferred), last official station, and dates of death (if applicable).

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To Contractors and subcontractors of TVA or the Retirement System who are provided records maintenance or other similar support service to the Retirement System.

To health-related agencies, organizations, or professionals for the purpose of compiling vital health statistics, or conducting biomedical investigations for employee population health monitoring which includes routine clinical and epidemiological investigations.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an electronic document management system.

RETRIEVABILITY:

Records are indexed by name and Social Security number.

SAFEGUARDS:

Access to the electronic document management system requires a password and is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Retirement Management, TVA, 400 W. Summit Hill Drive, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Inquiries should include the individual's full name, date of birth, and Social Security number.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained on them in this system should address inquiries to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; TVA personnel and payroll records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–29

SYSTEM NAME:

Energy Program Participant Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Energy Right & Renewable Solutions, External Relations, P.O. Box 292409, Nashville, TN 37229–2409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals participating in the Energy Right programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer name, address, account number, meter number, telephone number, characteristics of their dwelling, including type of heating and cooling systems and number and kind of appliances; and other characteristics of study participants relevant to patterns of residential electrical use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee.

PURPOSE:

The purpose of this system is to support the administration of the Energy Right program. Energy Right offers programs and products to help customers save energy and incentives, including rebates, to residential customers for reductions in their electric usage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To power distributors participating in the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated data storage devices and in file folders in locked file cabinets.

RETRIEVABILITY:

Records are indexed and retrieved by contractor name and invoice date.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Market & Program Analysis, Energy Right & Renewable Solutions, External Relations TVA, P.O. Box 292409, Nashville, TN 37229–2409.

NOTIFICATION PROCEDURE:

Individuals about whom information is maintained in this system of records are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager named above Request should include the individual's full name and address.

RECORD ACCESS PROCEDURES:

Requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORDS SOURCE CATEGORIES:

The information in this system is solicited from the individual to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–31

SYSTEM NAME:

OIG Investigative Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Office of the Inspector General, TVA, Knoxville, TN 37902–1499. Duplicate copies of certain documents may also be located in the files of other offices and divisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations by the Office of the Inspector General (OIG), or who provide information in connection with such investigations, including but not limited to: Employees; former employees; current or former contractors and subcontractors and their employees; consultants; and other individuals and entities which have or are seeking to obtain business or other relations with TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including information provided by known or anonymous complainants; information provided by the subjects of investigations; information provided by individuals or entities with whom the subjects are associated (*e.g.,* coworkers, business associates, relatives); information provided by Federal, State, or local investigatory, law enforcement, or other Government or non-Government agencies; information provided by witnesses and confidential sources; information from public source materials; information from commercial data bases or information resources; investigative notes; summaries of telephone calls; correspondence; investigative reports or prosecutorial referrals; and information about referrals for criminal prosecutions, civil proceedings, and administrative actions taken with respect to the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 10450; Executive Order 11222; Hatch Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535; Proposed Plan for the Creation, Structure, Authority, and Function of the Office of Inspector General, Tennessee Valley Authority, approved by the TVA Board of Directors on October 18, 1985; TVA Code XIII INSPECTOR GENERAL, approved by the TVA Board of Directors on February 19, 1987; Inspector General Act Amendments of 1988, Public Law 100–

504, 102 Stat. 2515, and 2000 amendments to the Inspector General Act, Public Law 106–422, 114 Stat. 1872. Inspector General Reform Act of 2008. Public Law 110–408, 122 Stat. 4305.

PURPOSE:

The purposes of this system are to document the conduct and outcome of Office of the Inspector General (OIG) investigations; to report the results of investigations to other Federal agencies, other public authorities, or professional organizations which have the authority to bring criminal prosecutions or civil or administrative actions, or to impose other disciplinary sanctions; and to serve as a repository of information necessary to fulfill OIG reporting requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal, State, or local entity (1) in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant to a decision on such matters, or (2) in connection with any other matter properly within the jurisdiction of such other entity and related to its prosecutorial investigatory, regulatory, administrative, or other responsibilities.

To the appropriate entity, whether Federal, State, or local, in connection with its oversight or review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding an individual, or to report to a Member on the results of investigations, audits, or other activities of OIG.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the subjects of an investigation and their representatives in the course of a TVA investigation of misconduct; to any other person or entity that has or may have information relevant to the investigation to the extent necessary to assist in the conduct of the investigation, such as to request information.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To a consultant, private firm, or individual who contracts or subcontracts with TVA, to the extent necessary to the performance of the contract.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant or potentially relevant information; and to request information from private individuals or entities, if necessary, to acquire information pertinent to the hiring, retention, or promotion of an employee; the issuance of a security clearance; the conduct of a background or other investigation; or other matter within the purposes of this system of records.

To the public when: (1) The matter under investigation has become public knowledge, or (2) when the Inspector General determines that such disclosure is necessary (a) to preserve confidence in the integrity of the OIG investigative process, or (b) to demonstrate the accountability of TVA officers, or employees, or other individuals covered by this system; unless the Inspector General determines that disclosure of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

To the news media and public when there exists a legitimate public interest (*e.g.,* to provide information on events in the criminal process, such as indictments), or when necessary for protection from imminent threat to life or property.

To members of the Council of the Inspectors General on Integrity and Efficiency, for the preparation of reports to the President and Congress on the activities of the Inspectors General.

To members of the Council of the Inspectors General on Integrity and Efficiency, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of TVA OIG to ensure that adequate internal safeguards and management procedures are maintained.

To appropriate agencies, entities, and persons when (a) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (c) The disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or case file number.

SAFEGUARDS:

Access to and use of records is limited to authorized staff in OIG and to other authorized officials and employees of TVA on a need-to-know basis as determined by OIG management. Security will be provided by physical, administrative, and computer system safeguards. Files will be kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24. This system is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.24.

TVA–32

SYSTEM NAME:

Call Detail Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Data Center, TVA, Chattanooga, TN 37402–2801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees, contractor personnel, and other individuals who make telephone calls from or charge telephone calls to TVA telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of TVA telephones; records relating to long distance telephone calls charged to TVA; records relating to cellular telephone calls charged to TVA; records indicating assignment of telephone numbers and authorization numbers; records relating to locations of TVA telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee.

PURPOSE:

The purpose of this system is to maintain call records. Call records are used to maintain a log for auditing or billing purposes. These records could be used to trace or identify call data regarding a caller threatening the safety of the public, TVA employees, or TVA property; as documentation to rebut costs provided on a monthly bill from the telephone carrier; to determine any employee conduct issues, such as repeated personal calls over a period of time; or to verify calls to or from a number for litigation purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding an individual.

To provide to the appropriate entity, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To a telecommunications company as well as to other TVA contractors providing telecommunications support to permit servicing the account.

To TVA contractors engaged at TVA's direction in investigations of abuse of TVA telephone service or other related issues.

To TVA contractors and contractor personnel to determine individual responsibility for telephone calls.

To TVA contractors in connection with amounts due TVA for telecommunications services provided to them.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are retrieved by name, authorization number, or telephone number.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Files are kept in secured facilities. Automated data is secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, IT Vendor Management, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct

their request to the system manager named above.

RECORD SOURCE CATEGORIES:

TVA Telecommunication Control System; telecommunications companies with which TVA contracts for telephone service; telephone and authorization number assignment records; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–34

SYSTEM NAME:

Project/Tract Files—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Realty, GIS, and Land Records, TVA, Chattanooga, TN 37402–2801, and secured off-site storage facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or business entities from/to whom TVA is in the process of or has (1) acquired, transferred, or sold land or landrights, (2) made payment for construction, maintenance, or other damage to real property, or (3) made payment for relocation assistance. A project/tract file may name more than one individual and/or business entity involved in a transaction. (The system records that pertain to individuals and reflect personal information are subject to the Privacy Act. Noncovered records include public information and records on corporations and other business entities.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Maps, property descriptions, appraisal reports, and title documents on real property; reports on contracts and transaction progress; contracts and options; records of investigations, claims, and/or payments related to land transactions, damage restitution, and relocation assistance; related correspondence and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Public Law 87–852, 76 Stat. 1129; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

PURPOSE:

To establish and maintain a system for recording parcel of land acquisitions and the disposal of land and land rights by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding an individual.

To lienholders as necessary to secure subordinations or releases of liens or to protect lienholders rights.

To county clerk and register of deeds offices to document and put on record the title acquired by TVA.

To landowners, prospective landowners, claimants, or trespassers to establish or cure titles, to resolve encroachments, to resolve boundary disputes, or to resolve questions about easement rights or the application of Section 26a of the TVA Act 16 U.S.C. 831y–1.

To contractors to secure appraisals and title abstracts.

To request information from a Federal, State, or local agency or from private individuals, as necessary, to obtain information relevant to a TVA decision to acquire or dispose of property or to pay claims or make payments related to land transactions, damage restitution, and relocation assistance.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To provide to the appropriate entity, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To report any required information to Federal, State, and local taxing authorities as required by law.

To genealogical researchers, relevant portions of maps, descriptions, appraisals, and title documents on real property, after 20 years, to establish historical records.

To archaeological researchers, relevant portions of maps, descriptions, appraisals, and title documents on real property, after 20 years, to reconstruct historical settings.

To respond to a request from a Member of Congress regarding the status of a matter relating to a specific project or tract.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on registers, aperture cards, microfilm, in file folders, and/or on automated data storage devices.

RETRIEVABILITY:

Records are primarily indexed by tract number and project symbol. Records may also be retrieved by cross-index reference to individual and business entity names.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Files are kept in secured facilities. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Realty GIS, and Land Records TVA, 1101 Market Street, BR–4B–C Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and, to the extent known, any project/tract identifying information such as the project name, tract number, address, or related data.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name, and to the extent known, any project/tract identifying information such as project name, tract number, address, or related data. Access will be granted only to individually segregable personal information about the requester and to segregable nonpersonal information in accordance with TVA regulations on release of records relating to negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their requests to the system manager named above.

RECORD SOURCE CATEGORIES:

Public records and directories, landowners, tenants, and other individuals and business entities (including financial institutions) having an interest in or knowledge related to land ownership, appraisal, or title history; TVA personnel and contractors including independent appraisers and commercial title companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–36

SYSTEM NAME:

Section 26a Permit Application Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

For applications involving construction of facilities located on TVA reservoirs, such as boathouses, piers, docks, launching ramps, marine railways, beaches, utilities, and ground improvements, the records are maintained in the following locations: Gray Regional Office, TVA, (Boone, Bristol Project Fort Patrick Henry, South Holston, Watauga, and Wilbur Reservoirs)) 106 Tri-Cities Business Park Drive, Gray Tennessee 376615

Morristown Regional Office, TVA, (Cherokee, Douglas, Nolichucky, French Broad, Holston and Norris Reservoirs) 3726 E. Morris Boulevard, Morristown, Tennessee 37813–1270 Lenoir City Regional Office, TVA, (Great Falls, Fort London, Melton Hill, Norris, Tellico, Fontana, and Watts Bar Reservoirs), 260 Interchange Park Drive, LCB 1A–LCT, Lenoir City, Tennessee 37772–5664

Chattanooga Regional Office, TVA, (Chickamauga and Nickajack Reservoirs), 4601 N. Access Road, Bldg. B, Chattanooga, Tennessee 37402–2801

Murphy Regional Office, TVA (Apalachia, Blue Ridge, Chatuge, Hiwassee, Nottely, and the Ocoee Reservoirs), 4800 US Highway 64 West, Suite 102, Murphy, North Carolina 28906

Guntersville Regional Office, TVA, (Guntersville, Normandy and Tims Ford Reservoirs), 3696 Alabama Highway 69, CAB 1A–GVA, Guntersville, Alabama 35976–7196

Muscle Shoals Regional Office, TVA (Bear Creek, Cedar Creek, Duck River, Elk River, Little Bear Creek, Pickwick, Upper Bear Creek, Wheeler, and Wilson Reservoirs), Post Office Box 1010, MPB 1H, Muscle Shoals, Alabama 35662–1010

Paris Regional, Office, TVA (Beech River Project, Kentucky, and Lower Duck Reservoirs), 2835–A East Wood Street, Paris, Tennessee 38242–5948

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system includes individuals who have filed a Section 26a application for approval of construction of such structures as boat ramps, docks, bridges, and dams located along, across, or in the Tennessee River and its tributaries. Also included in this system may be individuals whose structures do not have Section 26a permits, or whose approved structures have deteriorated so as to pose a threat to navigation, flood control, public lands or reservations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Section 26a permit applications made by individuals, businesses and industries, utilities, and Federal, State, county and city Government agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee.

PURPOSE(S):

Section 26a of the Tennessee Valley Authority Act of 1933, as amended, requires that TVA review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information collected is used to assess the impact of the proposed project on the statutory TVA programs and the environment and determine if the project can be approved. Rules on the application for review and approval of such plans are published in 18 CFR part 1304, Approval of Construction in the Tennessee River System and Regulation of Structures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To State or other Federal agencies for use in program evaluation, providing assistance to program participants, or engaged at TVA's direction in providing support services to the program, to the extent necessary to the performance of those services.

To TVA consultants, contractors, subcontractors or individuals who contract or subcontract with TVA, who are engaged in studies and evaluation of TVA's administration or other matters involving its Section 26a program or who are providing support services to the program, to the extent necessary to the performance of the contract.

To provide information to a Federal, State, or local entity in response to its request, in connection with the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant and necessary to the requesting agency's decision on such matters.

To respond to a request from a Member of Congress regarding the status of a specific application.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other

entities charged with enforcement, investigative, or oversight responsibility.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, in electronic format, on microfilm, and in hard copy files.

RETRIEVABILITY:

Records may be retrieved by applicant name, land tract number, or Section 26a application number, stream location, reservoir, county, or subdivision. Records in field offices are interfiled with land tract records and are retrieved by land tract number.

SAFEGUARDS:

Access to and use of these records is limited through physical, administrative, and computer system safeguards to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Natural Resources and Real Property Services, TVA 400 West Summit Hill Drive, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name. A land tract number, Section 26a permit application number, stream location or legal property description is not required, but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system is solicited from the individual to whom the record pertains. Information may also be obtained from other Federal, State, county or city Government agencies; public records and directories; landowners, tenants, and other individuals and business entities, including financial institutions, having an interest in or knowledge related to land ownership, appraisal, or title history; and TVA personnel and contractors including independent appraisers and commercial title companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–37

SYSTEM NAME:

U.S. TVA Security Records—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. TVA Police and Emergency Management, TVA, 400 West Summit Hill Drive, WT–2D, Knoxville, Tennessee 37902–1499.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who relate in any manner to official U.S. TVA Police investigations into incidents or events occurring within the jurisdiction of TVA, including but not limited to suspects, victims, witnesses, close relatives, medical personnel, and associates who have relevant information to an investigation.

B. Individuals who are the subject of unsolicited information or who offer unsolicited information, and law enforcement personnel who request assistance and/or make inquiries concerning records.

C. Individuals including, but not limited to, current or former employees; current or former contractor and subcontractor personnel; visitors and other individuals that have or are seeking to obtain business or other relations with TVA; individuals who have requested and/or have been granted access to TVA buildings or property, or secured areas within a building or property.

D. Individuals who are the subject of research studies including, but not limited to, crime profiles, scholarly journals, and news media references.

E. Individuals who respond to emergency situations at TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to case investigation reports on all forms of incidents or events, visitor and employee registers, TVA forms authorizing access for individuals into TVA buildings or secured areas within a building, and historical information on an individual's building access or denial of access; U.S. TVA Police on incidents or events; visitor and employee registers, TVA forms, or permits authorizing access for individuals into TVA buildings, property, or secured areas within buildings or property, and historical information on an individual's access or denial of access within buildings or property; emergency personnel information data bases; permit applications under the Archaeological Resources Protection Act (ARPA); risk, security, and emergency preparedness, assessments conducted by the U.S. TVA Police on facilities, property, or officials; research studies, scholarly journal articles, textbooks, training materials, and news media references of interest to U.S. TVA personnel; an index of all detected trends, patterns, profiles and methods of operation of known and unknown criminals whose records are maintained in the system; an index of the names, address, and contact telephone numbers of professional individuals and organizations who are in a position to furnish assistance to the U.S. TVA Police; an index of public record sources for historical, statistical, geographic, and demographic data; and an alphabetical name index of all individuals whose records are maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; 5 U.S.C. 552a; and 28 U.S.C. 534.

PURPOSE:

The purpose of this system is to collect and maintain records of processing of personnel security-related

actions, for personnel actions such as removal from sensitive duties, removal from employment, or denial to a restricted or sensitive area. The system also assists in capturing background investigations and adjudications; determining eligibility for unescorted access to TVA owned, occupied, or secured facilities or information technology systems; and/or other activities relating to personnel security management responsibilities at TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the appropriate official agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

In litigation where TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, information may be disclosed to respond to process issued under color of authority of a court of competent jurisdiction.

To provide information to a Federal, State, or local entity in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter, or in connection with any other matter properly within the jurisdiction of such other agency and related to its responsibilities to prosecute, investigate, regulate, and administrate, or other responsibilities.

To any Federal, State, local or foreign Government agency directly engaged in the criminal justice process where access is directly related to a law enforcement function of the recipient agency in connection with the tracking, identification, and apprehension of persons believed to be engaged in criminal activity.

To an organization or individual in both the public and private sector pursuant to an appropriate legal proceeding or if deemed necessary, to elicit information or cooperation from the recipient for use by TVA in the performance of an authorized activity.

To an organization or individual in the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy and to the extent the information is relevant to the protection of life or property.

To the news media and general public where there exists a legitimate public interest such as obtaining public or media assistance in the tracking, identifying, and apprehending of persons believed to be engaged in repeated acts of criminal behavior; notifying the public and/or media of arrests; protecting the public from imminent threat to life or property where necessary; and disseminating information to the public and/or media to obtain cooperation with research, evaluation, and statistical programs.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To appropriately respond to congressional inquiries on behalf of constituents.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually as hard copies in a secured area and/or in computerized data storage devices at the U.S. TVA offices in Knoxville, TN. Information maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on computer printed listings.

RETRIEVABILITY:

On-line computer access to U.S. TVA Police files is achieved by using the following search descriptors:

A. The names of individuals, their birth dates, physical descriptions, social security numbers, and other identification numbers, such as incident and case reports.

B. As previously described, summary variables contained on incident and call are submitted to the U.S. TVA Police.

C. Key word citations to research studies, scholarly journals, textbooks, training materials, and news media references.

SAFEGUARDS:

Records are maintained in restricted areas and are accessed only by U.S. TVA Police employees. Security is provided by a comprehensive program of physical, administrative, personnel, and computer system safeguards. Access to and use of records is limited to authorized U.S. TVA Police personnel and to other authorized officials and employees of TVA on a need-to-know basis. Sensitive or classified information in electronic form is encrypted prior to transmission to ensure confidentiality, security, and to prevent interception and interpretation.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules. As deemed necessary, certain records may be subject to restricted examinations by 44 U.S.C. 2104.

SYSTEM MANAGER(S) AND ADDRESS:

Director, TVA Police and Emergency Management, TVA, 400 West Summit Hill Drive, WT–2D, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k) (2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a (j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of 5 U.S.C. 552a

(section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24. This system of records is exempt from subsections (c)(3); (d); (e)(1); (e)(2); (e)(3); (e)(4)(G), (H), and (I); (e)(5); (e)(8); and (g) pursuant to 5 U.S.C. 552(j)(2) and TVA regulations at 18 CFR 1301.24.)

TVA–38

SYSTEM NAME:

Wholesale, Retail, and Emergency Data System—TVA.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

External Relations, Nashville, TN 37229–2409, and Customer Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA wholesale and retail customers' key personnel and governing bodies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, emergency numbers, interests, key dates, associates, immediate family members, and credentials of TVA's wholesale and retail customers and their officers and other personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee.

PURPOSE:

The purpose of this system is to maintain TVA wholesale and retail customers' key personnel and emergency information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To respond to a referral from a Member of Congress.

To contact customer personnel during system emergencies.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices. Hard copies of power distributor managers' key information are given to TVA staff working with distributor managers.

RETRIEVABILITY:

Records are organized by wholesale and retail customer name and indexed by individual's name.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Files are kept in a secured database. Access requires a login ID and password.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

General Manager, Customer Strategy and Support, TVA, 26 Century Blvd., Suite 100N, Nashville, TN 37214

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and employer.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The information for this system is obtained from TVA's wholesale and retail customers and their personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TVA–39

SYSTEM NAME:

Nuclear Access Authorization and Fitness for Duty Records-TVA

SYSTEM CLASSIFICATION:

Unclassified

SYSTEM LOCATIONS:

Nuclear Access Services, TVA, Chattanooga, Tennessee 37402–2801; various contractor locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

Current and former TVA employees, contractors, applicants for employment, applicants for employment by contractors who have been employed or sought to be employed in TVA Nuclear.

CATEGORIES OF RECORDS IN THE SYSTEM:

Education; qualification; work history; residence history citizenship; employment and military history; financial history; spouse/cohabitation and relatives; personal references; information received from various law enforcement agencies, federal, state and local; fingerprints; background investigation reports; psychological assessment files, drug and alcohol testing schedules and results; personnel identifying information; and additional security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; E.O. 9397; E.O. 12038; E.O. 13467; Atomic Energy Act of 1954 as amended; Title II of the Energy Reorganization Act of 1974; 10 CFR Pt. 26; 10 CFR 72.56, 73.57.

PURPOSE:

The purpose of this system is to safely provide unescorted access to TVA's nuclear sites. The Nuclear Access Authorization and Fitness for Duty Records allow TVA to provide proper consideration when providing, maintaining, or denying unescorted access to sensitive areas in and around its nuclear sites.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a member of Congress regarding the status of an employee, former employee or applicant made at the request of that individual.

To refer, where the is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility if investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

To request from any pertinent source directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

To another licensee, contractor or vendor or their authorized representatives legitimately seeking the information as required by this section for unescorted access decisions and who have obtained a signed release from the individual.

To representatives of the NRC to determine compliance with the applicable regulations and law.

To the appropriate agency, whether Federal State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in the proceedings under TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures, but only to the extent such records document processes or procedures used in making access determinations.

To those licensee representatives who have a need to have access to the information in performing assigned duties including audits of licensee's, contractor's, and vendors programs, determining clearance or access authorization eligibility, and reviewing access authorization determinations on appeal.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for any use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To persons deciding matters on review or appeal.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

This section does not authorize the licensee, contractor or vendor to withhold evidence of criminal conduct from law enforcement officials.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Information is stored in hard copy files or electronically in the electronic document management system (EDMS) system.

RETRIEVABILITY:

Records are indexed by name and employee Social Security number

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access and with the appropriate background investigation in accordance with 10 CFR 73.22. All filing systems are located in a secured area.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Nuclear Access and Fitness for Duty, TVA, Chattanooga, Tennessee, 37402–2801

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquires to the Manager, Nuclear Access and Fitness for Duty, TVA, Chattanooga, Tennessee, 37402–2801. Requests should include the individual's full name, and date of birth. A Social Security Number is not required but may expedite TVA's response; additionally, an Employee Identification Number may be included.

RECORD ACCESS PROCEDURE:

Individuals seeking to gain access to information about them in this system of records should contact the Manager, Nuclear Access and Fitness for Duty, TVA, Chattanooga, Tennessee 37402–2801. Requests should include the individual's full name and date of birth. A Social Security Number is not required but may expedite TVA's response; additionally an Employee Identification Number may be included. Access will not be granted to investigatory material compiled solely for the purpose of determining access authorization to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material to the extent such disclosure would compromise the objectivity or fairness of the testing or examination process or would compromise business sensitive or Trade Secrets Act material.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Manager, Nuclear Access and Fitness for Duty, TVA, Chattanooga, Tennessee 37402–2801.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, educational institutions, former employees, and other reference sources, Federal, state, and local law enforcement agencies, physicians and psychologists, military and credit agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3) and (4) of 5 U.S.C. 522a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a (k)(5) and (6).

Philip D. Propes,

Director, Enterprise Information Security & Policy, Tennessee Valley Authority.

Appendix A

Tennessee Valley Authority

AGENCY: Tennessee Valley Authority (TVA)

ACTION: Notice of the Retirement of One Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the TVA is providing notice that it is retiring one system of records notice, TVA–8, Employee Alleged Misconduct Investigatory Files, from its inventory because the records are no longer relevant and have been disposed of in accordance with regular retention and disposal schedules.

DATES: Effective upon publication.

FOR FURTHER INFORMATION CONTACT: Christopher A. Marsalis, Senior Privacy Program Manager, *camarsalis@tva.gov*, (865) 632–2467, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 5D–K, Knoxville, TN 37902

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and as part of the TVA's effort to review and update system of records notices, this system of records is being retired. TVA is retiring this system because the records are no longer relevant and have disposed of in accordance with regular retention and disposal schedules. Accordingly, this notice formally terminates system of records notice TVA–8 and removes it from the TVA inventory.

[FR Doc. 2015–09696 Filed 4–28–15; 8:45 am]

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FEDERAL REGISTER

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Part IV

Department of Homeland Security

8 CFR Part 214

Department of Labor

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 503

Temporary Non-Agricultural Employment of H–2B Aliens in the United States; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2563–15]

RIN 1615–AC06

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 503

RIN 1205–AB76

Temporary Non-Agricultural Employment of H–2B Aliens in the United States

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security; Employment and Training Administration, and Wage and Hour Division, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of Homeland Security (DHS) and the Department of Labor (DOL) are jointly issuing regulations governing the certification of the employment of nonimmigrant workers in temporary or seasonal non-agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers. This interim final rule establishes the process by which employers obtain a temporary labor certification from DOL for use in petitioning DHS to employ a nonimmigrant worker in H–2B status. We are also issuing regulations to provide for increased worker protections for both United States (U.S.) and foreign workers. DHS and DOL are issuing simultaneously with this rule a companion rule governing the methodology to set the prevailing wage in the H–2B program.

DATES: This interim final rule is effective April 29, 2015. Interested persons are invited to submit written comments on this interim final rule on or before June 29, 2015.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB76, by any one of the following methods:

- *Federal e-Rulemaking Portal www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Please submit all written comments (including disk and CD–ROM submissions) to Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. Comments received by means other than those listed above or received after the comment period has closed will not be reviewed. The Departments will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Departments caution commenters not to include personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments as such information will become viewable by the public on the *http://www.regulations.gov* Web site. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Departments encourage the public to submit comments through the *http://www.regulations.gov* Web site.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at *http://www.regulations.gov.* The Departments will also make all the comments received available for public inspection during normal business hours at the Employment and Training Administration (ETA) Office of Policy Development and Research at the above address. If you need assistance to review the comments, DOL will provide you with appropriate aids such as readers or print magnifiers. DOL will make copies of the rule available, upon request, in large print and as an electronic file on computer disk. DOL will consider providing the interim final rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the ETA Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: For further information on 8 CFR part 214, contact Steven W. Viger, Adjudications Officer (Policy), Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts NW., Washington, DC 20529–2060; Telephone (202) 272–1470 (this is not a toll-free number).

For further information on 20 CFR part 655, subpart A, contact William W. Thompson, II, Acting Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For further information on 29 CFR part 503, contact Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–3510, Washington, DC 20210; Telephone (202) 693–0071 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Immigration and Nationality Act (INA) establishes the H–2B nonimmigrant classification for a non-agricultural temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.'' 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b). In accordance with the INA and as discussed in detail in this preamble, the Department of Homeland Security (DHS) consults with the Department of Labor (DOL) with respect to the H–2B program, and DOL provides advice on whether U.S. workers capable of performing the temporary services or labor are available. *See* 8 U.S.C. 1184(c)(1), INA

section 214(c)(1) (providing for DHS to consult with ''appropriate agencies of the government''). Under DHS regulations, an H–2B petition for temporary employment must be accompanied by an approved temporary labor certification from DOL, which serves as DOL's advice to DHS regarding whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 8 CFR 214.2(h)(6)(iii)(A) and (D).

This interim final rule, which is virtually identical to the 2012 final rule that DOL developed following public notice and comment, improves DOL's ability to determine whether it is appropriate to grant a temporary employment certification. For reasons described in further detail below, DOL never implemented the 2012 final rule; as a result, this rulemaking contains a number of improvements to the temporary employment certification process that was in place on March 4, 2015. This interim final rule expands the ability of U.S. workers to become aware of the job opportunities in question and to apply for opportunities in which they are interested. For example, this interim final rule includes new recruitment and other requirements to broaden the dissemination of job offer information (such as by introducing the electronic job registry and the possibility of additional required contact with community-based organizations). The interim final rule also requires the job offer to remain open to U.S. workers until 21 days before the employer's start date of need, which provides a longer application period that ends closer to the date of need than was previously required. The interim final rule also reverts back to the compliance-based certification model that had been used prior to the 2008 final rule, rather than continuing to use the attestation model. Finally, the interim final rule also adopts an employer registration process that requires employers to demonstrate their temporary need for labor or services before they apply for a temporary labor certification, which expedites the certification process; additionally, the resulting registration may remain valid for up to three years, thereby shortening the employer's certification process in future years.

The interim final rule also provides a number of additional worker protections, such as increasing the number of hours per week required for full-time employment and requiring that U.S. workers in corresponding employment receive the same wages and benefits as the H–2B workers. It also requires that employers must guarantee employment for a total number of work hours equal to at least three-fourths of the workdays in specific periods for both H–2B workers and workers in corresponding employment. The interim final rule requires employers to pay visa and related fees of H–2B workers, and it requires employers to pay the inbound transportation and subsistence costs of workers who complete 50 percent of the job order period and the outbound transportation and subsistence expenses of employees who complete the entire job order period. Finally, it prohibits employers from retaliating against employees for exercising rights under the H–2B program.

The interim final rule also contains a number of provisions that will lead to increased transparency. It requires employers to disclose their use of foreign labor recruiters in the solicitation of workers; to provide workers with earnings statements, with hours worked and offered and deductions clearly specified; to provide workers with copies of the job order; and to display a poster describing employee rights and protections. The Departments believe that these procedures and additional worker protections will lead to an improved temporary employment certification process.

Summing the present value of the costs associated with this rulemaking in Years 1–10 results in total discounted costs over 10 years of $9.24 million to $10.58 million (with 7 percent and 3 percent discounting, respectively).

TABLE 1—SUMMARY OF ESTIMATED COST AND TRANSFERS BY PROVISION

[Millions of dollars]

Undiscounted	Transfers and costs by year (in millions of dollars)		
Cost component	Year 1 costs	Year 2–10 costs	Year 1–10 costs
Transfers			
Corresponding Workers' Wages—Low	$18.21	$18.21	$182.1
Corresponding Workers' Wages—High	$54.62	$54.62	$546.2
Transportation	$55.19	$55.19	$551.9
Subsistence	$3.13	$3.13	$31.3
Lodging	$1.87	$1.87	$18.66
Visa and Border Crossing Fees	$10.65	$10.65	$106.48
Total Transfers—Low	$87.24	$87.24	$890.43
Total Transfers—High	$125.45	$125.45	$1,254.52
Costs to Employers			
Additional Recruiting	$0.76	$0.76	$7.57
Disclosure of Job Order	$0.23	$0.23	$2.34
Read and Understand Rule	$0.98	$0	$0.98
Document Retention	$0.27	$0	$0.27
Other Provisions [a]	$0.014	$0.014	$0.14
Total Costs to Employers	$2.25	$1.01	$11.30
Costs to Government			
Electronic Job Registry	$0.14	$0.05	$0.56

TABLE 1—SUMMARY OF ESTIMATED COST AND TRANSFERS BY PROVISION—Continued

[Millions of dollars]

Undiscounted	Transfers and costs by year (in millions of dollars)		
Cost component	Year 1 costs	Year 2–10 costs	Year 1–10 costs
Enhanced U.S. Worker Referral Period	Not Estimated	Not Estimated	Not Estimated
Total Costs to Government	$0.14	$0.05	$0.56
Total Costs & Transfers			
Total Costs and Transfers—Low	$91.43	$90.09	$902.28
Total Costs and Transfers—High	$127.84	$126.50	$1,266.37
Total Transfers—Low	$89.04	$89.04	$890.43
Total Transfers—High	$125.45	$125.45	$1,254.52
Total Costs	$2.39	$1.05	$11.85

Note: Totals may not sum due to rounding.
[a] Includes the sum of: Elimination of Attestation-Based Model; Post Job Opportunity; Workers Rights Poster.

TABLE 2—SUMMARY OF COSTS AND TRANSFERS—SUM OF PRESENT VALUES

Cost component	Transfers and costs (millions of dollars)
	Year 1–10 costs
Present Value—7% Real Interest Rate	
Total Costs & Transfers—Low	$678.42
Total Costs & Transfers—High	952.04
Total Transfers—Low	669.18
Total Transfers—High	942.80
Total Costs	9.24
Present Value—3% Real Interest Rate	
Total Costs & Transfers—Low	$792.92
Total Costs & Transfers—High	1,112.81
Total Transfers—Low	782.34
Total Transfers—High	1,102.23
Total Costs	10.58

Note: Totals may not sum due to rounding.

II. Background

A. The Statutory and Regulatory Framework

The INA establishes the H–2B nonimmigrant classification for a non-agricultural temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.'' 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b). Section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), requires an importing employer (H–2B employer) to petition DHS for classification of the prospective temporary worker as an H–2B nonimmigrant.[1] DHS must approve this petition before the beneficiary can be considered eligible for an H–2B visa or H–2B status. Finally, the INA requires that ''[t]he question of importing any alien as [an H–2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS], after consultation with appropriate agencies of the Government, upon petition of the importing employer.'' 8 U.S.C. 1184(c)(1), INA section 214(c)(1).

Pursuant to the above-referenced authorities, DHS has promulgated regulations implementing the H–2B program. *See, e.g.,* 73 FR 78104 (Dec. 19, 2008). These regulations prescribe the conditions under which DHS may grant an employer's petition to classify an alien as an H–2B worker. *See* 8 CFR 214.2(h)(6). U.S. Citizenship and Immigration Services (USCIS) is the component agency within DHS that adjudicates H–2B petitions. *Id.*

USCIS examines H–2B petitions for compliance with a range of statutory and regulatory requirements. For instance, USCIS will examine each petition to ensure, *inter alia,* (1) that the job opportunity in the employer's petition is of a temporary nature, 8 CFR 214.2(h)(1)(ii)(D), (6)(ii) and (6)(vi)(D); (2) that the beneficiary alien meets the educational, training, experience, or other requirements, if any, attendant to the job opportunity described in the petition, 8 CFR 214.2(h)(6)(vi)(C); (3) that there are sufficiently available H–2B visas in light of the applicable numerical limitation for H–2B visas, 8 CFR 214.2(h)(8)(ii)(A); and (4) that the application is submitted consistent with strict requirements ensuring the integrity of the H–2B system, 8 CFR 214.2(h)(6)(i)(B), (6)(i)(F).[2]

DHS has implemented the statutory protections attendant to the H–2B program, by regulation. *See* 8 CFR 214.2(h)(6)(iii), (iv), and (v). In accordance with the statutory mandate at 8 U.S.C. 1184(c)(1), INA section 214(c)(1), that DHS consult with ''appropriate agencies of the government'' to determine eligibility for H–2B nonimmigrant status, DHS (and the former Immigration and Naturalization Service (''legacy INS'')) have long recognized that the most effective administration of the H–2B program requires consultation with DOL to advise whether U.S. workers capable of performing the temporary services or labor are available. *See, e.g.,* Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 FR 2606, 2617 (Jan. 26, 1990) (''The Service must seek advice from the Department of Labor under the H–2B classification because the statute requires a showing that unemployed U.S. workers are not available to perform the services before a petition can be approved. The Department of Labor is the appropriate agency of the Government to make such a labor

[1] Under section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions that were transferred from the Attorney General or other Department of Justice official to DHS by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, tit. XV, sec. 1517); 6 U.S.C. 542 note; 8 U.S.C. 1551 note.

[2] DHS also publishes annually a list of countries whose nationals are eligible to participate in the H–2B visa program in the coming year. *See* 8 CFR 214.2(h)(6)(i)(E); *see also, e.g.,* 79 FR 3214 (Jan. 17, 2014 notice of eligible country list). As part of its adjudication of H–2B petitions, USCIS must determine whether the alien beneficiary is a national of a country on the list; if not, USCIS must determine whether it is in the U.S. national interest for that alien to be a beneficiary of such petition. *See* 8 CFR 214.2(h)(6)(i)(E).

market finding. The Service supports the process which the Department of Labor uses for testing the labor market and assuring that wages and working conditions of U.S. workers will not be adversely affected by employment of alien workers.'').

Accordingly, DHS regulations require that an H–2B petition for temporary employment in the United States must be accompanied by an approved temporary labor certification from DOL. 8 CFR 214.2(h)(6)(iii)(A) and (iv)(A).[3] The temporary labor certification serves as DOL's advice to DHS with respect to whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 8 CFR 214.2(h)(6)(iii)(A) and (D). In addition, as part of DOL's certification, DHS regulations require DOL to ''determine the prevailing wage applicable to an application for temporary labor certification in accordance with the Secretary of Labor's regulation at 20 CFR 655.10.'' 8 CFR 214.2(h)(6)(iii)(D).

DHS relies on DOL's advice in this area, as DOL is the appropriate government agency with expertise in labor questions and historic and specific expertise in addressing labor protection questions related to the H–2B program. This advice helps DHS fulfill its statutory duty to determine, prior to approving an H–2B petition, that unemployed U.S. workers capable of performing the relevant service or labor cannot be found in the United States. 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b); 8 U.S.C. 1184(c)(1), INA section 214(c)(1). DHS has therefore made DOL's approval of a temporary labor certification a condition precedent to the acceptance of the H–2B petition. 8 CFR 214.2(h)(6)(iii) and (vi). Following receipt of an approved DOL temporary labor certification and other required evidence, USCIS may adjudicate an employer's complete H–2B petition. *Id.*

Consistent with the above-referenced authorities, since at least 1968,[4] DOL has established regulatory procedures to certify whether a qualified U.S. worker is available to fill the job opportunity described in the employer's petition for a temporary nonagricultural worker, and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 20 CFR part 655, subpart A. This interim final rule establishes the process by which employers obtain a temporary labor certification and the protections that apply to H–2B workers and corresponding workers. As part of DOL's temporary labor certification process, which is a condition precedent for employers seeking to apply for H–2B workers under DHS regulations, 8 CFR 214.2(h)(6)(iii)(D) and (iv), DOL sets the minimum wage that employers must offer and pay foreign workers admitted to the United States in H–2B nonimmigrant status. *See* 20 CFR 655.10. The companion final wage rule issued simultaneously with this interim final rule establishes DOL's methodology for setting the wage, consistent with the INA and existing DHS regulations.

As discussed above, DHS has determined that the most effective implementation of the statutory labor protections in the H–2B program requires that DHS consult with DOL for its advice about matters with which DOL has unique expertise, particularly questions about testing the U.S. labor market and the methodology for setting the prevailing wage in the H–2B program. The most effective method for DOL to provide this consultation is by the agencies setting forth in regulations the standards that DOL will use to provide that advice. These rules set the standards by which employers demonstrate to DOL that they have tested the labor market and found no or insufficient numbers of qualified, available U.S. workers, and set the standards by which employers demonstrate to DOL that the offered employment does not adversely affect U.S. workers. By setting forth this structure in regulations, DHS and DOL ensure the provision of this advice by DOL is consistent, transparent, and provided in the form that is most useful to DHS.

In addition, effective January 18, 2009, pursuant to 8 U.S.C. 1184(c)(14)(B), INA section 214(c)(14)(B), DHS transferred to DOL its enforcement authority for the H–2B program. *See, e.g.,* 8 CFR 214.2(h)(6)(ix) (stating that DOL may investigate employers to enforce compliance with the conditions of, among other things, an H–2B petition and a DOL-approved temporary labor certification). Under this authority, and after consultation with DHS, DOL established regulations governing enforcement of employer obligations and the terms and conditions of H–2B employment. Accordingly, this interim final rule sets forth enforcement provisions.

As discussed in greater detail below, DOL's authority to issue its own legislative rules to carry out its duties under the INA has been challenged in litigation. On April 1, 2013, the U.S. Court of Appeals for the Eleventh Circuit upheld a district court decision that granted a preliminary injunction against enforcement of the 2012 H–2B rule, 77 FR 10038, on the ground that the employers were likely to prevail on their allegation that DOL lacks H–2B rulemaking authority. *Bayou Lawn & Landscape Servs.* v. *Sec'y of Labor,* 713 F.3d 1080 (11th Cir. 2013). As a result of the preliminary injunction in *Bayou,* DOL continued to operate the H–2B program under the predecessor 2008 rule. On remand, the district court issued an order vacating the 2012 H–2B rule, and permanently enjoined DOL from enforcing the rule on the ground that DOL lacks rulemaking authority in the H–2B program. *Bayou Lawn & Landscape Servs.* v. *Sec'y of Labor,* No. 3:12–cv–183 (N.D. Fla. Dec. 18, 2014) (*Bayou II*). The *Bayou II* decision is currently on appeal to the Eleventh Circuit. On the other hand, on February 5, 2014, the U.S. Court of Appeals for the Third Circuit held that ''DOL *has* authority to promulgate rules concerning the temporary labor certification process in the context of the H–2B program, and that the 2011 Wage Rule was validly promulgated pursuant to that authority.'' *La. Forestry Ass'n* v. *Perez,* 745 F.3d 653, 669 (3d Cir. 2014) (emphasis added).

To ensure that there can be no question about the authority for and validity of the regulations in this area, DHS and DOL (the Departments), together, are issuing this interim final rule. By proceeding together, the Departments affirm that this rule is fully consistent with the INA and implementing DHS regulations and is

[3] The regulation establishes a different procedure for the Territory of Guam, under which a petitioning employer must apply for a temporary labor certification with the Governor of Guam. 8 CFR 214.2(h)(6)(iii)(A).

[4] DHS has required a temporary labor certification as a condition precedent to adjudication of an H–2B petition for temporary employment in the United States since 2008. 73 FR 78103. DOL, however, has promulgated regulations governing its adjudication of employer applications for temporary labor certification since 1968. *See* 33 FR 7570 (May 22, 1968) (DOL final rule on certification of temporary foreign labor for industries other than agriculture and logging). Until 1986, there was a single H–2 temporary worker classification applicable to both temporary agricultural and non-agricultural workers. In 1986, Congress revised the INA to create two separate programs for agricultural (H–2A) and non-agricultural (H–2B) workers. *See* INA 101(a)(15)(H)(ii), 66 Stat. 163 (June 27, 1952); Immigration Reform and Control Act of 1986, Pub. L. 99–603, sec. 301, 100 Stat. 3359. Under the 1968 final rule, DOL considered, ''such matter[s] as the employer's attempts to recruit workers and the appropriateness of the wages and working conditions offered.'' 33 FR at 7571.

vital to DHS's ability to faithfully implement the statutory labor protections attendant to the program. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b); 8 U.S.C. 1184(c)(1), INA section 214(c)(1); 8 CFR 214.2(h)(6)(iv). This interim final rule implements a key component of DHS's determination that it must consult with DOL on the labor market questions relevant to its adjudication of H–2B petitions. This interim final rule also executes DHS's and DOL's determination that implementation of the consultative relationship may be established through regulations that determine the method by which DOL will provide the necessary advice to DHS. Finally, this interim final rule sets forth enforcement procedures and remedies pursuant to DHS's delegation of enforcement authority to DOL. *See* 8 U.S.C. 1184(c)(14)(B), INA section 214(c)(14)(B); 8 CFR 214.2(h)(6)(ix).

B. The 2008 Rule and the CATA Litigation

In 2008, DOL issued regulations governing DOL's role in the H–2B temporary worker program. Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes, 73 FR 78020 (Dec. 19, 2008) (the 2008 rule). The 2008 rule established, among other things, the framework for DOL to receive, review and issue H–2B labor certifications. The 2008 rule also established a methodology for determining the wage that a prospective H–2B employer must pay, the recruitment standards for testing the domestic labor market, and the mechanism for processing prevailing wage requests. *Id.* In addition, the 2008 rule governed the enforcement process to make certain U.S. and H–2B workers are employed in compliance with H–2B labor certification requirements.

On August 30, 2010, the U.S. District Court for the Eastern District of Pennsylvania in *Comité de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,* No. 2:09–cv–240, 2010 WL 3431761 (E.D. Pa. Aug. 30, 2010) (*CATA I*), invalidated various provisions of the 2008 rule and remanded it to DOL. In response to *CATA I,* DOL's 2012 H–2B rule, which was ultimately enjoined in *Bayou,* revised the particular provisions that were invalidated by the Court, including specifying when H–2B employers must contact unions as a potential source of labor, and providing a new definition of full-time and a modified definition of job contractor.[5] *See CATA I,* 2010 WL 3431761 at *26–27.

C. The Perez Vacatur, Good Cause To Proceed Without Notice and Comment Rulemaking, and Request for Comments

1. The Perez Vacatur and Its Impact on Program Operations

On March 4, 2015, the U.S. District Court for the Northern District of Florida, which previously had vacated DOL's 2012 H–2B rule and enjoined its enforcement in *Bayou II,* vacated the 2008 rule and permanently enjoined DOL from enforcing it. *Perez* v. *Perez,* No. 14–cv–682 (N.D. Fla. Mar. 4, 2015). As in its decision in *Bayou II* vacating the 2012 H–2B rule, the court in *Perez* found that DOL lacked authority under the INA to independently issue legislative rules governing the H–2B program. *Perez,* slip op. at 6. Based on the vacatur order and the permanent injunction in *Perez,* DOL immediately ceased operating the H–2B program because it no longer has any existing regulation establishing the processes necessary to issue temporary labor certifications. Shortly after the court issued its decision, DOL posted a notice on its Web site informing the public that ''effective immediately, DOL can no longer accept or process requests for prevailing wage determinations or applications for labor certification in the H–2B program.'' [6] As a result of the *Perez* vacatur order, DOL was unable to process any H–2B temporary employment certification applications or issue any H–2B certifications as advice to DHS, which effectively shut down the H–2B program for all employers filing new H–2B temporary employment certification applications with DOL. In addition, the *Perez* vacatur order eliminated the crucial regulatory provision that the ''employer must request a prevailing wage determination from the NPC in accordance with the procedures established by this regulation'' set out at 20 CFR 655.10(a), thus leaving DOL unable to process any prevailing wage requests or issue any prevailing wage determinations.[7]

At the time of the *Perez* vacatur order on March 4, 2015, DOL had pending over 400 requests to set the prevailing wage for an H–2B occupation, and almost 800 applications for H–2B temporary labor certification representing approximately 16,408 workers. In order to minimize disruption to the H–2B program and to prevent economic dislocation to employers and employees in the industries that rely on H–2B foreign workers and to the general economy of

[5] Also in response to *CATA I,* which held that part of the methodology to set the prevailing wage was invalid because it was not adequately explained, 2010 WL 3431761 at *19, DOL issued separately a rule governing the methodology to set the H–2B prevailing wage. *See* Wage Methodology for the Temporary Non-agricultural Employment H–2B Program, on January 19, 2011, 76 FR 3452 (the 2011 Wage Rule). Shortly before the 2011 Wage Rule came into effect, Congress issued an appropriations rider effectively barring implementation of the 2011 Wage Rule, and the same rider was issued in every appropriations enactment until January 2014. During the period DOL was unable to implement the 2011 Wage Rule, DOL extended the effective date of the 2011 Wage Rule so that it would not come into effect while the agency was without the appropriations necessary to implement it. DOL was never able to implement the 2011 Wage Rule and continued to rely on the 2008 Rule. Therefore, the court in 2013 vacated the problematic provision (20 CFR 655.10(b)(2)) and ordered the DOL to come into compliance in 30 days. *Comite de Apoyo a los Trabajadores Agricolas* v. *Solis,* 933 F. Supp. 2d 700 (E.D. Pa. 2013) (*CATA II*).

In response to the vacatur and 30-day compliance order in *CATA II,* and the Eleventh Circuit's decision in *Bayou Lawn & Landscape Servs.,* discussed *supra,* DOL and DHS promulgated an interim final rule, Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program, part 2, 78 FR 24047 (Apr. 24, 2013) (2013 IFR), which again revised the wage methodology. The Departments issued the 2013 IFR jointly to dispel questions that arose as a result of *Bayou* about the respective roles of the two agencies and the validity of DOL's regulations as an appropriate way to implement the interagency consultation specified in section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1). Finally, the U.S. Court of Appeals for the Third Circuit vacated on substantive and procedural APA grounds 20 CFR 655.10(f), which permitted employers to submit employer-conducted surveys. *Comite de Apoyo a los Trabajadores Agricolas* v. *Perez,* 774 F.3d 173, 191 (3d Cir. 2014) (*CATA III*). For a complete history of the regulations governing the methodology to set the prevailing wage in the H–2B program, see the companion rule published in this issue of the **Federal Register**, Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program (2015), which finalizes the 2013 IFR following public input on the proper H–2B wage methodology.

[6] Employment and Training Administration, *Announcements, http://www.foreignlaborcert.doleta.gov* (Mar. 4, 2015).

[7] The court order in *Perez* did not vacate the 2013 IFR, and the court's judgment on DOL's independent regulatory authority did not have a direct impact on the 2013 IFR, which was issued jointly by DOL and DHS. However, the 2013 IFR did only one thing: it made a single change to § 655.10(b)(2) to eliminate the use of skill levels in setting wages based on the OES. The 2013 IFR left untouched all the other provisions in the 2008 wage methodology, and those provisions remained in full force and effect in the 2008 rule following the publication of the 2013 IFR. As a result, the *Perez* order vacated virtually all of § 655.10, except for § 655.10(b)(2), which was promulgated in the 2013 IFR. Thus, the vacatur eliminated DOL's wage methodology (except for § 655.10(b)(2)) as well as the procedures for requesting and obtaining prevailing wages. Together with the vacatur of § 655.10(f) in *CATA III,* this ruling left DOL without a complete methodology or any procedures to set prevailing wages in the H–2B program until the court's stay. As explained *infra,* the *Perez* court has stayed its vacatur order until May 15, 2015, and at the expiration of the stay, DOL will once again be without a complete methodology or any procedures to set and issue the prevailing wage in the H–2B program.

the areas in which those industries are located, on March 16, 2015, DOL filed an unopposed motion requesting a temporary stay of the *Perez* vacatur order. On March 18, 2015, the court entered an order temporarily staying the vacatur of the H–2B rule until and including April 15, 2015. On April 15, 2015, at the request of proposed intervenors, the court entered a second order extending the temporary stay up to and including May 15, 2015. The court in *Perez* has requested briefing on several issues, including whether the plaintiff had standing to challenge the 2008 rule. The court's extension of the stay on April 15 occurred late in the day, after DOL had already initiated processes necessary to provide for an orderly cessation of the H–2B program and after DOL had already posted a notice to the regulated community on its Web site that the H–2B program would be closed again the next day. On April 16, 2015, following the court's stay extension, DOL immediately posted a new notice on its Web site that it would continue to operate the H–2B program and resume normal operations.

DHS is charged with adjudicating petitions for a nonimmigrant worker (commonly referred to as Form I–129 petitions or, in this rule, ''H–2B petitions''), filed by employers seeking to employ H–2B workers, but, as discussed earlier, Congress directed the agency to issue its decisions relating to H–2B petitions ''after consultation with appropriate agencies of the Government.'' 8 U.S.C. 1184(c)(1), INA section 214(c)(1). Legacy INS and now DHS have historically consulted with DOL on U.S. labor market conditions to determine whether to approve an employer's petition to import H–2B workers. *See* 73 FR 78104, 78110 (DHS) (Dec. 19, 2008); 55 FR 2606, 2617 (INS) (Jan. 26, 1990). DOL plays a significant role in the H–2B program because DHS ''does not have the expertise needed to make any labor market determinations, independent of those already made by DOL.'' 73 FR at 78110; *see also* 55 FR at 2626. Without consulting with DOL, DHS lacks the expertise to adequately make the statutorily mandated determination about the availability of United States workers to fill the proposed job opportunities in the employers' Form I–129 petitions. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b); 78 FR 24047, 24050 (DHS–DOL) (Apr. 24, 2013). DHS regulations therefore require employers to obtain a temporary labor certification from DOL before filing a petition with DHS to import H–2B workers. *See* 8 CFR 214.2(h)(6)(iii)(A), (C), (iv)(A). In addition, as part of DOL's certification, DHS regulations require DOL to ''determine the prevailing wage applicable to an application for temporary labor certification in accordance with the Secretary of Labor's regulation at 20 CFR 655.10.'' 8 CFR 214.2(h)(6)(iii)(D).

DOL has fulfilled its consultative role in the H–2B program through the use of legislative rules to structure its advice to legacy INS and now DHS for several decades. *See* 33 FR 7570–71 (DOL) (May 22, 1968); 73 FR 78,020 (DOL) (Dec. 19, 2008). Before DOL issued the 2008 rule, it supplemented its regulations with guidance documents that set substantive standards for wages and recruitment and structured the manner in which the agency processed applications for H–2B labor certification. *See* 73 FR at 78021–22. One district court has held that DOL's pre-2008 H–2B guidance document was a legislative rule that determined the rights and obligations of employers and employees, and DOL's failure to issue the guidance through the notice and comment process was a procedural violation of the APA. As a result, the court invalidated the guidance. *See CATA I,* 2010 WL 3431761, at *19, 25. Similarly, the U.S. Court of Appeals for the D.C. Circuit has held that DOL violated the procedural requirements of the APA when it established requirements that ''set the bar for what employers must do to obtain approval'' of the H–2A labor certification application, including wage and housing requirements, in guidance documents. *Mendoza* v. *Perez,* 754 F.3d 1002, 1024 (D.C. Cir. 2014) (setting substantive standards for labor certification in the H–2A program requires legislative rules subject to the APA's notice and comment procedural requirements). The APA therefore prohibits DOL from setting substantive standards for the H–2B program through the use of guidance documents that have not gone through notice-and-comment rulemaking. As a result, if and when the temporary stay concludes, without this interim final rule, DOL will not be able to provide employers with temporary labor certifications necessary to allow importation of foreign workers under the H–2B program because DOL may not rely on subregulatory guidance standards, and has no prior rule to reinstate. Accordingly, DOL would again be forced to cease H–2B program operations, thus prohibiting DOL from processing temporary employment certification applications and prevailing wage requests, unless a rule was in place.

As with the two weeks in March 2015, the Departments are again facing the prospect of experiencing another program hiatus if and when the temporary stay expires on or before May 15, 2015. DOL's 2008 rule is the only comprehensive mechanism in place for DOL to provide advice to DHS because the 2008 rule sets the framework, procedures, and applicable standards for receiving, reviewing, and issuing H–2B prevailing wages and temporary labor certifications. The 2008 rule sets the recruitment standards for testing the domestic labor market and provides the rules for processing prevailing wage requests. DHS is precluded by its own regulations from accepting any H–2B petition without a temporary labor certification from DOL. *See* 8 CFR 214.2(h)(6)(iii)(C). Moreover, without advice from DOL, DHS lacks the capability to test the domestic labor market or determine whether there are available U.S. workers to fill the employer's job opportunity. As a result, if and when the stay concludes as currently scheduled on or before May 15, 2015, the vacatur of DOL's 2008 rule will require DOL to once again cease operating the H–2B program, and DOL will again be unable to process employers' requests for temporary employment certification applications until the agencies can put in place a new mechanism for fulfilling the statutory directive to ensure that the importation of foreign workers will not harm the domestic labor market. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b). Moreover, if the temporary stay is lifted, the vacatur of DOL's 2008 rule will void the enforcement regime by which DOL has carried out its statutorily-delegated enforcement authority. *See* 8 U.S.C. 1184(c)(14)(B), INA section 214(c)(14)(B).

2. Good Cause To Proceed Without Notice and Comment and With an Immediate Effective Date

The APA authorizes agencies to issue a rule without notice and comment upon a showing of good cause. 5 U.S.C. 553(b)(B). The APA's good cause exception to public participation applies upon a finding that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). Although the term is not defined in the APA, the accompanying Senate report described ''impracticable'' as ''a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings.'' S. Rep. No. 752, 79th Cong., 1st Sess. 200 (1945). The '' '[p]ublic interest' supplements . . . 'impracticable' [and] requires that

public rule-making procedures shall not prevent an agency from operating.'' *Id.*

Under the APA's ''good cause'' exception to notice and comment, an agency can take steps to minimize discontinuity in its program after the court has vacated a rule. *Mid-Tex Elec. Coop.* v. *FERC,* 822 F.2d 1123, 1131–34 (D.C. Cir. 1987) (upholding good cause to issue a post-remand interim rule); *see also Shell Oil Co.* v. *EPA,* 950 F.2d 741, 752 (D.C. Cir. 1991) (observing that where the agency had a regulatory void as the result of a vacatur of its rule, it should consider issuing an interim rule under the good cause exception because of the disruptions posed by discontinuity in the regulations); *Action on Smoking and Health* v. *Civil Aeronautics Bd.,* 713 F.2d 795, 800 (D.C. Cir. 1983) (same). Moreover, courts find ''good cause'' under the APA when an agency is moving expeditiously to eliminate uncertainty or confusion that, left to linger, could cause tangible harm or hardship to the agency, the program, program users, or other members of the public. *See, e.g., Mid-Tex,* 822 F.2d at 1133–34 (agency had good cause to promote continuity and prevent ''irremedial financial consequences'' and ''regulatory confusion''); *Nat'l Fed'n of Fed. Employees* v. *Devine,* 671 F.2d 607, 609, 611 (D.C. Cir. 1982) (agency had good cause based on emergency circumstances, including uncertainty created by pending litigation about significant aspects of the program, and potential harm to agency, to program, and to regulated community); *Am. Fed'n of Gov't Emp., AFL–CIO* v. *Block,* 655 F.2d 1153, 1157 (D.C. Cir. 1981) (agency had good cause where absence of immediate guidance from agency would have forced reliance upon antiquated guidelines, causing confusion among field administrators and economic harm and disruption to industry and consumers); *Woods Psychiatric Inst.* v. *United States,* 20 Cl. Ct. 324, 333 (1990), aff'd, 925 F.2d 1454 (Fed. Cir. 1991) (agency had good cause when program would continue to suffer administrative difficulties that had previously resulted in litigation and might continue to result in litigation due to uncertainty and confusion over scope of benefits, program standards, and eligibility requirements). Based on these legal standards and for the reasons set forth below, the Departments conclude that it is impracticable and contrary to the public interest to issue this rule under the APA's standard notice and comment procedures. DOL and those employers and employees who are involved in the H–2B program have already experienced one regulatory lapse and anticipate another, which provides a sound foundation for the Departments' good cause to proceed without notice and comment. Moreover, even in the absence of another regulatory lapse, confusion and disarray will persist in the H–2B program as a result of uncertainty about the rules governing the program, which includes ambiguity about DOL's ability to enforce protections afforded to U.S. and foreign workers, and this provides further good cause to proceed with this interim final rule without notice and public comment.

As an initial matter, DOL has already had to cease operating the H–2B program for two weeks in March 2015, and faces this prospect again at the expiration of the stay on or before May 15, 2015. Given the expectation of another regulatory void, were the Departments to follow the standard APA procedures, resumption of the H–2B program would be substantially delayed by the Departments' issuance of a notice of proposed rulemaking and request for comment, the time-consuming process involved in analyzing and responding to comments, and the publication of a final rule. Despite the fact that the statutory cap on H–2B visas has been reached for FY 2015, employers would normally now start the process for applying for temporary employment certifications for FY 2016 by: Filing requests for Prevailing Wage Determinations (PWDs); performing the required recruitment of U.S. workers; and submitting applications for temporary employment certification. In the absence of a rule, employers would not be able to take such actions.[8] Therefore, DHS and DOL must act swiftly to enable the agencies to meet their statutory obligations under the INA and to prevent further economic dislocation to employers and employees in anticipation of another regulatory void that will occur upon resumption of the *Perez* vacatur order.

Moreover, the on-again-off-again nature of H–2B program operations has created substantial confusion, uncertainty and disarray for the agencies and the regulated community. The original vacatur order in *Perez* effectively required the agency to immediately cease operation of the H–2B program, leaving unresolved hundreds of time-sensitive pending applications for prevailing wages and certifications. Two weeks later, following the court's stay of the vacatur and upon resumption of the H–2B program, those cases pending on the date of the vacatur created a backlog of applications, while, at the same time, employers began filing new applications for prevailing wages and certifications. DOL worked diligently and quickly to address the backlog and simultaneously keep up with new applications. Then, facing the expiration of the stay on April 15, 2015, DOL once again prepared to cease H–2B operations, which included posting a notice to the regulated community on its Web site that day announcing another closure, which was then obviated at the last minute by the court's extension of the stay late in the day on April 15. The next day, DOL announced that despite its earlier announcement, it would continue to operate the H–2B program as a result of the stay extension. These circumstances, which are beyond the Departments' ability to control, have resulted in substantial disorder and upheaval for the Departments, as well as employers and employees involved in the H–2B program.

This uncertainty and confusion is particularly applicable to DOL's ability to enforce rights and obligations under the H–2B program. Even if the temporary stay were to continue beyond May 15 or the court in *Perez* dismisses the case (for example, finding that the plaintiff lacked standing), it is necessary to dispense with notice and comment to ensure that DOL has the continued ability to take enforcement actions to protect H–2B and U.S. workers. As discussed above, employers have challenged DOL's independent regulatory authority in the H–2B program, and courts have issued decisions both affirming and repudiating that authority. *Compare La. Forestry Ass'n* v. *Perez,* 745 F.3d at 669, *Bayou,* 713 F.3d at 1084, *and Perez,* at slip op. at 6. As a result, one circuit has already found that DOL lacked independent regulatory authority to issue DOL's 2012 H–2B rule, and a district court has ruled similarly with respect to the 2008 rule, which DOL relied on to fill the regulatory void created in 2012. Based on these adverse precedents, the 2008 rule—the only vehicle under which DOL can presently administer and enforce the H–2B program—will remain vulnerable to challenges by employers in current and future enforcement proceedings based on the ground that the regulations DOL is seeking to enforce are void because DOL exceeded its statutory authority in

[8] Moreover, there may be petitions on behalf of H–2B workers who are exempt from, or have already been counted toward, the H–2B visa cap. These petitions will be affected if employers of these cap-exempt workers are unable to apply for temporary employment certifications.

unilaterally issuing the 2008 rule.[9] In this regard, the statute of limitations under the APA would not likely be available to DOL in such challenges because, even where the statute of limitations for a facial challenge has run, a litigant may challenge statutory authority for a rule in an enforcement proceeding when the rule is applied to it.[10] *See Wong* v. *Doar,* 571 F.3d 247, 263 n. 15 (2d Cir. 2009) (statute of limitations for a substantive challenge ''begins to run at the time of the adverse agency action on the particular claim''); *Indep. Cmty. Bankers of Am.* v. *Bd. of Governors of Fed. Reserve Sys.,* 195 F.3d 28, 34 (D.C. Cir. 1999) (''We have frequently said that a party against whom a rule is applied may, at the time of application, pursue substantive objections to the rule, including claims that an agency lacked the statutory authority to adopt the rule, even where the petitioner had notice and opportunity to bring a direct challenge within statutory time limits.''); *see also Coal River Energy LLC* v. *Jewell,* 751 F.3d 659, 664 (D.C. Cir. 2014) (''A substantive defense is one based on an argument that a regulation is not authorized by a statute or the Constitution, as opposed to a claim under the APA regarding the method used in promulgating the regulation, such as that it was issued without adequate notice, or that the government inadequately responded to comments.''). Therefore, employers subject to enforcement under the 2008 rule have an available defense that DOL is without regulatory authority to enforce rights and obligations in the H–2B program, leaving DOL in an untenable position with respect to its ability to require adherence to program standards. In the absence of this interim final rule, which immediately replaces the 2008 rule, uncertainty, confusion and attendant legal vulnerability arise each time DOL attempts to enforce the provisions of the 2008 rule, putting critical protections for U.S. and H–2B workers in jeopardy.

Accordingly, even if the *Perez* decision is ultimately dismissed on standing or other grounds or if the stay is subsequently extended, the court's earlier decision—finding on the merits that DOL lacked regulatory authority to issue the 2008 rule—has created significant confusion about the continued viability of the 2008 rule. To leave the 2008 rule in place while the Departments pursue a new notice-and-comment rulemaking would prolong for many months the regulatory confusion about the 2008 rule's status and DOL's authority to enforce worker protections and wages required under the 2008 rule and 2013 IFR. In the interim, in response to a challenge to any enforcement action under the 2008 rule, DOL may be required to defend the validity of the 2008 rule. Such challenges could lead to inconsistent outcomes, producing further instability in the program. Given the potential for harm to U.S. and foreign workers if DOL is unable to effectively protect their rights, and uncertainty and confusion about the status of the 2008 rule in the regulated community, the Departments conclude that it is impracticable and contrary to the public interest to conduct a rulemaking proceeding under the APA's notice and comment requirements, and that they have good and substantial cause to issue this rule immediately.

Finally, the Departments also have good cause to forego notice and comment because, as explained below, this rule has already been subject to one full round of notice and comment. On March 18, 2011, DOL proposed a regulation and sought public input on all issues addressed in this interim final rule during a 60-day comment period. 76 FR 15130. As noted below, DOL received over 800 comments from a wide variety of stakeholders, and adapted the final rule in 2012 based on those comments. 77 FR 10038 (Feb. 21, 2012). The public has by now had notice and an opportunity to comment on virtually every provision in this interim final rule. The only new provisions in this interim final rule involve transition filing procedures at § 655.4, which are necessary to instruct those program users who have already begun the employment certification process on the procedures to follow under the new regulatory system; electronic filing procedures at § 655.15(c) to permit easier submissions for H–2B program users; the rules that apply to Administrative Law Judge proceedings involving determinations under 8 U.S.C. 1184(c), section 214(c) of the INA, at 29 CFR 503.40(b); and implementation of the Congressional mandate in § 655.15(f) to permit employers in the seafood industry flexibility with respect to the entry into the U.S. by their H–2B nonimmigrant workers. The first three provisions (§§ 655.4, 655.15(c), 503.40(b)) are procedural in nature, and the last provision incorporates a statutory requirement that DOL and DHS have already implemented. The rulemaking record from the 2011–2012 proceeding remains fresh, and no new information relevant to policy decisions made during that proceeding has come to light. Therefore, the Departments have satisfied the APA's notice-and-comment requirements where, after one full period of notice and comment for a rule, we reinstate a virtually identical rule without an additional notice and comment period. *See Am. Mining Cong.* v. *EPA,* 907 F.2d 1179, 1191–1192 (D.C. Cir. 1990); *Am. Fed'n of Gov't Employees* v. *OPM,* 821 F.2d 761, 764 (D.C. Cir. 1987). Accordingly, the Departments have good and sufficient reason to rely on the APA's good cause exception, 5 U.S.C. 553(b)(B), to issue without notice and comment this new interim final rule.

The APA also authorizes agencies to make a rule effective immediately upon a showing of good cause instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). The good cause exception to the 30-day effective date requirement is easier to meet than the good cause exception for notice and comment. *Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Employees, AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981); *U.S. Steel Corp.* v. *EPA,* 605 F.2d 283, 289–90 (7th Cir. 1979). An agency can show good cause for eliminating the 30-day waiting period when it demonstrates urgent conditions the rule seeks to correct or unavoidable time limitations. *U.S. Steel Corp.,* 605 F.2d at 290; *United States* v. *Gavrilovic,* 511 F.2d 1099, 1104 (8th Cir. 1977). For the same reasons set forth above, we also conclude that the Departments have good cause to dispense with the 30-day effective date requirement given the continuing disruption, uncertainty, and confusion that a 30-day delay would cause in the H–2B program. 5 U.S.C. 553(d)(3).

The Departments underscore that although we are implementing this interim final rule in advance of a period

[9] Such challenges cannot be adjudicated before DOL Administrative Law Judges, but may be brought in federal district court. *See* 2008 rule, 20 CFR 655.75(d) (''The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.''); *see also Prince* v. *Westinghouse Savannah River Co.,* ARB No. 10–079, slip op. at 9 (ARB Nov. 17, 2010) (' 'The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations that has been duly promulgated by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions.' ') (quoting Secretary's Order No. 1–2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), sec. 5(c)(48), 75 FR 3924 (Jan. 15, 2010)).

[10] The default six-year statute of limitations for civil claims against the government applies to challenges under the APA, and so the statute of limitations for facial challenges to the 2008 Rule, published December 19, 2008, has run. *See* 28 U.S.C. 2401(a); *Harris* v. *FAA,* 353 F.3d 1006, 1009 (D.C. Cir. 2004) (''Unless another statute prescribes otherwise, a suit challenging final agency action [under the APA] must be commenced within six years after the right of action first accrues.'')

of public comment and without a 30-day delay in the effective date, we seek public input on every aspect of this interim final rule (even though virtually every provision herein has already gone through one round of notice and comment), and will assess that input and determine whether changes are appropriate. As a result, the public participation process will be preserved in this rulemaking proceeding, and we act only under the compulsion of the emergency conditions described above.

3. Request for Comments on All Aspects of This Interim Final Rule

Although this rule is being issued as an interim final rule, the Departments request public input on all aspects of the rule. The regulated community should be familiar with the provisions adopted in this interim final rule because they are largely the same as the provisions adopted in the 2012 H–2B rule, Temporary Non-agricultural Employment of H–2B Aliens in the United States, 77 FR 10038 (Feb. 21, 2012). As part of the rulemaking proceeding that culminated in the 2012 H–2B rule, DOL received, reviewed, and considered 869 comments on its proposal. Commenters represented a broad range of constituents of the H–2B program, including small business employers, U.S. and H–2B workers, worker advocacy groups, State Workforce Agencies (SWAs), agents, law firms, employer and industry advocacy groups, union organizations, members of the U.S. Congress, and interested members of the public. Those comments resulted in DOL's adjustment to or further explanation of that rule, and are incorporated here as well. As a result, to the extent that any provision of part 655 of title 20 or part 503 of title 29 of the Code of Federal Regulations adopted in this rulemaking proceeding requires further interpretation or justification, we refer the public to the explanations of the regulations contained in the prior rulemaking docket. That prior notice and comment proceeding does not foreclose public input in this proceeding, during which the Departments will jointly consider the public comments and revise this interim final rule as appropriate. The Departments invite the public to submit comments on all of the issues, requirements, and procedures addressed in this interim final rule; we will accept and consider these comments prior to issuing a final rule.

III. Revisions to 8 CFR Part 214

Deletion of 8 CFR 214.2(h)(9)(iii)(B)(2)

DHS currently requires all H–2B petitions to be accompanied by an approved temporary labor certification. *See* 8 CFR 214.2(h)(6)(iv)(A) (stating that an H–2B petition for temporary employment in the United States, except for temporary employment on Guam, must be accompanied by an approved temporary labor certification from the Secretary of Labor); 8 CFR 214.2(h)(6)(v) (stating that an H–2B petition for temporary employment on Guam must be accompanied by an approved temporary labor certification issued by the Governor of Guam). These regulatory provisions were enacted as part of DHS's 2008 notice and comment rulemaking on this topic. *See* DHS Proposed Rule, 73 FR 49109, 48110 (Aug. 20, 2008); DHS Final Rule, 73 FR 78104, 78104 (Dec. 19, 2008).

Due to a drafting oversight, when enacting the requirements above, DHS inadvertently left untouched the provisions at 8 CFR 214.2(h)(9)(iii)(B)(*2*), which should have been deleted. These provisions can only be read to apply to the time, before 2008, when DHS would accept petitions without a temporary labor certification. The 2008 DHS Proposed Rule (73 FR 49109) and DHS Final Rule (73 FR 78104) make it clear that DHS intended to require a temporary labor certification to be submitted with an H–2B petition, and thus 8 CFR 214.2(h)(9)(iii)(B)(*2*) cannot be read to have any effect. Finally, the provision requiring that all H–2B petitions must be accompanied by a temporary labor certification went through notice and comment rulemaking. Thus, the deletion of 8 CFR 214.2(h)(9)(iii)(B)(*2*) should be subject to the good cause exception under 5 U.S.C. 553(b)(B) as such deletion is a housekeeping matter and a minor technical amendment, which makes notice and comment unnecessary.

For these reasons, DHS will rescind 8 CFR 214.2(h)(9)(iii)(B)(*2*) in this interim final rule, consistent with 5 U.S.C. 553(b)(B).

IV. Revisions to 20 CFR Part 655, Subpart A

A. Introductory Sections

1. § 655.1 Scope and Purpose of Subpart A

This provision informs program users of the statutory basis and regulatory authority for the H–2B temporary labor certification process. This provision describes the Department's role in receiving, reviewing, adjudicating, and upholding the integrity of an Application for Temporary Employment Certification. DHS regulations at 8 CFR 214.2(h)(6)(iii)(D) recognize the Secretary of Labor as an appropriate authority with whom DHS consults regarding the H–2B program, and recognize the Secretary of Labor's authority, in carrying out that consultative function, to issue regulations regarding the issuance of temporary labor certifications. The purpose of these regulations is for the Secretary of Labor to determine that: (1) There are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to import foreign workers; and (2) the employment of the H–2B worker(s) will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* 8 CFR 214.2(h)(6)(iv)(A). It is through the regulatory provisions set forth below that DOL ensures that the criteria for its labor certification determinations are met.

2. § 655.2 Authority of Agencies, Offices and Divisions in the Department of Labor

This section describes the authority of and division of activities related to the H–2B program among DOL agencies. It discusses the authority of the Office of Foreign Labor Certification (OFLC), the office within ETA that exercises the Secretary of Labor's responsibility for determining the availability of qualified U.S. workers and whether the employment of H–2B nonimmigrant workers will adversely affect the wages and working conditions of similarly employed workers. It also discusses the authority of the Wage and Hour Division (WHD), the agency responsible for investigation and enforcement of the terms and conditions of H–2B labor certifications, as delegated by DHS.[11]

3. § 655.3 Territory of Guam

Under DHS regulations and pursuant to DHS's consultative relationship with the Governor of Guam related to the H–2B visa program on Guam, the granting of H–2B labor certifications and the enforcement of the H–2B visa program on Guam resides with the Governor of Guam. 8 CFR 214.2(h)(6)(v). Subject to

[11] Applications for temporary labor certification are processed by OFLC in the ETA, the agency to which the Secretary of Labor has delegated his responsibilities as described in the DHS H–2B regulations. Enforcement of the attestations made by employers in the course of submission of H–2B applications for labor certification is conducted by WHD within DOL, to which DHS on January 18, 2009 delegated enforcement authority granted to it by the INA. 8 U.S.C. 1184(c)(14)(B), INA section 214(c)(14)(B); 8 CFR 214.2(h)(6)(ix).

DHS approval, the Governor of Guam is authorized to set the prevailing wage for H–2B job opportunities on Guam. 8 CFR 214.2(h)(6)(v)(E) and (F). To further uniformity of standards through the United States, the Departments have concluded that it would be more appropriate for OFLC to issue H–2B prevailing wages for all workers on Guam, because OFLC already provides prevailing wage determinations (PWDs) for all other U.S. jurisdictions. Therefore, the process for obtaining a prevailing wage in § 655.10 would also apply to H–2B job opportunities on Guam, subject to the transfer of the authority to set the prevailing wage for a job opportunity on Guam to DOL in title 8 of the Code of Federal Regulations. Should such transfer occur, employment opportunities on Guam accordingly would be subject to the same process and methodology for calculating prevailing wages as any other jurisdiction within OFLC's purview. DHS will separately conduct rulemaking intended to make DOL responsible for issuing prevailing wage rates for all H–2B workers on Guam.

4. Special Procedures

Special procedures in DOL's temporary labor certification programs were based upon a determination that variations from the normal labor certification processes were necessary to permit the temporary employment of foreign workers in specific industries or occupations when qualified U.S. workers were not available and the employment of foreign workers would not adversely affect the wages or working conditions of similarly employed U.S. workers. The 2008 rule provided authority for DOL to ''establish or to devise, continue, revise or revoke'' special procedures in the H–2B program. 20 CFR 655.3 (2009). The regulation concerning the H–2A temporary agricultural worker program at 20 CFR 655.102 establishes in a virtually identical fashion, as did the 2008 H–2B rule, DOL's authority in the H–2A program to ''establish, continue, revise, or revoke special procedures'' for certain H–2A occupations. In *Mendoza* v. *Perez,* 754 F.3d 1002, 1022 (D.C. Cir. 2014), the D.C. Circuit concluded that 20 CFR 655.102 was ''a grant of unconstrained and undefined authority [, and the] purpose of the APA would be disserved if an agency with a broad statutory command . . . could avoid notice-and-comment rulemaking simply by promulgating a comparably broad regulation . . . and then invoking its power to interpret that statute and regulation in binding the public to a strict and specific set of obligations.'' Accordingly, the court in *Mendoza* held that for herding occupations the special procedures issued under 20 CFR 655.102 were rules subject to the APA's notice and comment requirements because they possess all the hallmarks of a legislative rule and could not be issued through subregulatory guidance. 754 F.3d at 1024 (''The [special procedures] are necessarily legislative rules because they 'effect[ ] a [substantive] change in existing law or policy,' and 'effectively amend[ ] a prior legislative rule.'') (citations omitted).

In light of *Mendoza,* the Departments are not including in this interim final rule a provision to allow for the creation of special procedures that establish variations for processing certain H–2B *Applications for Temporary Employment Certification,* similar to a provision included in the 2008 H–2B rule. Special procedures currently in place on the effective date of this interim final rule will remain in force until we otherwise modify or withdraw them, and DOL will review such procedures expeditiously.

5. § 655.4 Transition Filing Procedures

Generally, DOL will process all applications in accordance with the rules in effect on the date the application was submitted. Accordingly, DOL will continue to process all applications for PWDs and for certification submitted prior to the effective date of this rule in accordance with the 2008 rule and the 2013 IFR. Further, DOL will process all applications for PWDs and for certification submitted on or after the effective date of this rule in accordance with this interim final rule and the companion wage final rule issued simultaneously.

This rule will permit employers submitting an *Application for Temporary Employment Certification* on or after the effective date of this rule and who have a start date of need prior to October 1, 2015, to rely on the emergency processing provisions in § 655.17. Such an *Application for Temporary Employment Certification* must include a signed and dated copy of the new Appendix B associated with the ETA Form 9142B containing the requisite program assurances and obligations under this rule. In the case of a job contractor filing as a joint employer with its employer-client, the NPC must receive a separate attachment containing the employer-client's business and contact information (*i.e.,* sections C and D of the ETA Form 9142B) as well as a separate signed and dated copy of the Appendix B for its employer-client, as required by § 655.19.

For these employers with a start date of need before October 1, 2015, the NPC will also waive the regulatory filing timeframe under § 655.15 and process the *Application for Temporary Employment Certification* and job order in a manner consistent with the handling of applications under § 655.17 for emergency situations, including the recruitment of U.S. workers on an expedited basis, and make a determination on certification as required by § 655.50. The recruitment of U.S. workers on an expedited basis will consist of placing a new job order with the SWA serving the area of intended employment that contains the job assurances and contents set forth in § 655.18 for a period of not less than 10 calendar days. In addition, employers who have not placed any newspaper advertisements under the 2008 rule must place one newspaper advertisement, which may be published on any day of the week, meeting the advertising requirements of § 655.41, during the period of time the SWA is actively circulating the job order for intrastate clearance. If the Chicago NPC grants a temporary labor certification, the employer will receive an original certified ETA Form 9142B and a Final Determination letter. Upon receipt of the original certified ETA Form 9142B, the employer or its agent or attorney, if applicable, must complete the footer on the original Appendix B, retain the original Appendix B, and submit a signed copy of Appendix B, together with the original certified ETA Form 9142B directly to USCIS. Under the document retention requirements in § 655.56, the employer must retain a copy of the certified ETA 9142B and the original signed Appendix B.

For the convenience of the employer submitting a new *Application for Temporary Employment Certification* with a start date of need prior to October 1, 2015 and who did not submit an *Application for a Prevailing Wage Determination* prior to the effective date of this rule, such an employer may submit a completed *Application for a Prevailing Wage Determination* to the NPC with its emergency *Application for Temporary Employment Certification* requesting a prevailing wage determination for the job opportunity. Upon receipt, the NPC will transmit, on behalf of the employer, a copy of the *Application for a Prevailing Wage Determination* to the NPWC for processing and issuance of a prevailing wage determination using the wage methodology established in § 655.10 of the companion wage rule.

For employers submitting new applications with a start date of need

before October 1, 2015, DOL will also waive the requirements in §§ 655.8 and 655.9 of this interim final rule, requiring the employer, and its attorney or agent, as applicable, to provide copies of all agreements with any agent and/or foreign labor recruiter(s), executed in connection with the H–2B temporary employer certification application.[12] In addition, due to the expedited timeframes for recruiting U.S. workers associated with H–2B temporary employment certification applications processed under these transition procedures, DOL will not place for public examination a copy of the job order posted by the state workforce agency (SWA) on DOL's electronic job registry, as specified under § 655.34. However, DOL will implement the new electronic job registry requirement under § 655.34 for all temporary employment certification applications filed with the Chicago NPC where the employer has a start date of need on or after October 1, 2015.

For all employers submitting new applications for employment certification, regardless of the start date of need, DOL will require a period of time to operationalize the registration process for H–2B employers required in § 655.11. As a result, DOL will announce separately in the **Federal Register** the initiation and implementation of the registration requirements in § 655.11(j). In the meantime, on the effective date of this interim final rule and until such announcement is made in the **Federal Register**, H–2B temporary employment certification applications filed with the NPC will be exempt from the registration requirements of § 655.11, and adjudication of the employer's temporary need will occur during the processing of the application. The exemption will terminate after a separate announcement in the **Federal Register**, which will provide the public with notice of when DOL will initiate the registration process.

Finally, employers with a prevailing wage determination issued by the NPWC, or who have a pending or granted *Application for Temporary Employment Certification* on the effective date of this rule may seek a supplemental prevailing wage determination (SPWD) in order to obtain a prevailing wage based on an alternate wage source under the new rule. The SPWD will apply during the validity period of the certification, except that such SPWD will be applicable only to those H–2B workers who are not yet employed in the certified position on the date of the issuance of the SPWD. The SPWD will not be applicable to H–2B workers who are already employed in the certified position at the time of the issuance of the SPWD, and it will not apply to United States workers recruited and hired under the original job order. For seafood employers whose workers' entry into the United States may be staggered under § 655.15(f), an SPWD issued under this provision will apply only to those H–2B workers who have not yet entered the United States and are therefore not yet employed in the certified position at the time of the issuance of the SPWD. In order to receive an SPWD under this provision, the employer must submit a new ETA Form 9141 to the NPWC that contains in Section E.a.5 Job Duties the original PWD tracking number (starting with P–400), the H–2B temporary employment certification application number (starting with H–400), and the words ''Request for a Supplemental Prevailing Wage Determination.'' Electronic submission through the iCERT Visa Portal System is preferred. Upon receipt of the request, the NPWC will issue to the employer, or if applicable, the employer's attorney or agent, an SPWD in an expedited manner and provide a copy to the Chicago NPC.

6. § 655.5 Definition of Terms

The Departments have made a number of changes to the definitions contained in the 2008 rule. Many of the changes clarify definitions in minor ways that do not substantively change the meaning of the term. However, we have also made some substantive changes to definitions, and we discuss below those definitions.

a. ''Area of Substantial Unemployment''

This new term reflects the established definition of area of substantial unemployment in use within ETA as it relates to Workforce Investment Act (WIA) fund allocations, and is the existing definition of area of substantial unemployment within ETA. ETA uses this definition to identify areas with concentrated unemployment and to focus WIA funding for services to facilitate employment in those areas. ETA employs this term both as a way to improve labor market test quality and for the sake of operational simplicity. This existing definition provides the appropriate standard for identifying areas of concentrated unemployment where additional recruitment could result in U.S. worker employment. Also, the process of collecting data and designating an area of substantial unemployment using the existing definition is already established, as discussed in ETA's Training and Employment Guidance Letter No. 5–11, Aug. 12, 2011,[13] providing OFLC with a ready resource for identifying areas to focus additional recruitment. Finally, using this definition of area of substantial unemployment in the interim final rule enables an employer to check the list of areas of substantial unemployment ETA publishes to determine whether its job opportunity may fall within an area of substantial unemployment and, as appropriate, be subject to enhanced recruitment.

b. ''Corresponding Employment''

In this interim final rule, ''corresponding employment'' means the employment of workers who are not H–2B workers by an employer that has a certified H–2B *Application for Temporary Employment Certification* when those workers are performing either substantially the same work included in the job order or substantially the same work performed by the H–2B workers. The definition contains exceptions for two categories of incumbent employees (certain employees who have worked full-time for at least one year and certain employees covered by a collective bargaining agreement).

The first category not included in the definition of corresponding employment covers incumbent employees:

1. Who have been continuously employed by the H–2B employer to perform substantially the same work included in the job order or substantially the same work performed by the H–2B workers during the 52 weeks prior to the period of employment certified on the *Application for Temporary Employment Certification;*

2. who have worked or been paid for at least 35 hours per week in at least 48 of the prior 52 workweeks; and

3. who have worked or been paid for an average of at least 35 hours per week over the prior 52 weeks.

The second and third conditions of this exception must be demonstrated on the employer's payroll records, and the employees' terms and working

[12] DOL will not publish agent or foreign recruiter names until it makes any necessary updates to its system of records notice required by the Privacy Act (5 U.S.C. 552a).

[13] TEGL 5–11—Designation of Areas of Substantial Unemployment (ASUs) under the Workforce Investment Act (WIA) for Program Year (PY) 2012 has been added to the ETA Advisory Web site and is available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3069.* With some exceptions, the provisions of the recently enacted Workforce Innovation and Opportunity Act (WIOA), Public Law 113–128, 128 Stat. 1425 (2014), will supersede WIA as of July 1, 2015. WIOA contains a statutory definition of ''area of substantial unemployment'' that is identical to the definition of this term in WIA. *See* 29 U.S.C. 3162(b)(2)(B), 3172(b)(1)(B)(v)(III).

conditions of employment must not be substantially reduced during the period of employment covered by the job order.

In determining whether this standard was met, the employer may take credit for any hours that were reduced by the employee voluntarily choosing not to work due to personal reasons such as illness or vacation. Second, not included in the definition are incumbent employees covered by a collective bargaining agreement or an individual employment contract that guarantees both an offer of at least 35 hours of work each workweek and continued employment with the H–2B employer at least through the period of employment covered by the job order, except that the employee may be dismissed for cause.

To qualify as corresponding employment, the work must be performed during the period of the job order, including any approved extension thereof. Any work performed by U.S. workers outside the specific period of the job order does not qualify as corresponding employment. Accordingly, the interim final rule does not require employers to offer their U.S. workers (part-time or full-time workers) corresponding employment protections outside of the period of the job order. If, for example, a U.S. worker is in corresponding employment with H–2B workers, the employer must provide corresponding employment protections during the time period of the job order but may choose *not to do so* during the time period outside of the job order.

The interim final rule includes these workers within the definition of corresponding employment in order to fulfill the DHS regulatory requirement that an *H–2B Petition* will not be approved unless the Secretary of Labor certifies that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers. 8 CFR 214.2(h)(6)(iv). Congress has long intended that similarly employed U.S. workers should not be treated less favorably than temporary foreign workers. For example, a 1980 report on temporary worker programs stated that U.S. employers were required to offer domestic workers wages equal to foreign workers as a prerequisite for labor certification. *See* Congressional Research Service: ''Report to the Senate Committee on the Judiciary: Temporary Worker Programs: Background and Issues'' 53 (1980); *see also* H.R. Rep. No. 99–682, pt. 1 at 80 (1986) (''The essential feature of the H–2 program has been and would continue to be the requirement that efforts be made to find domestic workers before admitting workers from abroad. A corollary rule, again preserved in the bill, is that the importation of foreign workers will not be allowed if it would adversely affect the wages and working conditions of domestic workers similarly employed''). The 2008 rule reflected this principle, in part, by requiring that the terms and conditions of offered employment cannot be less favorable than those offered to H–2B workers. 20 CFR 655.22(a) (2009). Thus, the 2008 rule provided for equal treatment of workers newly hired during the 10-day H–2B recruitment process.

The 2008 rule, however, did not protect U.S. workers who engage in similar work performed by H–2B workers during the validity period of the job order, because it did not protect any incumbent employees. Therefore, for example, a U.S. employee hired three months previously performing the same work as the work requested in the job order, but earning less than the advertised wage, would have been required to quit the current employment and re-apply for the same job with the same employer to obtain the higher wage rate offered to H–2B workers. This was disruptive for the employer and created an additional administrative burden for the SWAs with respect to any workers being referred through them. It also overestimated employees' understanding of their rights under the regulations, and placed workers in insecure situations by requiring them to quit their jobs with the hope of being immediately rehired in order to avail themselves of the regulation's protections. Therefore, the interim final rule does not require incumbent employees to jump through this unnecessary hoop; U.S. workers generally will be entitled to the wage rates paid to H–2B employees without having to quit their jobs and be rehired.

As set out above, there are only two categories of incumbent U.S. employees who will be excluded from the definition of corresponding employment. The first category covers those incumbents who have been continuously employed by the H–2B employer for at least the 52 weeks prior to the date of need, who have averaged at least 35 hours of work or pay over those 52 weeks, and who have worked or been paid for at least 35 hours in at least 48 of the 52 weeks, and whose terms and conditions of employment are not substantially reduced during the period of the job order. The employer may take credit for any hours that were reduced because the employee voluntarily chose for personal reasons not to work hours that the employer offered, such as due to illness or vacation. Thus, for example, assume an employee took six weeks of unpaid leave due to illness, and the employer offered the employee 40 hours of work each of those weeks. In that situation, the employer could take credit for all those hours in determining the employee's average number of hours worked in the prior year and could take credit for each of those six weeks in determining whether it provided at least 35 hours of work or pay in 48 of the prior 52 weeks. Similarly, if the employer provided a paid day off for Thanksgiving and an employee worked the other 32 hours in that workweek, the employer would be able to take credit for all 40 hours when computing the average number of hours worked and count that week toward the required 48 weeks. In contrast, assume another situation where the employer offered the employee only 15 hours of work during each of three weeks, and the employee did not work any of those hours. The employer could only take credit for the hours actually offered when computing the average number of hours worked or paid during the prior 52 weeks, and it would not be able to count those three weeks when determining whether it provided at least 35 hours of work or pay for the required 48 weeks.

The second category of incumbent workers excluded from the definition of corresponding employment includes those covered by a collective bargaining agreement or individual employment contract that guarantees both an offer of at least 35 hours of work each week and continued employment with the H–2B employer at least through the period of the job order (except that the employee may be dismissed for cause). As noted above, incumbent employees in the first category are year-round employees who began working for the employer before the employer filed an *Application for Temporary Employment Certification.* They work 35 hours per week for the employer, even during its slow season. The Departments recognize that there may be some weeks when, due to personal factors such as illness or vacation, the employee does not work 35 hours. The employer may still treat such a week as a week when the employee worked 35 hours for purposes of the corresponding employment definition, so long as the employer offered at least 35 hours of work and the employee voluntarily declined to work, as demonstrated by the employer's payroll records. Thus, these workers have valuable job security that is lacked by H–2B workers and those hired during

the recruitment period or the period of the job order. Such full-time, year-round employees may have other valuable benefits as well, such as health insurance or paid time off. Similarly, employees covered by a collective bargaining agreement or an individual employment contract with a guaranteed weekly number of hours and just-cause provisions also have valuable job security; they may also have benefits beyond those guarantees provided by the H–2B program. These valuable terms and conditions of employment may account for any difference in wages between what they receive and what H–2B workers receive. Therefore, these U.S. workers are excluded from corresponding employment if they continue to be employed full-time at substantially the same terms and conditions throughout the period covered by the job order, except that they may be dismissed for cause.

The interim final rule's inclusion of other workers within the definition of corresponding employment is important because the 2008 rule did not protect U.S. workers in the situation where an H–2B employer places H–2B workers in occupations and/or at job sites outside the scope of the labor certification, in violation of the regulations. For example, if an employer submits an application for workers to serve as landscape laborers, but then assigns the H–2B workers to serve as bricklayers constructing decorative landscaping walls, the employer has bypassed many of the H–2B program's protections for U.S. workers. The employer has deprived such U.S. workers of their right to protections such as domestic recruitment requirements, the right to be employed if available and qualified, and the prevailing wage requirement. The interim final rule guards against this abuse of the system and protects the integrity of the H–2B process by ensuring that the corresponding U.S. workers employed as bricklayers receive the prevailing wage for that work.

The 2008 rule also did not protect U.S. workers in cases where employers placed H–2B workers at job sites outside the scope of the labor certification. For example, an employer may submit an application for workers to serve as landscape laborers in a rural county in southern Illinois, but instead violate its obligations by assigning its H–2B workers to work as landscape laborers in the Chicago area. Because the employer did not fulfill its recruitment obligations in the Chicago area, U.S. workers were not aware of the job opportunity, they could not apply and take advantage of their priority hiring right, and the prevailing wage assigned was not the correct rate for the Chicago area. Such a violation of the employer's attestations would result both in the absence of a meaningful test of the labor market for available U.S. workers and U.S. workers being adversely affected by the presence of underpaid H–2B workers. The interim final rule's definition of corresponding employment ensures that the employer's incumbent landscape laborers who work where the H–2B workers actually are assigned to work will receive the appropriate prevailing wage rate. Paying the proper wage to such workers is necessary to protect against possible adverse effects on U.S. workers due to wage depression from the introduction of foreign workers. Therefore, the definition of corresponding employment in the interim final rule is necessary to fulfill the responsibility to provide temporary labor certifications only in appropriate circumstances.

c. ''Full-Time''

The definition of ''full-time'' means 35 or more hours of work per week. In accord with the decision in *CATA I,* which invalidated the 2008 rule's definition of full-time employment because DOL did not consider and articulate relevant factors supporting the 30-hour definition, 2010 WL 3431761 at *14, we have continued to carefully consider all pertinent information in determining the threshold number of hours for full-time employment, including national labor market statistics, empirical evidence from a random sample of approved applications, and other employment laws. All available evidence suggests that the 2008 rule's definition of 30 hours or more per workweek was not an accurate reflection of full-time employment. DOL's enforcement experience confirms that the vast majority of H–2B temporary employment certification applications that are the subject of investigations are certified for 35 or more hours per week. Under the H–2A nonimmigrant visa program applicable to agricultural workers, DOL defines full-time as 35 hours per week. The 35-hour floor allows employers access to the H–2B program for a relatively small number of full-time jobs that would not have been eligible under a higher criterion (for example, a 40-hour standard). H–2B employers are and will remain required to accurately represent the actual number of hours per week associated with the job, recruit U.S. workers on the basis of those hours, and pay for all hours of work. Therefore, the employer is obligated to disclose and offer those hours of employment—whether 35, 40, 45, or more—that accurately reflect the job being certified. Failure to do so could result in a finding of violation of these regulations.

d. ''Job Contractor''

This term means a person, association, firm, or a corporation that meets the definition of an employer and that contracts services or labor on a temporary basis to one or more employers, which is not an affiliate, branch or subsidiary of the job contractor and where the job contractor will not exercise substantial, direct day-to-day supervision and control in the performance of the services or labor to be performed other than hiring, paying and firing the workers. The following examples illustrate the differences between an employer that is a job contractor and an employer that is not. Employer A is a temporary clerical staffing company. It sends several of its employees to Acme Corporation to answer phones and make copies for a week. Although Employer A has hired these employees and will be issuing paychecks to these employees for the time worked at Acme Corporation, Employer A will not exercise substantial, direct day-to-day supervision and control over its employees during their performance of services at Acme Corporation. Rather, Acme Corporation will direct and supervise the Employer A employees during that week. Under this particular set of facts, Employer A would be considered a job contractor. By contrast, Employer B is a landscaping company. It sends several of its employees to Acme Corporation once a week to do mowing, weeding, and trimming around the Acme campus. Among the employees that Employer B sends to Acme Corporation are several landscape laborers and one supervisor. Employer B's supervisor instructs and supervises the laborers as to the tasks to be performed on the Acme campus. Under this particular set of facts, Employer B would not be considered a job contractor.

Similarly, in the reforestation industry, employers may perform contract work using crews of workers subject to the employer's on-site, day-to-day supervision and control. Such an employer, whose relationship with its employees involves substantial, direct, on-site, day-to-day supervision and control would not be considered a job contractor under this interim final rule. However, if a reforestation employer were to send its workers to another company to work on that company's crew and did not provide substantial, direct, on-site, day-to-day supervision

and control of the workers, that employer would be considered a job contractor under this interim final rule. Note that the provision of services to another company, under a contract alone, does not render an employer a job contractor; rather, each employment situation must be evaluated individually to determine the nature of the employer-employee relationship and, accordingly, whether the petitioning employer is in fact a job contractor.

e. Other Definitions

As discussed under § 655.6, we have decided to permit job contractors to participate in the H–2B program where they can demonstrate their own temporary need, not that of their clients. The particular procedures and requirements that govern their participation are set forth in § 655.19 and provide in greater detail the responsibilities of the job contractors and their clients. Accordingly, we are adding a definition of ''employer-client'' to this interim final rule to define the characteristics of the employer that is served by the job contractor and the nature of their relationship.

We have included definitions of job offer and job order to make certain that employers understand the difference between the offer that is made to workers, which must contain all the material terms and conditions of the job, and the order that is the published document used by SWAs in the dissemination of the job opportunity. The definition of job order reflects that it must include some, but not all, of the material terms and conditions of employment as reflected in § 655.18, which identifies the minimum content required for job orders. The definition of job offer requires an employer's job offer to contain all material terms and conditions of employment.

We have included the definition of strike so that the term is defined more consistently with DOL's 2010 H–2A regulations. The definition recognizes a range of protected concerted activity and clearly notifies employers and workers of their obligations when workers engage in these protected activities.

7. § 655.6 Temporary Need

We will interpret temporary need in accordance with the DHS definition of that term and our experience in the H–2B program. The DHS regulations define temporary need as a need for a limited period of time, where the employer must ''establish that the need for the employee will end in the near, definable future.'' 8 CFR 214.2(h)(6)(ii)(B). The interim final rule, as discussed in further detail below, is consistent with this approach.

a. Job Contractors: We generally conclude that a person or entity that is a job contractor, as defined under § 655.5, has no individual need for workers. Rather, its need is based on the underlying need of its employer-clients. Job contractors generally have an ongoing business of supplying workers to other entities, even if the receiving entity's need for the services is temporary. However, we recognize that we should exclude from the program only those job contractors who have a definitively permanent need for workers, and that job contractors who only have a need for the services or labor to be performed several months out of the year have a genuine temporary need and should not be excluded. Therefore, § 655.6 permits only those contractors that demonstrate their own temporary need, not that of their employer-clients, to continue to participate in the H–2B program.

Job contractors will only be permitted to file applications based on seasonal need or a one-time occurrence. In other words, in order to participate in the H–2B program, a job contractor would have to demonstrate, just as all employers seeking H–2B workers based on seasonal need have always been required to demonstrate: 1) If based on a seasonal need that the services or labor that it provides are traditionally tied to a season of the year, by an event or pattern and is of a recurring nature; or 2) if based on a one-time occurrence, that the employer has not employed workers to perform the services or labor in the past and will not need workers to perform the services in the future or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker. For a job contractor with a seasonal need, the job contractor must specify the period(s) or time during each year in which it does not employ the services or labor. The employment is not seasonal if the period during which the services or labor is not provided is unpredictable or subject to change or is considered a vacation period for the contractor's permanent employees. For instance, a job contractor that regularly supplies workers for ski resorts from October to March but does not supply any workers performing the same services or labor needed by the ski resorts outside of those months would qualify as having a temporary need that is seasonal for such workers.

We are allowing job contractors to be certified based only on seasonal or one-time need because it is extremely difficult, if not impossible, to identify appropriate peakload or intermittent needs for job contractors with clients who have variable needs. The seminal Immigration and Naturalization Service (INS) decision, *Matter of Artee,* 18 I. & N. Dec 366 (Comm'r 1982), established that a determination of temporary need rests on the nature of the underlying need for the duties of the position. To the extent that a job contractor is applying for a temporary labor certification, the job contractor whose need rests on that of its clients has itself no independent need for the services or labor to be performed. The Board of Alien Labor Certification Appeals (BALCA) has further clarified the definition of temporary need in *Matter of Caballero Contracting & Consulting LLC,* 2009–TLN–00015 (Apr. 9, 2009), finding that ''the main point of *Artee* . . . is that a job contractor cannot use [solely] its client's needs to define the temporary nature of the job where focusing solely on the client's needs would misrepresent the reality of the application.'' The BALCA, in *Matter of Cajun Constructors, Inc.* 2009–TLN–00096 (Oct. 9, 2009), also decided that an employer by the nature of its business works on a project until completion and then moves on to another has a permanent rather than a temporary need. The limited circumstances under which job contractors may continue to participate in the H–2B program will be subject to the requirements in § 655.19, which sets forth the procedures and requirements governing the filing of applications by job contractors. Contractors have no temporary need apart from the underlying need of the employer on whose behalf they are filing the *Application for Temporary Employment Certification.* When considering any employer's *H–2B Registration,* DOL will require that employer to substantiate its temporary need by providing evidence required to support such a need.

b. Duration of Temporary Need. For the reasons described below, DOL is defining temporary need, except in the event of a one-time occurrence, as 9 months in duration, a decrease from the 10-month limitation under DOL's 2008 rule. This definition is consistent with the definition of temporary need in DHS regulations, which provides that ''[g]enerally, that period of time will be limited to one year *or less,* but in the case of a one-time event could last up to 3 years.'' 8 CFR 214.2(h)(6)(ii)(B) (emphasis provided). This interim final rule further provides, consistent with 8 CFR 214.2(h)(6)(ii)(B), that in the case of ''extraordinary circumstances,'' DOL

may extend a temporary labor certification for a period beyond nine months, but not to exceed a total period of twelve months.

DHS categorizes and defines temporary need into four classifications: seasonal need; peakload need; intermittent need; and one-time occurrence. A one-time occurrence may be for a period of up to 3 years. The other categories are generally limited to 1 year or less in duration. *See* 8 CFR 214.2(h)(6)(ii)(B). DOL's temporary need period falls comfortably within the parameters of the general ''one year or less'' limitation contained in the DHS regulations. Routinely allowing employers to file seasonal, peakload or intermittent need applications for periods approaching a year would be inconsistent with the statutory requirement that H–2B job opportunities need to be temporary. In our experience, the closer the period of employment is to one year in the H–2B program, the more the opportunity resembles a permanent position. We conclude that a maximum employment period of 9 months establishes the temporariness of the position. Where there are only a few days or even a month or two for which no work is required, the job becomes less distinguishable from a permanent position, particularly one that offers time off due to a slow-down in work activity. Recurring temporary needs of more than 9 months are, as a practical matter, permanent positions for which H–2B labor certification is not appropriate. The approach in the 2008 rule that permitted temporary certifications for periods up to 10 months encompasses job opportunities that we conclude are permanent in nature and inconsistent with congressional intent to limit H–2B visas to employers with temporary or seasonal needs. We conclude that the 9-month limitation that fairly describes the maximum scope of a seasonal need should also be applied to peakload need since there is no compelling rationale for creating a different standard for peakload.

The impact of the change from 10 months, which was the standard in the 2008 rule, to 9 months, may have an adverse impact on some employers. But that impact, standing alone, is not dispositive regarding our legal obligation to protect the wages and working conditions of U.S. workers. DOL previously relied on the standard articulated in *Matter of Vito Volpe Landscaping,* Nos. 91–INA–300, 91–INA–301, 92–INA–170, 91–INA–339, 91–INA–323, 92–INA–11 (Sept. 29, 1994), which stated that a period of 10 months was not permanent. The Departments may adopt through rulemaking a new standard that is within their respective responsibilities in administering the program. *See United States* v. *Storer Broad.,* 351 U.S. 192, 203 (1956); *Heckler* v. *Campbell,* 461 U.S. 458, 467 (1983); *see also FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 156–57 (2000) (recognizing that ''agencies must be given ample latitude to adapt their rules and policies to the demands of changing circumstances''). DOL has determined that 9 months better reflects a recurring seasonal or temporary need and have accordingly adopted a new standard in this interim final rule. The majority of H–2B employer applicants will not be affected by this change. According to DOL H–2B program data for FY 2010–2014, 65.2 percent of certified and partially certified employer applicants had a duration of temporary need less than or equal to 9 months.

Similarly, we have determined that limiting to 9 months the duration of temporary need on a peakload basis would ensure that the employer is not mischaracterizing a permanent need as one that is temporary. For example, since temporary need on a peakload basis is not tied to a season, under the current 10-month standard, an employer may be able to characterize a permanent need for the services or labor by filing consecutive applications for workers on a peakload basis. To the extent that each application does not exceed 10 months, the 2-month inactive period may correspond to a temporary reduction in workforce due to annual vacations or administrative periods. Increasing the duration of time during which an employer must discontinue operations from 2 months to 3 will ensure that the use of the program is reserved for employers with a genuine temporary need. Similarly, a 9-month limitation is appropriate for ensuring that the employer's intermittent need is, in fact, temporary. In addition, under the interim final rule, each employer with an intermittent need will be required to file a separate *H–2B Registration* and *Application for Temporary Employment Certification* to make certain that any disconnected periods of need are accurately portrayed and comply with the 9-month limitation.

c. Peakload need: The Departments will employ the definition of peakload need established in DHS regulations at 8 CFR 214.2(h)(6)(ii)(B)(*3*).

d. One-Time Occurrence. The Departments will employ the definition of one-time occurrence established in DHS regulations at 8 CFR 214.2(h)(6)(ii)(B)(*1*). The Departments do not intend for the 3-year accommodation of special projects to provide a specific exemption for industries like construction in which many of an employer's projects or contracts may prove a permanent rather than a temporary need. Therefore, we will closely review all assertions of temporary need on the basis of a one-time occurrence to ensure that the use of this category is limited to those circumstances where the employer has a non-recurring need which exceeds the 9-month limitation. For example, an employer who has a construction contract that exceeds 9 months may not use the program under a one-time occurrence if it has previously filed an *Application for Temporary Employment Certification* identifying a one-time occurrence and the prior *Application for Temporary Employment Certification* requested H–2B workers to perform the same services or labor in the same occupation.

8. § 655.7 Persons and Entities Authorized To File

The employer, or its attorney or agent, are persons authorized to file an *H–2B Registration* or an *Application for Temporary Employment Certification.* The employer must sign the *H–2B Registration* or *Application for Temporary Employment Certification* and any other required documents, whether or not it is represented by an attorney or agent.

9. § 655.8 Requirements for Agents

Employer's agents are required to provide copies of current agreements defining the scope of their relationships with employers, or other document demonstrating the agent's authority to represent the employer. DOL will review the documents to make certain that there is evidence that a bona fide relationship exists between the agent and the employer and, where the agent is also engaged in recruitment, to ensure that the agreements include the language required at § 655.20(p) prohibiting the payment of fees by the worker. DOL also reserves the right to further review the agreements in the course of an investigation or other integrity measure. A certification of an employer's application that includes such a submitted agreement in no way indicates a general approval of the agreement or the terms therein. The requirement does not obligate either the agent or the employer to disclose any trade secrets or other proprietary business information. The interim final rule only requires the agent to provide sufficient documentation to clearly demonstrate the scope of the agency relationship. In addition, under this

interim final rule, DOL does not plan at present to post these agreements for public viewing. If, however, DOL does so in the future, DOL will continue to follow all applicable legal and internal procedures including those relating to Freedom of Information Act (FOIA) requests to ensure the protection of private data in such circumstances.

We remind both agents and employers that each is responsible for the accuracy and veracity of the information and documentation submitted, as indicated in the ETA Form 9142B and Appendix B, both of which must be signed by the employer and its agent. As discussed under § 655.73(b), agents who are signatories to ETA Form 9142B may now be held liable for their own independent violations of the H–2B program.

Finally, under this provision, where an agent is required under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) to have a Certificate of Registration, the agent must also provide a current copy of the certificate which identifies the specific farm labor contracting activities that the agent is authorized to perform.

10. § 655.9 Disclosure of Foreign Worker Recruitment

Paragraph (a) requires an employer and its attorney and/or agent to provide DOL a copy of all agreements with any agent or recruiter that it engages or plans to engage in the recruitment of prospective H–2B workers, regardless whether the agent or recruiter is located in the U.S. or abroad. The written contract must contain the contractual prohibition on charging fees, as set forth in § 655.20(p). At the time of collection, DOL will review the agreements to obtain the names of the foreign labor recruiters (for purposes of maintaining a public list, as described below), and to verify that these agreements include the required contractual prohibition against charging fees. DOL may also further review the agreements in the course of an investigation or other integrity measure. Certification of an employer's application that includes such a submitted agreement, however, does not indicate general approval of the agreement or the terms therein. Where the contract is not in English and the required contractual prohibition is not readily discernible, DOL reserves the right to request further information to ensure that the contractual prohibition is included in the agreement. Agreements between the employer and the foreign labor recruiter will not be made public unless required by law. This interim final rule provides for DOL to obtain the agreements, but only share with the public the identity of the recruiters as discussed further below, but not the full agreements.

Paragraph (b) requires an employer and its attorney or agent, as applicable, to disclose to DOL the identity (name) and geographic location of persons and entities hired by or working for the foreign labor recruiter and any of the agents or employees of those persons and entities who will recruit or solicit prospective H–2B workers for the job opportunities offered by the employer. We interpret the term ''working for'' to encompass any persons or entities engaged in recruiting prospective foreign workers for the H–2B job opportunities offered by the employer, whether they are hired directly by the primary recruiter or are working indirectly for that recruiter downstream in the recruitment chain. This requirement encompasses all agreements, whether written or verbal, involving the whole recruitment chain that brings an H–2B worker to the employer's certified H–2B job opportunity in the United States. Employers, and their attorneys or agents, as applicable, are expected to provide these names and geographic locations to the best of their knowledge at the time the application is filed. DOL expects that, as a normal business practice, when completing the written agreement with the primary recruiting agent or recruiter, the employer/attorney/agent will ask whom the recruiter plans to use to recruit workers in foreign countries, and whether those persons or entities plan to hire other persons or entities to conduct such recruitment, throughout the recruitment chain.

Paragraph (c) provides for DOL's public disclosure of the names of the agents and foreign labor recruiters used by employers, as well as the identities and locations of all the persons or entities hired by or working for the primary recruiter in the recruitment of prospective H–2B workers, and the agents or employees of these entities. Determining the identity and location of persons hired by or working for the recruiter or its agent to recruit or solicit prospective H–2B workers—effectively acting as sub-recruiters, sub-agents, or sub-contractors—serves several purposes. It bolsters program integrity by aiding in the enforcement of certain regulatory provisions. This provision will also bring a greater level of transparency to the H–2B worker recruitment process. By maintaining and making public a list of agents and recruiters, DOL will be in a better position to enforce recruitment violations, and workers will be better protected against fraudulent recruiting schemes because they will be able to verify whether a recruiter is in fact recruiting for legitimate H–2B job opportunities in the United States. As the Government Accountability Office (GAO) explained in a recent report, ''[w]ithout accurate, accessible information about employers, recruiters, and jobs during the recruitment process, potential foreign workers are unable to effectively evaluate the existence and nature of specific jobs or the legitimate parties contracted to recruit for employers, potentially making them more vulnerable to abuse.'' *H–2A and H–2B Visa Programs: Increased Protections Needed for Foreign Workers,* GAO–15–154 (Mar. 2015). A list of foreign labor recruiters will facilitate information sharing between the Departments and the public, and assist us, other agencies, workers, and community and worker advocates to better understand the roles of recruiters and their agents in the recruitment chain and permit a closer examination of applications or certifications involving recruiters who may be engaged in improper behavior. Information about the identity of the international and domestic recruiters of foreign labor will also assist DOL in more appropriately directing its audits and investigations. Strengthening enforcement of recruitment abuses also ensures that employers who comply with the H–2B program requirements are not undercut by unscrupulous employers, such as those who pass recruitment fees on to workers.

B. Prefiling Procedures

1. § 655.10 Prevailing Wage

The interim final rule requires employers to request PWDs from the NPWC before posting their job orders with the SWA. The PWD must be valid on the day the job orders are posted. We encourage employers to continue to request a PWD in the H–2B program at least 60 days before the date the determination is needed. Under the companion H–2B final wage rule, issued simultaneously with this interim final rule, employer-provided surveys may not be used to set the prevailing wage except in limited circumstances. Paragraph (g) provides that if OFLC determines that an employer-provided survey is not acceptable, it will inform the employer in writing of the reasons the survey is being rejected. Employers may request review of this determination through the appeal process in § 655.13 of this interim final rule. Unlike the 2008 rule, this interim final rule does not allow an employer to

request a redetermination of the rejection of an employer-provided survey from the certifying officer (CO), but may request review by the NPWC Director as specified in § 655.13. DOL has determined that the 2008 procedures, which allowed an employer to request redetermination from the CO before appeal to the NPWC Director, were unnecessarily burdensome and that streamlining this process will allow for more expeditious resolution of prevailing wage requests.

2. § 655.11 Registration of H–2B Employers

The interim final rule bifurcates the current application process into a registration phase, which addresses the employer's temporary need, and an application phase, which addresses the labor market test. This provision requires employers to submit an *H–2B Registration* and receive an approval before submitting an *Application for Temporary Employment Certification* and conducting the U.S. labor market test.

Paragraph (a) requires employers to file an *H–2B Registration,* which must be accompanied by documentation showing: The number of positions the employer desires to fill in the first year of registration; the period of time for which the employer needs the workers; and that the employer's need for the services or labor is non-agricultural, temporary and is justified as either a one-time occurrence, a seasonal need, a peakload need, or an intermittent need, as described in 8 CFR 214.2(h)(6)(ii)(B) and § 655.6 of this interim final rule. The Departments have found that evaluating temporary need is a fact-intensive process which, in many cases, can take a considerable amount of time to resolve. DOL has a longstanding practice of evaluating temporary need as an integral part of the adjudication of the *Application for Temporary Employment Certification;* the bifurcation of the application process into a registration phase and a labor market test phase shifts the timing of, but does not change the nature of, DOL's review. *See Matter of Golden Dragon Chinese Rest.,* 19 I. & N. Dec. 238, 239 (Comm'r 1984). Separating the two processes will give OFLC the time to make a considered decision about temporary need without negatively impacting an employer's ability to have the workers it needs in place in a timely manner. In addition, we anticipate that many employers, with 3 years of registration validity, will benefit from a one-step process involving only the labor market test in their second and third years after registration, which will allow DOL to process these applications more efficiently. We conclude that enforcement alone cannot ensure program integrity; in the move from an attestation-based model to a compliance-based model, the bifurcation of application processing into registration and labor market test phases contributes to program integrity. Job contractors also must register, and provide documentation that establishes their temporary seasonal need or one-time occurrence during the registration process. Although a job contractor must file an *Application for Temporary Employment Certification* jointly with its employer-client, in accordance with § 655.19, a job contractor and its employer-client must each file a separate *H–2B Registration.* Paragraph (b) requires the employer and, as applicable, its agent and/or attorney, to sign the *H–2B Registration.*

Paragraph (c) requires employers to file an *H–2B Registration* no less than 120 and no more than 150 calendar days before the date of initial need for H–2B workers, except where the employer submits the *H–2B Registration* in support of an emergency filing, discussed further below with reference to paragraph (j). The registration window (*i.e.,* 120 to 150 days before the employer's anticipated date of need) provides enough time for processing the registration before an employer may submit an *Application for Temporary Employment Certification* (*i.e.,* 75 to 90 days before the employer's anticipated date of need) to assure that the adjudication of the *Application for Temporary Employment Certification* will not be delayed. In addition, many employers will not have to repeat the registration process with respect to the following 2 years. The registration timeframe also reflects the understanding that some employers may have difficulty accurately predicting their need more than 5 months in advance. The registration window seeks to balance both processing time and accuracy concerns. We anticipate an employer's overall processing time to decrease significantly when the bifurcated process goes into effect.

Paragraph (d) states that the assertion of temporary need will be evaluated based on standards established by DHS in 8 CFR 214.2(h)(6)(ii).[14] The NPC will review the registration under the standards set in paragraph (e) of § 655.11. Paragraph (f) of this provision establishes mailing and postmark requirements.

Paragraph (g) authorizes the CO to issue one or more Requests for Further Information (RFIs) before issuing a Notice of Decision on the *H–2B Registration* if the CO determines that he or she could not approve the *H–2B Registration* for various reasons, including, but not limited to: An incomplete or inaccurate ETA Form 9155; a job classification and duties that do not qualify as non-agricultural; the failure to demonstrate temporary need; and/or positions that do not constitute bona fide job opportunities. In addition, DOL will perform the initial business existence verification and, if questions arise, will request additional documentation of bona fide existence through the RFI process.

Paragraph (h) provides that, if approved, the registration would be valid for a period of up to 3 years, absent a significant change in conditions, enabling an employer to begin the application process at the second phase without having to re-establish temporary need for the second and third years of registration. This provision grants the CO the necessary discretion to approve a registration for a period up to 3 consecutive years, taking into consideration the standard of need and any other factors in the registration. If the *H–2B Registration* is denied, the CO will send a Notice of Decision stating the reason(s) for the denial and providing an opportunity for administrative review within 10 days of the denial.

Paragraph (i) requires all employers that file an *H–2B Registration* to retain any documents and records not otherwise submitted proving compliance with this subpart for a period of 3 years from the date of certification of the last *Application for Temporary Employment Certification* supported by the *H–2B Registration,* if approved, or 3 years from the date the decision is issued if the *H–2B Registration* is denied or withdrawn. We have included corresponding § 655.56 that sets out all document retention obligations for H–2B employers.

Paragraph (j) adds a provision to allow for the transition to the registration process through a future announcement in the **Federal Register**, until which time the CO will adjudicate temporary need through the application process.

[14] DHS is the final arbiter in terms of determining temporary need. *See* 8 CFR 214.2(h)(6)(iii)(A) (stating that a temporary labor certification constitutes advice to DHS as to the availability of qualified U.S. workers and as to any adverse effect hiring an alien worker may have on the wages and working conditions of similarly employed U.S. workers).

3. § 655.12 Use of Registration by H–2B Employers

Under this provision, an employer may file an *Application for Temporary Employment Certification* upon approval of its *H–2B Registration,* and for the duration of the registration's validity period, which may be up to 3 consecutive years from the date of issuance, provided that the employer's need for workers has not changed. The employer will be required to file a new H–2B Registration if the employer's need for workers increases by more than 20 percent (or 50 percent for employers requesting fewer than 10 workers); if the dates of need of the job opportunity have changed by more than a total of 30 calendar days from the initial year for the entire period of need; if the nature of the job classification and/or duties materially changed; and/or if the temporary nature of the employer's need for services or labor materially changed. We conclude that material changes in the job classification or job duties, material changes in the nature of the employer's temporary need, or changes in the number of workers needed greater than the specified levels, from one year to the next, merit a fresh review through re-registration. We note that the tolerance level for the number of workers requested for the registration process (*i.e.,* 20 percent (or 50 percent for employers requesting fewer than 10 workers)) is the same as the tolerance level in the 2008 rule, the current H–2A regulation, and § 655.35 of this interim final rule, which pertains to amendments to an *Application for Temporary Employment Certification* before certification. Under the interim final rule, an *H–2B Registration* is non-transferrable.

4. § 655.13 Review of Prevailing Wage Determinations

The interim final rule alters the process from the 2008 rule for the review of PWDs to improve clarity and consistency. Specifically, the provision reduces the number of days within which the employer must request review of a PWD by the NPWC Director from 10 calendar days in the 2008 rule to 7 business days from the date of the PWD in this interim final rule. In addition, the NPWC Director will review determinations, and the employer has 10 business days from the date of the NPWC Director's final determination within which to request review by the BALCA.

C. Application for Temporary Employment Certification Filing Procedures

1. § 655.15 Application Filing Requirements

Under the interim final rule, we have returned to a post-filing recruitment model in order to develop more robust recruitment and to ensure better and more complete compliance by H–2B employers with program requirements. DOL's experience in administering the H–2B program since the implementation of the 2008 rule suggests that the lack of agency oversight during the pre-filing recruitment process has resulted in failures to comply with program requirements. We conclude that the recruitment model adopted in this interim final rule will enhance coordination between OFLC and the SWAs, better serve the public by providing U.S. workers more access to available job opportunities, and assist employers in obtaining the workers that they require in a timelier manner. This provision requires all employers to first obtain a prevailing wage determination under § 655.10 and register under the procedures set out in § 655.11, unless requirements under §§ 655.4 or 655.17 are met.

Paragraph (a) requires a registered employer to file the *Application for Temporary Employment Certification,* together with copies of all contracts and agreements with any agent and/or recruiter executed in connection with the job opportunities, and a copy of the job order with the Chicago NPC at the same time it files the job order with the SWA. DOL understands that there are circumstances in which the job order has yet to be created and posted by the SWA, so DOL will require a document that outlines the details of the employer's job opportunity where a copy of the official job order from the SWA's job order system is not yet available; DOL expects the employer to provide the Chicago NPC with an exact copy of the draft the employer provides to the SWA for the creation of the SWA job order. The process relies on the SWAs' significant knowledge of the local labor market and job requirements. The resulting job order will provide accurate, program compliant notification of the job opportunity to U.S. workers. In addition, requiring the employer to simultaneously file the job order with the Chicago NPC and the SWA will enhance coordination between the agencies, resulting in increased U.S. worker access to job opportunities as well as helping employers locate qualified and available U.S. workers. The employer is required to also submit to the NPC any information required under §§ 655.8 and 655.9 (including the identity and location of persons and entities hired by or working with the recruiter or agent or employee of the recruiter to recruit prospective foreign workers for the H–2B job opportunities). Under Paragraph (b), the employer must submit this filing no more than 90 days and no fewer than 75 days before its date of need.

Paragraph (c) permits the employer or its authorized attorney or agent to file electronically H–2B temporary employment certification applications under the H–2B visa category through the iCERT System (*http://icert.doleta.gov*). An employer or its authorized attorney or agent electing not to use the electronic filing capability must file their H–2B temporary employment certification applications directly with the Chicago NPC using the traditional paper-based filing method. Data from mailed-in H–2B temporary employment certification applications will be entered into the iCERT System's internal case management system by the Chicago NPC and processed in a similar manner as those filed electronically.

Paragraph (d) requires the employer and, as applicable, its attorney and/or agent, to sign the *Application for Temporary Employment Certification.* When filing an H–2B temporary employment certification application electronically, the iCERT System account holder must upload a signed and dated copy of the Appendix B associated with the H–2B temporary employment certification application containing the requisite program assurances and obligations under this interim final rule. In the case of a job contractor filing as a joint employer with its employer-client, a separate attachment containing the employer-client's business and contact information (*i.e.,* Sections C and D of the ETA Form 9142B) and a separate signed and dated copy of the Appendix B and *H–2B Registration* for the employer-client must be uploaded prior to electronically submitting the H–2B temporary employment certification application, as required by 20 CFR 655.19. For electronic filing only, an H–2B temporary employment certification application bearing original signatures will no longer be required by the Chicago NPC at the time of filing, because a copy of the signed and dated Appendix B will be uploaded directly into the iCERT System and the original Appendix B will be retained by the employer, as required by 20 CFR 655.56.

In addition to the H–2B temporary employment certification application, the regulations require an employer to

submit all supporting documentation at the time of filing. When filing an H–2B temporary employment certification application electronically, the iCERT System account holder must upload, prior to submission of the application and in an electronic format acceptable to the iCERT System, all required supporting documentation that would normally be sent to the Chicago NPC by U.S. mail, because the system will not permit documents to be uploaded once the H–2B temporary employment certification application has been submitted for processing. An employer who elects to file H–2B temporary employment certification applications by U.S. mail must submit all required documentation in hard copy to the Chicago NPC. To avoid any processing delays, the iCERT account holder is strongly encouraged to preview and check the H–2B temporary employment certification application and all uploaded documents for completeness and accuracy before submitting the application electronically. Any supporting documentation required after the H–2B temporary employment certification application is filed will be requested by the Chicago NPC and must be filed by U.S. mail, electronic mail or facsimile, even if the application itself was submitted electronically.

Where a temporary labor certification is granted, the Chicago NPC will send the approved H–2B temporary employment certification application and a Final Determination letter to the employer by means normally assuring next day delivery, including electronic mail, and a copy, if applicable, to the employer's attorney or agent. For all H–2B temporary employment certification applications granted under this interim final rule, whether filed electronically or mailed, the employer will receive from the Chicago NPC an original certified ETA Form 9142B, but not an Appendix B, issued on security certification paper. A certified ETA Form 9142B is valid when it contains a completed Section K bearing the electronic signature of the OFLC Administrator, and a completed ''For Department of Labor Use Only'' footer on each page identifying the case number, case status, and validity period. Upon receipt of the original certified ETA Form 9142B, the employer or its agent or attorney, if applicable, must complete the footer on the original Appendix B, retain the original Appendix B, and submit a signed copy of Appendix B, together with the original certified ETA Form 9142B directly to USCIS. Under the document retention requirements in § 655.56, the employer must retain a copy of the temporary labor certification and the original signed Appendix B.

Paragraph (f) requires that, with one exception discussed below applicable to employers in the seafood industry, employers file separate applications when there are different dates of need for the same job opportunity or different worksites within an area of intended employment. Employers must accurately identify their personnel needs and, for each period within their season for which they have more than one date of need, file a separate application for each separate date of need. An application with an accurate date of need will be more likely to attract qualified U.S. workers to fill those open positions, especially when the employer conducts recruitment closer to the actual date of need. This prohibition against staggered entries based on a single date of need is intended to require that employers provide U.S. workers the maximum opportunity to consider the job opportunity and is consistent with USCIS policies. It is intended to provide that U.S. workers are not treated less favorably than H–2B workers who, for example, may be permitted to report for duty 6 weeks after the stated date of need.

The interim final rule, at § 655.15(f), permits only employers in the seafood industry to stagger the entry of their otherwise admissible H–2B nonimmigrants into the United States under certain circumstances. Under section 108 of the Consolidated and Further Continuing Appropriations Act, 2015 (the ''2015 Appropriations Act''), Public Law 113–235, 128 Stat. 2130, 2464, permits staggered entry of H–2B nonimmigrants employed by employers in the seafood industry under certain conditions. The Departments have determined that this legislation constitutes a permanent enactment, and so we have incorporated the requirements into this interim final rule.

Under the 2015 Appropriations Act and § 655.15(f), employers in the seafood industry may bring into the United States, in accordance with an approved H–2B petition, nonimmigrant workers at any time during the 120-day period on or after the employer's certified start date of need if certain conditions are met. No additional information or documentation related to this provision should be submitted with an H–2B temporary employment certification application to the Chicago NPC. However, as discussed below, in order for employers to use this provision, H–2B nonimmigrant workers must show to the Department of State's consular officers and to the DHS's U.S. Customs and Border Protection officers, as necessary, the employer's attestation that the conditions set forth in the statute and regulation have been met.

The statute and regulation contain two primary conditions that employers must meet in order to benefit from this exception. First, this rule applies only to employers engaged in a business in the seafood industry. We have added to § 655.5 a definition of ''seafood,'' which is defined as fresh or saltwater finfish, crustaceans, other forms of aquatic animal life, including, but not limited to, alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals, and all mollusks. Second, any seafood industry employer that permits or requires its H–2B nonimmigrant workers to enter the United States between 90 and 120 days after the certified start date of need must complete a new assessment of the local labor market during the period that begins at least 45 days after the certified start date of need and ends before the 90th day after the certified start date of need, which must include: (A) Listing the job in local newspapers on two separate Sundays; (B) placing new job orders for the job opportunity with the SWA serving the area of intended employment and posting the job opportunity at the place of employment for at least 10 days; and (C) offering the job to any equally or better qualified U.S. worker who applies for the job and who will be available at the time and place of need. Seafood industry employers who conduct the required additional recruitment should not submit proof of the additional recruitment to OFLC. However, seafood industry employers must retain the additional recruitment documentation, together with their pre-filing recruitment documentation, for a period of 3 years from the date of certification, consistent with the document retention requirements under § 655.56.

In order to comply with this provision, a seafood industry employer must prepare a written, signed attestation indicating its compliance with the conditions outlined above.[15] Employers must download the official attestation, review the conditions contained in the attestation, and indicate compliance by signing and

[15] The official attestation is available in PDF-format on OFLC's Web site at *http://www.foreignlaborcert.doleta.gov/form.cfm.* The attestation was developed as a result of Congress's original and temporary enactment of legislation permitting seafood industry employers to stagger the entry of their H–2B workers into the U.S. under section 113 of the Consolidated Appropriations Act, 2014, Public Law 113–76, 128 Stat. 5 (Jan. 17, 2014).

dating the attestation. An employer seeking to use this statutory and regulatory provision must provide each H–2B nonimmigrant worker seeking entry into the United States a copy of the signed and dated attestation, with instructions that the worker must present the documentation upon request to the Department of State's consular officers when they apply for an H–2B visa, and/or DHS's U.S. Customs and Border Protection officers when seeking entry into the United States. Without this attestation, an H–2B nonimmigrant may be denied admission to the United States if seeking to enter at any time other than the designated 20-day period (10 days before and after the start date) surrounding the start date stated in the petition. (The attestation is not necessary when filing an amended petition based on a worker that is being substituted under 8 CFR 214.2(h)(6)(viii)). The attestation presented by an H–2B nonimmigrant worker in order to be admitted to the United States in H–2B status must be the official attestation downloaded from OFLC's Web site and may not be altered or revised in any manner.

2. § 655.16 Filing of the Job Order at the SWA

The interim final rule requires the employer to submit its job order directly to the SWA at the same time it files the *Application for Temporary Employment Certification* and a copy of the job order with the Chicago NPC, no more than 90 calendar days and no fewer than 75 calendar days before the employer's date of need. As discussed above, we are continuing to rely on the SWAs' experience with the local labor market, job requirements, and prevailing practices by requiring the SWA to review the contents of the job order for compliance with § 655.18 and to notify the CO of any deficiencies within 6 business days of the SWA's receipt of the job order. By requiring such concurrent filing and review, the CO can use the knowledge of the SWA, in addition to its own review, in a single Notice of Deficiency before the employer conducts its recruitment. SWAs can continue to rely on foreign labor certification grant funding to support those functions. We conclude that this continued cooperative relationship between the CO and the SWA will ensure greater program integrity and efficiency.

Under paragraph (c), the SWAs must circulate the job order in intrastate clearance, and in interstate clearance by providing a copy of the job order to other states as directed by the CO. Intrastate clearance refers to placement of the job order within the SWA labor exchange services system of the State to which the employer submitted the job order and to which the NPC sent the Notice of Acceptance, and interstate clearance refers to circulation of the job order to SWAs in other States, including those with jurisdiction over listed worksites and those the CO designates, for placement in their labor exchange services systems. We note that, under § 655.33(b)(4), the CO directs the SWA in the Notice of Acceptance to circulate the job order in the course of interstate clearance, ensuring that the employer is also aware of the job order's exposure in the SWAs' labor exchange services systems.

Posting the job order in the SWA labor exchange system is but one of the recruitment requirements contained in the interim final rule, which together are designed to ensure maximum job opportunity exposure for U.S. workers during the recruitment period. Also, in most cases, the job order will be posted for at least 54 days, since the interim final rule requires the employer to file its application no more than 90 calendar days and no less than 75 calendar days before its date of need and the SWA to post the job order upon receipt of the Notice of Acceptance and to keep the job order posted until 21 days before the date of need, as discussed in the preamble to § 655.20(t).

3. § 655.17 Emergency Situations

The interim final rule permits an employer to file an *H–2B Registration* fewer than 120 days before the date of need, and/or an *Application for Temporary Employment Certification* with the job order fewer than 75 days before the date of need, where an employer has good and substantial cause and there is enough time for the employer to undertake an adequate test of the labor market. This emergency provision permits an employer to file fewer than 75 days before the start date of need, but does not expand the earliest date an employer is eligible to submit an *H–2B Registration* or *Application for Temporary Employment Certification.* This provision represents a change from the 2008 rule, which did not allow for emergency filings, and affords employers flexibility while maintaining the integrity of the application and recruitment processes.

To rely on this provision, the employer must provide the CO with detailed information describing the ''good and substantial cause'' necessitating the waiver. Such cause may include the substantial loss of U.S. workers due to Acts of God, or a similar unforeseeable human-made catastrophic event that is wholly outside the employer's control, unforeseeable changes in market conditions, or pandemic health issues. The CO's denial of an *H–2B Registration* in accordance with the procedures under § 655.11 does not, standing alone, constitute good and substantial cause for a waiver request.

In processing an emergency *H–2B Registration* or *Application for Temporary Employment Certification* and job order, the CO will review the submissions in a manner consistent with this subpart and make a determination in accordance with § 655.50. If the CO grants the waiver request, the CO will forward a Notice of Acceptance and the approved job order to the SWA serving the area of intended employment identified by the employer in the job order. If the CO determines that the certification cannot be granted because, under paragraph (a) of this section, the request for emergency filing is not justified and/or there is not sufficient time to make a determination of temporary need or ensure compliance with the criteria for certification contained in § 655.51, the CO will send a Final Determination letter to the employer in accordance with § 655.53. As discussed earlier, for purposes of simultaneous filing, we use the term ''job order'' in this provision, when the job order has yet to be created and posted by the SWA. As a result, the employer must submit a draft document outlining the details of the employer's job opportunity simultaneously with the *Application for Temporary Employment Certification,* not the official job order.

Under the interim final rule, an *H–2B Registration* and/or *Application for Temporary Employment Certification* processed under the emergency situation provision is subject to the same recruitment activities, audit processes, and enforcement mechanisms as a non-emergency *H–2B Registration* and/or *Application for Temporary Employment Certification.* However, DOL intends to subject emergency applications to a higher level of scrutiny than non-emergency applications in order to make certain that the provision is not subject to abuse. The regulation gives the CO the discretion not to accept the emergency filing if the CO concludes there is insufficient time to thoroughly test the U.S. labor market and make a final determination. Moreover, under § 655.46, the CO has the discretion to instruct an employer to conduct additional recruitment. The CO will adjudicate the foreseeability of the emergency based on the precise circumstances of each situation presented. The burden of proof is on the

employer to demonstrate the unforeseeability leading to a request for a filing on an emergency basis.

4. § 655.18 Job Order Assurances and Contents

The job order is essential for U.S. workers to make informed employment decisions. It must include not only standard information about the job opportunity, but also several key assurances and obligations to which the employer is committing by filing an *Application for Temporary Employment Certification* for H–2B workers and to which U.S. workers are also entitled. The job order must also be provided to H–2B workers with its pertinent terms in a language the worker understands, as required in § 655.20(l) of this interim final rule.

Assurances

There are two overarching assurances in § 655.18(a) with which the employer agrees to comply by filing an *Application for Temporary Employment Certification.* These assurances, which pertain to the prohibition against preferential treatment and bona fide job requirements, need not be included in the job order verbatim; rather, they are applicable to each job order insofar as they apply to each listed term and condition of employment.

a. Prohibition against preferential treatment, § 655.18(a)(1). Similar to the requirements under § 655.22(a) of the 2008 rule, and as described under § 655.20(q) of this interim final rule, the employer must provide to U.S. workers at least the same benefits, wages, and working conditions that are being or will be offered or provided to H–2B workers. The purpose of § 655.18(a)(1) is to protect U.S. workers by ensuring that employers do not understate wages and/or benefits in an attempt to discourage U.S. applicants or to provide preferential treatment to temporary foreign workers. Employers are required to offer and provide H–2B workers at least the minimum wages and benefits outlined in these regulations. So long as the employer offers U.S. workers at least the same level of benefits, wages, and working conditions as will be provided to the H–2B workers, the employer will be in compliance with this provision. Section 655.18(a)(1) does not preclude an employer from offering a higher wage rate or more generous benefits or working conditions to U.S. workers, as long as the employer offers to U.S. workers all the wages, benefits, and working conditions offered to and required for H–2B workers pursuant to the certified *Application for Temporary Employment Certification.*

b. Bona fide job requirements, § 655.18(a)(2). The job qualifications and requirements listed in the job order must be bona fide and consistent with the normal and accepted job qualifications and requirements of employers that do not use H–2B workers for the same or comparable occupations in the same area of intended employment.

Under DOL's longstanding policy, job qualifications and requirements must be customary; *i.e.,* they may not be used to discourage applicants from applying for the job opportunity. Including requirements that do not meet this standard would undermine a true test of the labor market. The standard for employment of H–2B workers is that there are no U.S. workers capable and available to perform such services or labor. For purposes of complying with this requirement, the Departments have clarified in § 655.20(e) the meaning of qualifications and requirements. A qualification means a characteristic that is necessary to the individual's ability to perform the job in question. Such characteristics include but are not limited to, the ability to use specific equipment or any education or experience required for performing a certain job task. A requirement, on the other hand, means a term or condition of employment which a worker is required to accept to obtain or retain the job opportunity, *e.g.,* the willingness to complete the full period of employment or commute to and from the worksite.

This interpretation is consistent with program history, primarily under the General Administration Letter 1–95,[16] where the State Employment Security Agencies (now SWAs) were specifically directed to reject any restrictive job requirements. To the extent an employer has requirements that are related to the U.S. workers' qualifications or availability, DOL will examine those in consultation with the SWAs to determine whether they are normal and accepted. For example, the Departments recognize that background checks are used in private industry and it is not our intent to preclude the employer from conducting such checks to the extent that the requirement is a bona fide, normal and accepted requirement applied by non-H–2B employers for the occupation in the area of employment, and the employer applies the same criteria to both H–2B and U.S. workers. However, where such job requirements are included in the recruitment materials, DOL reserves the right to inquire further as to whether such requirements are normal and accepted by non-H–2B employers and by what methods the employer will administer and evaluate such requirements.

Contents

In addition to complying with the assurances in paragraph (a) of this section, § 655.18(b) requires that the employer include at a minimum the following contents in the job order.

a. Benefits, wages and working conditions, § 655.18(b)(2), (5), (6), (9). Employers must list the following benefits, wages, and working conditions in the job order: The rate of pay, frequency of pay, the availability of overtime, and that the job opportunity concerns a full-time position. These disclosures are critical to any applicant's decision to apply for and accept the job opportunity.

b. Board, lodging, or facilities, § 655.18(b)(10). If an employer provides the worker with the option of board, lodging, or other facilities, including fringe benefits, or intends to assist workers to secure such lodging, this must be listed in the job order along with any wage deductions related to such provision of board, lodging or other facilities. Assisting workers to secure lodging consists of more than an employer's simple provision of information, such as providing workers coming from remote locations with a list of facilities providing short-term leases, or a list of extended-stay motels. Assistance could be reserving a block of rooms for employees and negotiating a discounted rate on the workers' behalf, or arranging to have housing provided at a subsidized cost for employees. Any such assistance may make it more feasible for a U.S. worker from outside the area of intended employment to accept the job, and therefore it should be included in the job order.

The Departments note that the concept of ''facilities'' is defined in 29 CFR 531.32, which has been construed and enforced by DOL for several decades. The Departments have concluded that it is beneficial for workers, employers, agents, and the WHD to ground enforcement of H–2B program obligations in DOL's decades of experience enforcing the Fair Labor Standards Act (FLSA), and the decades of court decisions interpreting the regulatory language we are adopting in these regulations. Therefore, the Departments note throughout this preamble where they rely on FLSA principles to explain the meaning of the requirements of the H–2B program that use similar language.

[16] General Administration Letter 1–95, Procedures for H–2B Temporary Labor Certification in Nonagricultural Occupations (Dec. 31, 1995).

DOL's longstanding position is that deductions or costs incurred for facilities that are primarily for the benefit or convenience of the employer will not be recognized as reasonable and therefore may not be charged to the worker. *See* 29 CFR 531.3(d)(1). Thus, housing that is provided by employers with a need for a mobile workforce, such as those in the carnival or forestry industries where workers are in an area for a short period of time, need to be available to work immediately, and may not be able to procure temporary housing easily, is primarily for the employer's benefit and convenience and cannot be charged to the workers.

c. Deductions, § 655.18(b)(11). The job order must specify that the employer will make all deductions from the worker's paycheck required by law and specifically list all deductions not required by law that the employer intends to make from the worker's paycheck. This includes, if applicable, any wage deductions for the reasonable cost of board, lodging, or other facilities. Any deductions not disclosed in the job order are prohibited under § 655.20(c) of this interim final rule.

Under the FLSA, there is no legal difference between deducting a cost from a worker's wages and shifting a cost to an employee to bear directly. As the U.S. Court of Appeals for the Eleventh Circuit stated in *Arriaga* v. *Florida Pacific Farms, L.L.C.,* 305 F.3d 1228, 1236 (11th Cir. 2002):

> An employer may not deduct from employee wages the cost of facilities which primarily benefit the employer if such deductions drive wages below the minimum wage. *See* 29 CFR 531.36(b). This rule cannot be avoided by simply requiring employees to make such purchases on their own, either in advance of or during employment. *See id. § 531.35; Ayres* v. *127 Rest. Corp.,* 12 F.Supp.2d 305, 310 (S.D.N.Y. 1998).

Consistent with the FLSA and the Departments' obligation to prevent adverse effects on U.S. workers by protecting the integrity of the H–2B offered wage, the offered wage will be considered the effective minimum wage for H–2B and corresponding U.S. workers.

d. Three-fourths guarantee, § 655.18(b)(17). The employer must list in the job order that the employer will guarantee to offer employment for a total number of work hours equal to at least three-fourths of the workdays of each 12-week period (or 6-week period if the employment covered by the job order is less than 120 days) and, if the guarantee is not met, the employer will pay the worker what the worker would have earned if the employer had offered the guaranteed number of days, as required by § 655.20(f) of this interim final rule.

e. Transportation and visa fees, § 655.18(b)(12)–(15). The employer must detail in the job order how the worker will be provided with or reimbursed for inbound transportation and subsistence costs if the worker completes 50 percent of the period of employment covered by the job order, consistent with § 655.20(j)(1)(i) of this interim final rule. The employer must also state that it will provide or pay for the worker's outbound transportation and subsistence if the worker completes the job order period or is dismissed early, consistent with § 655.20(j)(1)(ii) of this interim final rule. The employer must also disclose that it will provide or reimburse inbound and outbound transportation and daily subsistence costs for corresponding U.S. workers who are not reasonably able to return to their residence within the same workday. Finally, employers are required to disclose in the job order that they will provide daily transportation to the worksite, if they intend to do so, and that the employer will reimburse H–2B workers for visa and related fees in the first workweek.

f. Employer-provided items, § 655.18(b)(16). The job order must disclose that the employer will provide workers with all tools, supplies, and equipment needed to perform the job at no cost to the employee. This provision gives workers additional protection against improper deductions from wages for items that primarily benefit the employer, and assures workers that they will not be required to pay for items necessary to perform the job.

The Departments note that section 3(m) of the FLSA and DOL regulations at 20 CFR part 531 prohibit deductions that are primarily for the benefit of the employer that bring a worker's wage below the applicable minimum wage, including deductions for tools, supplies, or equipment that are incidental to carrying out the employer's business. Consistent with the FLSA, § 655.22(g)(1) in the 2008 rule (which required all deductions to be reasonable), and the Departments' obligation to prevent adverse effects on U.S. workers, this interim final rule similarly protects the integrity of the H–2B offered wage by treating it as the effective minimum wage. Therefore, deductions for items such as damaged and lost equipment, which are encompassed within deductions for equipment needed to perform a job, would not be permissible where such deductions bring a worker's wage below the offered wage.

Employers must provide standard equipment that allows employees to perform their job fully, but they are not required to provide, for example, equipment such as custom-made skis that may be preferred, but not needed by, ski instructors. This requirement does not prohibit employees from electing to use their own equipment, nor does it penalize employers whose employees voluntarily do so, so long as a bona fide offer of adequate, appropriate equipment has been made.

In addition to the provisions discussed above, this interim final rule requires employers to list in the job order the following information that is essential for providing U.S. workers sufficient information about the job opportunity: The employer's name and contact information (§ 655.18(b)(1)); a full description of the job opportunity (§ 655.18(b)(3)); the specific geographic area of intended employment (§ 655.18(b)(4)); if applicable, a statement that on-the-job training will be provided to the worker (§ 655.18(b)(7)); a statement that the employer will use a single workweek as its standard for computing wages due (§ 655.18(b)(8)); and instructions for inquiring about the job opportunity or submitting applications, indications of availability, and/or resumes to the appropriate SWA (§ 655.18(b)(18)). This last requirement is included to ensure that applicants who learn of the job opening through the electronic job registry are provided with the opportunity to contact the SWA for more information or referral.

The Departments believe that the information employers are required to include in the job order under § 655.18 of this interim final rule is necessary and sufficient to provide the worker with adequate information to determine whether to accept the job opportunity, and notes that the Department of State provides all H–2B nonimmigrants with a detailed worker rights card at the visa application stage.[17]

Finally, the Departments view the terms and conditions of the job order as binding. In the event that an employer does not provide a copy of the job order to workers as required under § 655.20(l) of this interim final rule, the terms and conditions of the job order nevertheless apply.

5. § 655.19 Job Contractor Filing Requirements

This interim final rule establishes in § 655.6 the limited circumstances under which job contractors may continue to

[17] The workers rights card is available at *http://travel.state.gov/content/dam/visas/LegalRightsandProtections/WilberforcePamphletEnglishDoubleSidedPrinting12-22-2014.pdf.*

participate in the H–2B program. DOL will no longer accept H–2B temporary employment certification applications from job contractors if the job contractor's employer-clients are not also included on the temporary employment certification applications. However, both the 2008 rule and this interim final rule only permit one H–2B temporary employment certification application to be filed for worksite(s) within one area of intended employment for each job opportunity with an employer. Accordingly, a job contractor and employer-client cannot separately file an individual application for a single job opportunity.

Job contractors and their employer-clients must file a single application when acting as joint employers. Joint employment is defined as circumstances in which two or more employers each have sufficient definitional indicia of employment to be considered the employer of an employee, in which case the employers may be considered to jointly employ that employee. An employer may be considered a joint employer if it has an employment relationship with an individual, even if the individual may be considered the employee of another employer. *See* § 655.4. DOL has issued guidance on its Web site which addresses the requirements and procedures for filing and processing applications for joint employers (which could include job contractors and their employer-client(s)) under the H–2B program.[18]

In deciding whether to file as joint employers, the job contractor and its employer-client should understand that employers are considered to jointly employ an employee when they each, individually, have sufficient definitional indicia of employment with respect to that employee. As described in the definition of employee in § 655.4, some factors relevant to the determination of employment status include, but are not limited to, the following: The right to control the manner and means by which work is accomplished; the skill required to perform the work; the source of the instrumentalities and tools for accomplishing the work; the location of the work; discretion over when and how long to work; and whether the work is part of the regular business of the employer or employers. Whenever a job contractor and its employer client file applications, each employer is responsible for compliance with H–2B program assurances and obligations. In the event a violation is determined to have occurred, either or both employers can be found to be responsible for remedying the violation and attendant penalties.

D. Assurances and Obligations

1. § 655.20 Assurances and Obligations of H–2B Employers

Section 655.20 of the interim final rule, which is similar to § 655.22 of the 2008 rule, contains the employer obligations that WHD will enforce to ensure that the employment of H–2B workers will not adversely affect the wages and working conditions of U.S. workers similarly employed. These assurances and obligations are consistent with, and are intended to complement, DHS's regulations where they address similar issues, such as transportation and recruitment fees. Requiring compliance with the following conditions of employment is the most effective way to meet this goal. As discussed in the preamble to § 655.5, workers engaged in corresponding employment are entitled to the same protections and benefits, set forth below, that are provided to H–2B workers.

a. Rate of pay (§ 655.20(a)). Section 655.20(a)(1), like § 655.22(e) in the 2008 rule, requires that employers pay the offered wage during the entire certification period and that the offered wage equal or exceed the highest of the prevailing wage, the applicable Federal minimum wage, the State minimum wage, and any local minimum wage. It also requires that such wages be paid free and clear. *See* 29 CFR 531.35. If, during the course of the period certified in the *Application for Temporary Employment Certification,* the Federal, State or local minimum wage increases to a level higher than the prevailing wage certified in the Application, then the employer is obligated to pay that higher rate for the work performed in that jurisdiction where the higher minimum wage applies. Section 655.20(a)(2), similarly to § 655.22(g)(1) in the 2008 rule, provides that the wage may not be based on commissions, bonuses, or other incentives unless the employer guarantees the offered wage each workweek.

With respect to productivity standards, § 655.20(a)(3) requires the employer to demonstrate that any productivity standards are normal and usual for non-H–2B employers for the same occupation in the area of intended employment. Unlike in the H–2A program, DOL does not conduct prevailing practice surveys through the SWAs, which would provide such information to enable a CO to make this decision. If an employer wishes to provide productivity standards as a condition of job retention, the burden of proof rests with that employer to show that such productivity standards are normal and usual for employers not employing H–2B workers in order to ensure there is no adverse effect on similarly employed U.S. workers.

Finally, pursuant to § 655.20(a)(4), if an employer pays on a piece-rate basis, it must demonstrate that the piece rate is no less than the normal rate paid by non-H–2B employers to workers performing the same activity in the area of intended employment, and that each workweek the average hourly piece rate earnings result in an amount at least equal to the offered wage (or the employer must make up the difference).

b. Wages free and clear (§ 655.20(b)). Section 655.20(b) requires that wages be paid either in cash or negotiable instrument payable at par, and that payment be made finally and unconditionally and free and clear in accordance with WHD regulations at 29 CFR part 531. This assurance clarifies the pre-existing obligation for both employers and employees to ensure that wages are not reduced below the required rate.

c. Deductions (§ 655.20(c)). Section 655.20(c) ensures payment of the offered wage by limiting deductions which reduce wages to below the required rate. The section limits authorized deductions to those required by law, made under a court order, that are for the reasonable cost or fair value of board, lodging, or facilities furnished that primarily benefit the employee, or that are amounts paid to third parties authorized by the employee or a collective bargaining agreement. Similar to § 655.22(g)(1) of the 2008 rule, this section specifically provides that deductions not disclosed in the job order are prohibited. The section also specifies deductions that would never be permissible, including: Those for costs that are primarily for the benefit of the employer; those not specified on the job order; kickbacks paid to the employer or an employer representative; and amounts paid to third parties which are unauthorized, unlawful, or from which the employer or its foreign labor contractor, recruiter, agent, or affiliated person benefits to the extent that such deductions reduce the actual wage to below the required wage.

This section refers to the FLSA and 29 CFR part 531 for further guidance. Consistent with these and other authorities administered by DOL, for purposes of § 655.20(c) deductions must, among other requirements, be truly voluntary, and may not be a

[18] See *http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#h2b.*

condition of employment under the totality of the circumstances in order to be permissible.[19] In evaluating whether an employee voluntarily authorized an otherwise permissible deduction for purposes of § 655.20(c), it is important to evaluate whether the employee had a meaningful choice in light of all the facts presented.

Moreover, for purposes of § 655.20(c), a deduction for any cost that is primarily for the benefit of the employer is never reasonable and therefore never permitted under this interim final rule. Some examples of costs that DOL has long held to be primarily for the benefit of the employer are: Tools of the trade and other materials and services incidental to carrying on the employer's business; the cost of any construction by and for the employer; the cost of uniforms (whether purchased or rented) and of their laundering, where the nature of the business requires the employee to wear a uniform; and transportation charges where such transportation is an incident of and necessary to the employment. This list is not an all-inclusive list of employer business expenses. Further, the concept of de facto deductions initially developed under the FLSA, where employees are required to purchase items like uniforms or tools that are employer business expenses, is equally applicable to purchases that bring H–2B workers' wages below the required wage, as the payment of the prevailing wage is necessary to ensure that the employment of foreign workers does not adversely affect the wages and working conditions of similarly employed U.S. workers. To allow deductions for business expenses, such as tools of the trade, would undercut the prevailing wage concept and, as a result, harm U.S. workers.

d. Job opportunity is full-time (§ 655.20(d)). Section 655.20(d) requires that all job opportunities be full-time temporary positions, consistent with language in § 655.22(h) of the vacated 2008 rule, and that employers use a single workweek as the standard for computing wages due. Additionally, consistent with the FLSA, this section provides that the workweek is a fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods which may start on any day or hour of the day. This establishment of a clear period for determining whether the employer has paid the required wage will aid in enforcement.

e. Job qualifications and requirements (§ 655.20(e)). Section 655.20(e), which clarifies § 655.22(h) of the 2008 rule, states that each job qualification and requirement listed in the job order must be consistent with normal and accepted qualifications required by non-H–2B employers for the same occupation in the area of intended employment. Further, the employer's job qualifications and requirements imposed on U.S. workers must be no less favorable than the qualifications and requirements that the employer is imposing or will impose on H–2B workers. A qualification means a characteristic that is necessary to the individual's ability to perform the job in question. In contrast, a requirement means a term or condition of employment which a worker is required to accept in order to obtain the job opportunity. Finally, the CO has the authority to require the employer to substantiate any job qualifications or requirements specified in the job order.

This provision enables DOL to continue to review the job qualifications and special requirements by looking at what non-H–2B employers determine is normal and accepted to be required to perform the duties of the job opportunity. The purpose of this review is to avoid the consideration (and the subsequent imposition) of requirements on the performance of the job duties that would serve to limit U.S. worker access to the opportunity. OFLC has significant experience in conducting this review and in making determinations based on a wide range of sources assessing what is normal for a particular job, and employers will continue to be held to an objective standard beyond their mere assertion that a requirement is necessary. DOL will continue to look at a wide range of available objective sources of such information, including but not limited to O*NET and other job classification materials and the experience of local treatment of requirements at the SWA level. Ultimately, however, it is incumbent upon the employer to provide sufficient justification for any requirement outside the standards for the particular job opportunity.

f. Three-fourths guarantee (§ 655.20(f)). Section 655.20(f) requires employers to guarantee to offer employment for a total number of work hours equal to at least three-fourths of the workdays of each 12-week period if the period of employment covered by the job order is 120 days or more and each 6-week period, if the period of employment covered by the job order is less than 120 days. If the guarantee is not met, the employer is required to pay the worker what the worker would have earned if the employer had offered the guaranteed number of days. These 12-week periods (6 weeks if the job order is less than 120 days) begin the first workday after the worker's arrival at the place of employment or the advertised contractual first date of need, whichever is later, and end on the expiration date specified in the job order or in any extensions. A workday is based on the workday hours stated in the employer's job order, and the 12-week periods (6 weeks if the job order is less than 120 days) are based on the employer's workweek for pay purposes, with partial week increases for the initial period and decreases for the last period on a pro rata basis, depending on which day of the workweek the worker starts or ceases work.

If a worker fails or refuses to work hours offered by the employer, the employer may count any hours offered consistent with the job order that a worker freely and without coercion chooses not to work, up to the maximum number of daily hours on the job order, in the calculation of guaranteed hours. The employer may offer the worker more than the specified daily work hours, but the employer may not require the employee to work such hours or count them as offered if the employee chooses not to work the extra hours. However, the employer may include all hours actually worked when determining whether the guarantee has been met. Finally, as detailed in 20 CFR 655.20(g), the CO can terminate the employer's obligations under the guarantee in the event of fire, weather, or other Act of God that makes the fulfillment of the job order impossible, or for a similar man-made catastrophic event such as an oil spill or controlled flooding.

The Departments believe that the interim final rule's approach provides the benefits of having a wage guarantee, while offering employers the flexibility to spread the required hours over a sufficiently long period of time such that the vagaries of the weather or other events out of their control that affect their need for labor do not prevent employers from fulfilling their

[19] The scope and substance of DOL regulations in this interim final rule relating to permissible deductions, prohibited payment of fees by workers, and employer transportation obligations, *see, e.g.,* new 20 CFR 655.20(c), (j), and (o) (and identical provisions in new 29 CFR part 503) reflect DOL statutory and regulatory authorities relating to worker protections, including under the FLSA; DOL H–2B enforcement responsibilities, including pursuant to the DHS delegation to DOL under 8 U.S.C. 1184(c)(14)(B), *see also* 8 CFR 214.2(h)(6)(ix); and DOL investigative capabilities. Similarly, the scope and substance of DHS's separate and independent regulations concerning prohibited fees and other compensation and transportation obligations, *see* 8 CFR 214.2(h)(6)(i) and (vi)(E), reflect USCIS operational realities inherent to the H–2B petition adjudication process.

guarantee. When employers file applications for H–2B labor certifications, they represent that they have a need for full-time workers during the entire certification period. Therefore, it is important to the integrity of the program, which is a capped visa program, to have a methodology for ensuring that employers have fairly and accurately estimated their temporary need. The guarantee deters employers from misusing the program by overstating their need for full-time, temporary workers, such as by carelessly calculating the starting and ending dates of their temporary need, the hours of work needed per week, or the total number of workers required to do the work available. To the extent that employers more accurately describe the amount of work available and the periods during which work is available, it gives both U.S. and foreign workers a better chance to realistically evaluate the desirability of the offered job. U.S. workers will not be induced to abandon employment, to seek full-time work elsewhere at the beginning of the season or near the end of the season because the employer overstated the number of employees it actually needed to ramp up or to wind down operations. Nor will U.S. workers be induced to leave employment at the beginning of the season or near the end of the season due to limited hours of work because the employer misstated the months during which it reasonably could expect to perform the particular type of work involved in that geographic area. Likewise, H–2B workers will not be induced to try to seek employment not permitted under the terms of their H–2B nonimmigrant status. Not only will the guarantee result in U.S. and H–2B workers actually working most of the hours promised in the job order, but it also will make the capped H–2B visas more available to other employers whose businesses need to use H–2B workers. Therefore, the Departments believe the guarantee is an important element to ensure the integrity of the temporary labor certification process, to ensure that the availability of U.S. workers for full-time employment is appropriately tested, to ensure that there is no adverse effect on U.S. workers from the presence of H–2B workers who seek work not permitted under the terms of their H–2B nonimmigrant status because the job that was promised does not exist, and to ensure that H–2B visas are available to employers who truly have a need for temporary labor for the dates and for the numbers of employees stated.

DOL's recent experience in enforcing the H–2B regulations demonstrates that its concerns about employers overstating their need for workers are not unfounded. DOL's investigations have revealed that some employers have stated on their H–2B temporary employment certification applications that they would provide 40 hours of work per week when, in fact, their workers averaged far fewer hours of work, especially at the beginning and/or end of the season. Indeed, in some weeks the workers have not worked at all. In addition, there has been testimony before Congress involving similar cases in which employers have overstated the period of need and/or the number of hours for which the workers are needed. For example, H–2B workers testified at a hearing before the Domestic Policy Subcommittee, House Committee on Oversight and Government Reform, on April 23, 2009, that there were several weeks in which they were offered no work; others testified that their actual weekly hours—and hence their weekly earnings—were less than half of the amount they had been promised in the job order. Daniel Angel Castellanos Contreras, a Peruvian engineer, was promised 60 hours per week at $10–$15 per hour. According to Mr. Contreras, ''[t]he guarantee of 60 hours per week became an average of only 20 to 30 hours per week—sometimes less. With so little work at such low pay [$6.02 to $7.79 per hour] it was impossible to even cover our expenses in New Orleans, let alone pay off the debt we incurred to come to work and save money to send home.'' [20] Miguel Angel Jovel Lopez, a plumber and farmer from El Salvador, was recruited to do demolition work in Louisiana with a guaranteed minimum of 40 hours of work per week. Mr. Lopez testified, ''[i]nstead of starting work, however, I was dropped off at an apartment and left for two weeks. Then I was told to attend a two week training course. I waited three more weeks before working for one day on a private home and then sitting for three more weeks.'' [21] Testimony at the same hearing by three attorneys who represent H–2B workers stated that these witnesses' experiences were not aberrations but were typical.

[20] Testimony of Daniel Angel Castellanos Contreras before the House Committee on Oversight and Government Reform Domestic Policy Subcommittee 2 (Apr. 23, 2009), *available at http://oversight.house.gov/wp-content/uploads/2012/01/20090423Contreras.pdf.*

[21] Testimony of Miguel Angel Jovel Lopez before the House Committee on Oversight and Government Reform Domestic Policy Subcommittee 2 (Apr. 23, 2009), *available at http://oversight.house.gov/wp-content/uploads/2012/01/20090423Lopez.pdf.* Hearing on the H–2B Guestworker Program and Improving the Department of Labor's Enforcement of the Rights of Guestworkers, 111th Cong. (Apr. 23, 2009).

Therefore, spreading the three-fourths guarantee over the entire period covered by the job order would not adequately protect the integrity of the program because it would not measure whether an employer has appropriately estimated its need for temporary workers. It would not prevent an employer from overstating the beginning date of need and/or the ending date of need and then making up for the lack of work in those two periods by offering employees 100 percent of the advertised hours in the middle of the certification period. Indeed the employer could offer employees more than 100 percent of the advertised hours in the peak season and, although they would not be required to work the excess hours, most employees could reasonably be expected to do so in an effort to maximize their earnings.

However, in order to meet the legitimate needs of employers for adequate flexibility to respond to changes in climatic conditions (such as too much or too little snow or rain, or temperatures too high or too low) as well as the impact of other events beyond the employer's control (such as a major customer who cancels a large contract), the Departments are establishing the increment of time for measuring the guarantee at 12 weeks (if the period of employment covered by the job order is at least 120 days) and 6 weeks (if the employment is less than 120 days). The Departments believe this provides sufficient flexibility to employers, while continuing to deter employers from requesting workers for 9 months, for example, when they really only have a need for their services for 7 months. If an employer needs fewer workers during the shoulder months (at the beginning and end of the season) than during the peak months, it should not attest to an inaccurate statement of need by requesting the full number of workers for all the months. Rather, the proper approach it should follow is to submit two applications with separate dates of need, so that it engages in the required recruitment of U.S. workers at the appropriate time when it actually needs the workers.

The Departments remind employers that they may count toward the guarantee hours that are offered but that the employee fails to work, up to the maximum number of hours specified in the job order for a workday; thus, they do not have to pay an employee who voluntarily chooses not to work. Similarly, they may count all hours the

employee actually works, even if they are in excess of the daily hours specified in the job order.

Finally, the Departments do not believe it would be appropriate to impose a more protective guarantee, such as a 100 percent, 90 percent, or weekly guarantee. The three-fourths guarantee is a reasonable deterrent to potential carelessness and an important protection for workers, while still providing employers with some flexibility relating to the required hours, given that many common H–2B occupations involve work that can be significantly affected by weather conditions. Moreover, it is not just outdoor jobs such as landscaping that are affected by weather. For example, indoor jobs such as housekeeping and waiting on tables can be affected when a hurricane, flood, unseasonably cool temperatures, or the lack of snow deters customers from traveling to a resort location. The impact on business of such weather effects may last for several weeks, although they are likely to be able to make up for them in other weeks of the season. Moreover, the Departments understand that it is difficult to predict with precision months in advance exactly how many hours of work will be available, especially as the period of time involved is shortened.

g. Impossibility of fulfillment (§ 655.20(g)). Section 655.20(g) allows employers to terminate a job order in certain narrowly-prescribed circumstances when approved by the CO, such as due to fire, weather, other Acts of God, or a similar unforeseeable human-made catastrophic event (such as an oil spill or controlled flooding) that is wholly outside the employer's control, that makes the fulfillment of the job order impossible. In such an event, the employer is required to meet the three-fourths guarantee discussed in paragraph (f) of this section based on the starting date listed in the job order or first workday after the arrival of the worker, whichever is later, and ending on the date on which the job order is terminated due to the event. The employer also is required to attempt to transfer the H–2B worker (to the extent permitted by DHS) or worker in corresponding employment to another comparable job. Actions employers could take include reviewing the electronic job registry to locate other H–2B-certified employers in the area and contacting any known H–2B employers, the SWA, or ETA for assistance in placing workers. Absent such placement, the employer will be required to comply with the transportation requirements in paragraph (j) of this section. We remind employers that CO approval is required to terminate the job order; simply submitting a request to the CO is insufficient to terminate the three-fourths guarantee.

h. Frequency of pay (§ 655.20(h)). Section 655.20(h) requires that the employer indicate the frequency of pay in the job order and that workers be paid at least every two weeks or according to the prevailing practice in the area of intended employment, whichever is more frequent. Further, it requires that wages be paid when due.

The requirement that workers be paid at least every 2 weeks is designed to protect financially vulnerable workers. Allowing an employer to pay less frequently than every two weeks would impose an undue burden on workers who are often paid low wages and may lack the means to make their income stretch through a month until they get paid.

i. Earnings statements (§ 655.20(i)). Section 655.20(i) requires the employer to maintain accurate records of worker earnings and provide the worker an appropriate earnings statement on or before each payday, specifying the information that the employer must include in such a statement (including, *e.g.,* the worker's total earnings each workweek, the hourly rate and/or piece rate, the hours offered and worked, and an itemization of all deductions from pay).

The Departments believe that any administrative burden resulting from this provision will be outweighed by the importance of providing workers with this crucial information, especially because an earnings statement provides workers with an opportunity to quickly identify and resolve any anomalies with the employer and hold employers accountable for proper payment. Similar to § 655.122(j)(3) in the H–2A program, the interim final rule requires an employer to record the reasons why a worker declined any offered hours of work, which will support DOL's enforcement activities related to the three-fourths guarantee in § 655.20(f). Additionally, this section, § 655.16(i)(2)(iv), and 29 CFR 503.16(i)(l) require employers to maintain records of any additions made to a worker's wages and to include such information in the earnings statements furnished to the worker. Such additions could include performance bonuses, cash advances, or reimbursements for costs incurred by the worker. This requirement is consistent with the recordkeeping requirements under the FLSA in 29 CFR part 516. *See* 29 CFR part 785 for guidance regarding what constitutes hours worked.

j. Transportation and visa fees (§ 655.20(j)). Section 655.20(j)(1)(i) requires an employer to provide inbound transportation and subsistence to H–2B employees and to U.S. employees who have traveled to take the position from such a distance that they are not reasonably able to return to their residence each day, if the workers complete 50 percent of the period of employment covered by the job order (not counting any extensions). The interim final rule provides that employers may: Arrange and pay for the transportation and subsistence directly; advance, at a minimum, the most economical and reasonable common carrier cost and subsistence; or reimburse the worker's reasonable costs. If the employer advances or provides transportation and subsistence costs to foreign workers, or it is the prevailing practice of non-H–2B employers to do so, the employer must advance such costs or provide the services to workers in corresponding employment traveling to the worksite. The interim final rule also reminds employers that the FLSA imposes independent wage payment obligations, where it applies.

Section 655.20(j)(1)(ii) requires the employer, at the end of the employment, to provide or pay for the U.S. or foreign worker's return transportation and daily subsistence from the place of employment to the place from which the worker departed to work for the employer, if the worker has no immediate subsequent approved H–2B employment; however, the obligation attaches only if the worker completes the period of employment covered by the job order or if the worker is dismissed from employment for any reason before the end of the period. The employer is required to provide or pay for the return transportation and daily subsistence of a worker who has completed the period of employment listed on the certified *Application for Temporary Employment Certification,* regardless of any subsequent extensions. An employer is not required to provide return transportation if separation is due to a worker's voluntary abandonment. If the worker has been contracted to work for a subsequent and certified employer, the last H–2B employer to employ the worker is required to provide or pay the U.S. or foreign worker's return transportation. Therefore, prior employers are not obligated to pay for such return transportation costs.

Section 655.20(j)(1)(iii) requires that all employer-provided transportation—including transportation to and from the worksite, if provided—must meet

applicable safety, licensure, and insurance standards. Furthermore, all transportation and subsistence costs covered by the employer must be disclosed in the job order (§ 655.20(j)(1)(iv)). Finally, § 655.20(j)(2) requires employers to pay or reimburse the worker in the first workweek for the H–2B worker's visa, visa processing, border crossing, and other related fees including those fees mandated by the government (the employer need not, but may, reimburse workers for expenses that are primarily for the benefit of the employee, such as passport expenses).

Under the FLSA the transportation, subsistence, and visa and related expenses for H–2B workers are for the primary benefit of employers, as DOL explained in Wage and Hour's Field Assistance Bulletin No. 2009–2 (Aug. 21, 2009). The employer benefits because it obtains foreign workers where the employer has demonstrated that there are not sufficient qualified U.S. workers available to perform the work; the employer has demonstrated that unavailability by engaging in prescribed recruiting activities that do not yield sufficient U.S. workers. The H–2B workers, on the other hand, only receive the right to work for a particular employer, in a particular location, and for a temporary period of time; if they leave that specific job, they generally must leave the country. Transporting these H–2B workers from remote locations to the workplace thus primarily benefits the employer who has sought authority to fill its workforce needs by bringing in workers from foreign countries. Similarly, because an H–2B worker's visa (including all the related expenses, which vary by country, including the visa processing interview fee and border crossing fee) is an incident of and necessary to employment under the program, the employer is the primary beneficiary of such expenses. The visa does not allow the employee to find work in the U.S. generally, but rather permits the visa holder to apply for admission in H–2B nonimmigrant status, which restricts the worker to the employer with an approved temporary labor certification and to the particular approved work described in the employer's application.

Therefore, the interim final rule includes a reminder to employers that the FLSA applies independently of the H–2B requirements. Employers covered by the FLSA must pay such expenses to nonexempt employees in the first workweek, to the level necessary to meet the FLSA minimum wage (outside the Fifth Circuit, which covers Louisiana, Mississippi, and Texas). *See, e.g., Rivera* v. *Peri & Sons Farms, Inc.,* 735 F.3d 892 (9th Cir. 2013); *Arriaga* v. *Florida Pacific Farms, LLC,* 305 F.3d 1228 (11th Cir. 2002); *Morante-Navarro* v. *T&Y Pine Straw, Inc.,* 350 F.3d 1163 (11th Cir. 2003); *Gaxiola* v. *Williams Seafood of Arapahoe, Inc.,* 2011 WL 806792 (E.D.N.C. 2011); *Teoba* v. *Trugreen Landcare LLC,* 2011 WL 573572 (W.D.N.Y. 2011); *DeLeon-Granados* v. *Eller & Sons Trees, Inc.,* 581 F. Supp. 2d 1295 (N.D. Ga. 2008); *Rosales* v. *Hispanic Employee Leasing Program,* 2008 WL 363479 (W.D. Mich. 2008); *Rivera* v. *Brickman Group,* 2008 WL 81570 (E.D. Pa. 2008). *But see Castellanos-Contreras* v. *Decatur Hotels, LLC,* 622 F.3d 393 (5th Cir. 2010). Payment sufficient to satisfy the FLSA in the first workweek is also required because § 655.20(z) of the interim final rule, like § 655.22(d) in the 2008 H–2B rule, specifically requires employers to comply with all applicable Federal, State, and local employment-related laws. Furthermore, because U.S. workers are entitled to receive at least the same terms and conditions of employment as H–2B workers, in order to prevent adverse effects on U.S. workers from the presence of foreign workers, the interim final rule requires the same reimbursement for U.S. workers in corresponding employment who are unable to return to their residence each workday, such as those from another state who saw the position advertised in a SWA posting or on DOL's electronic job registry.

The interim final rule separately requires employers to reimburse these inbound transportation and subsistence expenses, up to the offered wage rate, if the employee completes 50 percent of the period of employment covered by the job order. The Departments believe this approach is appropriate and adequately protects the interests of both U.S. and H–2B workers and employers, because it does not require employers to pay the inbound transportation and subsistence costs of U.S. workers recruited pursuant to H–2B job orders who do not remain on the job for more than a very brief period.

Additionally, the interim final rule requires reimbursement of outbound transportation and subsistence if the worker completes the job order period or if the employer dismisses the worker before the end of the period of employment in the job order, even if the employee has completed less than 50 percent of the period of employment covered by the job order. This requirement uses language contained in the DHS regulation at 8 CFR 214.2(h)(6)(vi)(E), which states that employers will be liable for reasonable return transportation costs if the employer dismisses the worker for any reason before the end of the period of authorized admission. *See* 8 U.S.C. 1184(c)(5)(A), INA section 214(c)(5)(A). For example, if there is a constructive discharge, such as the employer's failure to offer any work or sexual harassment that created an untenable working situation, the requirement to pay outbound transportation applies. However, if separation from employment is due to voluntary abandonment by an H–2B worker or a corresponding worker, and the employer provides appropriate notification specified under § 655.20(y), the employer is not responsible for providing or paying for return transportation and subsistence expenses of that worker.

This requirement to pay inbound transportation at the 50 percent point and outbound transportation at the completion of the work period is consistent with the rule under the H–2A visa program. Moreover, the interim final rule fulfills the Departments' obligation to protect U.S. workers from adverse effect due to the presence of temporary foreign workers. As discussed above, under the FLSA, numerous courts have held in the context of both H–2B and H–2A workers that the inbound and outbound transportation costs associated with using such workers are an inevitable and inescapable consequence of employers choosing to participate in these visa programs. Moreover, the courts have held that such transportation expenses are not ordinary living expenses, because they have no substantial value to the employee independent of the job and do not ordinarily arise in an employment relationship, unlike normal daily home-to-work commuting costs. Therefore, the courts view employers as the primary beneficiaries of such expenses under the FLSA; in essence the courts have held that inbound and outbound transportation are employer business expenses just like any other tool of the trade. A similar analysis applies to the H–2B required wage. If employers were permitted to shift their business expenses onto H–2B workers, they would effectively be making a de facto deduction and bringing the worker below the H–2B required wage, thereby risking depression of the wages of U.S. workers in corresponding employment. This regulatory requirement, therefore, ensures the integrity of the full H–2B required wage, rather than just the FLSA minimum wage, over the full term of employment; both H–2B workers and U.S. workers in corresponding

employment will receive the H–2B required wage they were promised, as well as reimbursement for the reasonable transportation and subsistence expenses that primarily benefit the employer, over the full period of employment. To enhance this protection, the interim final rule contains the additional requirement that, where a worker pays out of pocket for inbound transportation and subsistence, the employer must maintain records of the cost of transportation and subsistence incurred by the worker, the amount reimbursed, and the date(s) of reimbursement.

Finally, to comply with this section, transportation must be reimbursed from the place from which the worker has come to work for the employer to the place of employment; therefore, the employer must pay for transportation from the place of recruitment to the consular city and then on to the worksite. Similarly, the employer must pay for subsistence during that period, so if an overnight stay at a hotel in the consular city is required while the employee is interviewing for and obtaining a visa, that subsistence must be reimbursed. *See Morales-Arcadio* v. *Shannon Produce Farms, Inc.,* 2007 WL 2106188 (S.D. Ga. 2007). Finally, if an employer provides daily transportation to the worksite, the regulation requires both that the transportation must comply with all applicable safety laws and that the employer must disclose the fact that free transportation will be provided in the job order.

k. Employer-provided items (§ 655.20(k)). Section 655.20(k) requires, consistent with the requirement under the FLSA regulations at 29 CFR part 531, that the employer provide to the worker without charge all tools, supplies, and equipment necessary to perform the assigned duties. The employer may not shift to the employee the burden to pay for damage to, loss of, or normal wear and tear of, such items. This provision gives workers additional protections against improper deductions for the employer's business expenses from required wages.

As discussed above with respect to the disclosure requirement in § 655.18(b), section 3(m) of the FLSA prohibits employers from making deductions for items that are primarily for the benefit of the employer if such deductions reduce the employee's wage below the Federal minimum wage. Therefore an employer that does not provide tools but requires its employees to bring their own would already be required under the FLSA to reimburse its employees for the difference between the weekly wage minus the cost of equipment and the weekly minimum wage. This provision simply extends this protection to cover the required H–2B offered wage, in order to protect the integrity of the required H–2B wage rate and thereby avoid adverse effects on the wages of U.S. workers. However, as discussed above with regard to § 655.18(b), this requirement does not prohibit employees from voluntarily choosing to use their own specialized equipment; it simply requires employers to make available to employees adequate and appropriate equipment.

l. Disclosure of the job order (§ 655.20(l)). Section 655.20(l) requires that the employer provide a copy of the job order to prospective H–2B workers no later than the time of application for a visa and to workers in corresponding employment no later than the first day of work. For H–2B workers changing to a subsequent H–2B employer, the job order must be provided no later than the time the subsequent offer of employment is made. The job order must contain information about the terms and conditions of employment and employer obligations as provided in § 655.18 and must be in a language understandable to the workers, as necessary and reasonable. The purpose of the disclosure is to provide workers with the terms and conditions of employment and of employer obligations to strengthen worker protection and promote program compliance.

This section does not require written disclosure of the job order at the time of recruitment, as required under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). DOL notes that H–2B employers that are subject to MSPA are bound by the requirements of that Act, including disclosure of the appropriate job order at the time of recruitment. The H–2B and MSPA programs are not analogous, however. MSPA workers are often recruited domestically shortly before the start date of the job order, making the provision of the job order at the time of recruitment both logical and practical. In the H–2B program, as in the H–2A program, recruitment is often less directly related to the work start date, making immediate disclosure of the job order less necessary. It thus is more practical to require disclosure of the job order at the time the worker applies for a visa, to be sure that workers fully understand the terms and conditions of their job offer before they make a commitment to come to the United States. To clarify, the time at which the worker applies for the visa means before the worker has made any payment, whether to a recruiter or directly to the consulate, to initiate the visa application process. Worker notification is a vital component of worker protection and program compliance, and the Departments believe that the requirement provides workers with sufficient notice of the terms and conditions of the job so that they can make an informed decision.

In addition, providing the terms and conditions of employment to each worker in a language that the individual understands is a key element of much-needed worker protection. Therefore, DOL intends to broadly interpret the necessary or reasonable qualification and apply the exemption only in those situations where having the job order translated into a particular language would both place an undue burden on an employer and not significantly disadvantage an H–2B or corresponding worker.

m. Notice of worker rights (§ 655.20(m)). Section 655.20(m) requires that the employer post a notice in English of worker rights and protections in a conspicuous location and if necessary post the notice in other appropriate languages if such translations are provided by DOL.

The poster, which will be printed and provided by DOL, will state that workers who believe their rights under the program have been violated may file confidential complaints and will display the number for WHD's toll-free help line. While the purpose of this section would be undermined if workers cannot read the notice, DOL cannot guarantee that it will have available translations of the notice in any given language, and cannot require employers to display a translation that may not exist. Translations will be made in response to demand; employers and organizations that work with H–2B workers are encouraged to inform DOL about the language needs of the H–2B worker population. If revised versions of the poster are created, DOL expects employers to post the most recent version published by DOL.

n. No unfair treatment (§ 655.20(n)). Section 655.20(n) provides nondiscrimination and nonretaliation protections that are fundamental to the statutes that DOL enforces. Worker rights cannot be secured unless there is protection from all forms of intimidation or discrimination resulting from any person's attempt to report or correct perceived violations of the H–2B provisions. Therefore, workers are protected from retaliation, including retaliation based on contact or consultation with an attorney or an employee of a legal assistance organization, or contact with labor

unions, worker centers, and community organizations, which frequently have the first contact with temporary foreign workers when they seek help to correct and/or report perceived violations of the H–2B provisions. This provision applies to oral complaints and complaints made internally to employers, and it applies to current, former and prospective workers. As provided in 29 CFR 503.20, make-whole relief would be available to victims of discrimination and retaliation under this paragraph.

This provision protects against discrimination and retaliation for asserting rights specific to the H–2B program. For example, if workers sought legal assistance in relation to their terms and conditions of employment, such as legal assistance relating to employer-provided housing because an employer charged for housing that was listed as free of charge in the job order, this would be a protected act; however, a routine landlord-tenant dispute may not fall under the protections of this section. This section provides protection to U.S. workers and H–2B workers alike. While H–2B workers are particularly vulnerable to retaliation and need protection against employer retaliatory acts, it is important to encourage all workers to come forward when there is a potential workplace violation. Therefore, the Departments clarify that § 655.20(n) applies equally to H–2B workers and U.S. workers.

o. Comply with the prohibitions against employees paying fees (§ 655.20(o)). Section 655.20(o), similarly to § 655.22(j) in the 2008 rule, prohibits employers and their attorneys, agents, or employees from seeking or receiving payment of any kind from workers for any activity related to obtaining H–2B temporary labor certification or employment, including recruitment costs. However, this provision does allow employers and their agents to receive reimbursement for fees that are primarily for the benefit of the worker, such as passport fees, which can be used for personal travel or for travel to another job.

p. Contracts with third parties to comply with prohibitions (§ 655.20(p)). Section 655.20(p), similarly to § 655.22(g)(2) in the 2008 rule, requires that an employer that engages any agent or recruiter must prohibit in a written contract the agent or recruiter from seeking or receiving payments from prospective employees. DOL notes that the new requirements at § 655.9 of this interim final rule require disclosure of the employer's agreements with any agent or recruiter whom it engages or plans to engage in the recruitment of prospective H–2B workers, whether in the U.S. or abroad, as well as the identity and geographic location of any persons or entities hired by or working for the recruiter and the agents or employees of those persons and entities. The Departments believe that public disclosure of the identity of recruiters and the entities for which they work is necessary to prevent abuse, and this issue is addressed under § 655.9. DOL will maintain a publicly available list of agents and recruiters who are party to such recruitment contracts, as well as a list of the identity and location of any persons or entities hired by or working for the recruiters to recruit prospective H–2B workers for the H–2B job opportunities offered by the employer.

The difference between § 655.9, which requires the employer to provide copies of such agreements to DOL when an employer files its *Application for Temporary Employment Certification,* and this provision's requirements is that the requirements in this provision are of an ongoing nature. The employer must always prohibit the seeking or collection of fees from prospective employees in any contract with third parties whom the employer engages to recruit international workers, and is required to provide a copy of such existing agreements when the employer files its *Application for Temporary Employment Certification.* For employers' convenience, and to facilitate the processing of applications, the interim final rule contains the exact language of the required contractual prohibition that must appear in such agreements. Further guidance on how DOL interprets the employer obligations in § 655.20(o) and (p) regarding prohibited fees can be found in Field Assistance Bulletin No. 2011–2 (May 2011), available at *http://www.dol.gov/whd/FieldBulletins/fab2011_2.htm.*

The Departments recognize the complexities of recruiters using subcontractor recruiters and have accounted for this in § 655.20(p) by including language requiring the employer to contractually prohibit in writing any agent or recruiter (or any agent or employee of such agent or recruiter) whom the employer engages, either directly or indirectly, from seeking or receiving payments from any prospective employees. The specific language covers subcontractors. In addition, the required contractual prohibition applies to the agents and employees of the recruiting agent, and encompasses both direct and indirect fees.

q. Prohibition against preferential treatment of H–2B workers (§ 655.20(q)). Section 655.20(q), similarly to § 655.22(a) in the 2008 rule, prohibits employers from providing better terms and conditions of employment to H–2B workers than to U.S. workers. The substance of this provision is identical to the assurance found at § 655.18(a)(1) of this interim final rule, relating to the job order, and a discussion of it is set forth in the preamble to that section.

r. Non-discriminatory hiring practices § 655.20(r). Section 655.20(r), like § 655.22(c) of the 2008 rule, sets forth a non-discriminatory hiring provision; it clarifies that the employer's obligation to hire U.S. workers continues throughout the period described in § 655.20(t). Under this provision, rejections of U.S. workers continue to be permitted only for lawful, job-related reasons. This section works together with § 655.20(q), which specifies that job qualifications and requirements imposed on U.S. workers must be no less favorable than the qualifications and requirements that the employer is imposing or will impose on H–2B workers. Thus, for example, where an employer requires drug tests or criminal background checks for U.S. workers and does not require the same tests and background checks for H–2B workers, the employer has violated this provision. Additionally, where an employer conducts criminal background checks on prospective employees, in order to be lawful and job-related, the employer's consideration of any arrest or conviction history must be consistent with guidance from the Equal Employment Opportunity Commission (EEOC) on employer consideration of arrest and conviction history under Title VII of the Civil Rights Act of 1964. *See* EEOC Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964, *available at http://www.eeoc.gov/policy/docs/convict1.html;* EEOC, Pre-Employment Inquiries and Arrest & Conviction, *available at http://www.eeoc.gov/laws/practices/inquiries_arrest_conviction.cfm.* Thus, employers may reject U.S. workers solely for lawful, job-related reasons, and they must also comply with all applicable employment-related laws, pursuant to § 655.20(z).

s. Recruitment requirements (§ 655.20(s)). Section 655.20(s) requires employers to conduct required recruitment as described in §§ 655.40–.46, including any activities directed by the CO. Such required recruitment activities are discussed in the preamble to those sections.

t. Continuing obligation to hire U.S. workers § 655.20(t). Section 655.20(t) requires employers to hire qualified U.S. workers referred by the SWA or who respond to recruitment until 21 days

before the date of need. The provision corrects the inadequacy in the 2008 rule, under which an employer is under no obligation to hire U.S. workers after submitting the recruitment report, which could occur almost four months before the first date of need. U.S. applicants—particularly unemployed workers—applying for the kinds of temporary positions typically offered by H–2B employers are often unable to make informed decisions about jobs several months in advance; it is far more likely that they are in need of a job beginning far sooner. In fact, many of these potential applicants may not even be searching for work as early as several months in advance and are therefore unlikely to see SWA job orders in the 10 days they are posted or the newspaper advertisements on the 2 days they are published in accordance with the 2008 rule's minimum recruitment requirements. This segment of the labor force cannot afford to make plans around the possibility of a temporary job several months in the future. The 2008 rule's recruitment and hiring structure simply cannot be reconciled with the Departments' obligation to protect U.S. workers and ensure that qualified U.S. applicants are unavailable for a job opportunity before H–2B workers are hired.

Requiring a priority hiring period until 21 days before the date of need is consistent with the DHS requirement that H–2B nonimmigrants not be admitted to the United States until 10 days before the date of need, *see* 8 CFR 214.2(h)(13)(i)(A), since it minimizes the possibility that a U.S. applicant could displace an H–2B nonimmigrant who has been recruited, traveled to the consulate, obtained a visa, or even begun inbound transportation to the worksite. At the same time, the 21-day provision still gives employers certainty regarding the timing of and need for their efforts to recruit prospective H–2B workers. With regard to travel expenses, the 21-day cutoff will be sufficient to allow for the arrangement of inbound transportation without employers having to bear any risk of last-minute cancellations, pay premiums for refundable fares, or pay visa expenses that are ultimately not needed. Housing arrangements should not present an issue, as § 655.20(q) requires an employer to offer U.S. workers the same benefits that it is offering, intends to offer, or will provide to H–2B workers. If an employer intends to offer housing to H–2B workers, such housing must also be offered to all U.S. applicants who live outside the area of intended employment. Housing secured for workers can just as easily be occupied by U.S. workers as by H–2B workers, or some combination of U.S. and H–2B workers.

The 21-day provision also will prevent H–2B workers from being dismissed after beginning travel from their home to the consulate or even to the United States as the obligation to hire U.S. workers now ends 11 days before the earliest date an H–2B worker may be admitted to the United States. Additionally, in order to create appropriate expectations for potential H–2B workers, when an employer recruits foreign workers, it should put them on notice that the job opportunity will be available to U.S. workers until 21 days before the date of need; therefore, the job offer is conditional upon there being no qualified and available U.S. workers to fill the positions.

The Departments believe this 21-day requirement, which extends the duration of the U.S. worker referral period by as much as 3 months compared to the 2008 rule, is sufficient to protect the interests of U.S. workers. Further, the Departments note that the extended recruitment period is not the only provision of this interim final rule enhancing U.S. applicants' access to vacancies: the number and breadth of recruitment vehicles in place (*i.e.,* contact of previous workers, a national job registry, a 15-day job posting notice at worksites, among others) have also expanded. The worker protections contained in this interim final rule are intended to encourage U.S. applicants hired to remain on the job. However, provisions such as those found at § 655.20(y) (Abandonment/termination of employment) offer protection to employers from workers who might accept the offer of employment but who subsequently abandon the job, and § 655.20(y) similarly relieves the employer, under certain circumstances, of the responsibilities to provide transportation and to fulfill the three-quarter work guarantee obligation.

The Departments note that regardless of the time when the obligation to hire terminates, the H–2B employer has a high degree of certainty that it will have access to workers, whether from within or outside the United States. Further, the interim final rule's 21-day obligation-to-hire cutoff should provide employers with time to identify foreign workers if they are, in fact, needed and to initiate their travel without substantial uncertainty. However, the primary purpose of this provision is to ensure that available U.S. workers have a viable opportunity to apply for H–2B job opportunities and to facilitate the employment of these workers.

State laws that require employers in some industries to submit requests for background checks or drug testing for their employees 30 to 45 days before the date of need may affect the requirement that such employers continue to hire U.S. workers until 21 days before the date of need. A background check or drug test required for employment in a State, if listed in the job order, would be considered a bona fide job requirement, as long as it was clearly disclosed in the job order and recruitment materials. An applicant who submitted an application for employment after a State-established deadline and was therefore unable to undergo such an evaluation would be considered not qualified for employment in that State. However, consistent with §§ 655.18(a)(2) and 655.20(e), such a requirement must be disclosed in the job order, and the employer would bear the responsibility of demonstrating that it is bona fide and consistent with the normal and accepted requirements imposed by non-H–2B employers in the same occupation and area of intended employment. Furthermore, employers cannot treat U.S. workers less favorably than foreign workers with regard to start date; employers may not conduct such screening for prospective H–2B workers at a later date if the employer does not provide the same late screening for U.S. workers who submit an application after a State-established deadline.

Finally, given that many employers' workforce needs vary throughout the season and they require fewer workers in slow months at the beginning and end of the season, the Departments wish to remind employers about the requirements of the three-fourths guarantee. Specifically, the guarantee begins on the first workday after the arrival of the worker at the place of employment or the advertised first date of need, whichever is later. An employer cannot delay the three-fourths guarantee, such as by telling workers to come to work three weeks after the advertised first date of need, because the employer does not have a need for them at that time (but see the provisions applicable to employers in the seafood industry discussed in the preamble to § 655.15). This means that when workers present themselves at the place of employment on the advertised first date of need, the three-fourths guarantee is triggered, whether or not the employer has sufficient full-time work for all of them to perform.

u. No strike or lockout (§ 655.20(u)). Section 655.20(u) modifies the no strike or lockout language in the 2008 rule to

require employers to assure DOL that there is no strike or lockout at any of the employer's worksites in the area of intended employment for which the employer is requesting H–2B certification, rather than solely no strike or lockout in the positions being filled by H–2B workers, which is the requirement under § 655.22(b) of the 2008 regulations. If there is a strike or lockout at the worksite when the employer requests H–2B workers, the CO may deny the H–2B certification.

This provision is intended to decrease the chances that an unscrupulous employer will circumvent the regulatory requirement by transferring U.S. workers to fill positions vacated by striking workers and employing H–2B workers in the positions those U.S. workers vacated. The Departments believe that this extension will provide added protection for workers whose employers have multiple locations within a commuting distance where transferring employees among locations would be relatively easy.

With respect to annual layoffs that occur due to the end of the peak season, § 655.20(u) is not intended to include employer layoffs; § 655.20(v) addresses employer layoffs. Further, with respect to the ability of a CO to deny an application due to a strike or a lockout and whether that might complicate the application process and increase delays, unsuccessful applications, and last-minute refusals of H–2B workers, DOL does not anticipate that this will be a problem as long as employers do not seek approval of an *Application for Temporary Employment Certification* while there is a strike or lockout at the worksite.

v. No recent or future layoffs (§ 655.20(v)). Section 655.20(v) modifies the dates of impermissible layoffs of U.S. workers in § 655.22(i) of the 2008 rule, extending the period during which an H–2B employer must not lay off any similarly employed U.S. workers from 120 days after the date of need to the end of the certification period. Further, this section provides that H–2B workers must be laid off before any U.S. worker in corresponding employment. However, the provision specifically permits layoffs due to lawful, job-related reasons, such as the end of the peak season or a natural or manmade disaster, as long as, if applicable, the employer lays off its H–2B workers first.

w. Contact with former U.S. employees (§ 655.20(w)). Section 655.20(w) requires employers to contact former U.S. employees who worked for the employer in the occupation and at the place of employment listed on the *Application for Temporary Employment Certification* within the last year, including any U.S. employees who were laid off within 120 days before the date of need. This expands the 2008 rule's requirement at § 655.15(h) that employers contact only former employees who were laid off during the 120 days preceding the date of need. The employer is not required to contact those who were dismissed for cause or who abandoned the worksite. Note, however, that voluntary abandonment is different from a constructive discharge, which occurs when the ''working conditions have become so intolerable that a reasonable person in the employee's position would have felt compelled to resign.'' *Pennsylvania State Police* v. *Suders,* 542 U.S. 129, 141 (2004). DOL also reminds employers that if qualified former employees apply during the recruitment period they, like all qualified U.S. applicants, must be offered employment.

x. Area of intended employment and job opportunity (§ 655.20(x)). Section 655.20(x) modifies § 655.22(l) of the 2008 rule by additionally prohibiting the employer from placing a worker in a job opportunity not specified on the *Application for Temporary Employment Certification,* clarifying that an H–2B worker is only permitted to work in the job and in the location that OFLC approves unless the employer obtains a new temporary labor certification.

y. Abandonment/termination of employment (§ 655.20(y)). Section 655.20(y), which is largely consistent with the notification requirement in § 655.22(f) of the 2008 rule, requires that employers notify OFLC within 2 days of the separation of an H–2B worker or worker in corresponding employment if the separation occurs before the end date certified on the *Application for Temporary Employment Certification* and notify DHS. The section also deems that an abandonment or abscondment begins after a worker fails to report for work without the employer's consent for 5 consecutive working days, and adds language relieving the employer of the subsequent transportation requirements under § 655.22(j) and 29 CFR 503.16(j) if the separation is due to a worker's voluntary abandonment. Additionally, the section clarifies that if a worker voluntarily abandons employment or is terminated for cause, an employer is not required to guarantee three-fourths of the work in the worker's final partial 6- or 12-week period, as described in § 655.22(f) and 29 CFR 503.16(f).

This section provides employers with guidance regarding their notification obligations, which is informed by DOL's enforcement experience with the § 655.22(f) of the 2008 rule, under which neither WHD nor employers expressed confusion or concerns since its introduction in the 2008 rule. DOL's enforcement experience under the H–2A program suggests that the identical provision in its H–2A regulations has not resulted in confusion for H–2A employers, many of whom also participate in the H–2B program. The written notification required under 20 CFR 655.20(y) must be provided by one of the following means:

1. By electronic mail (email) to: *TLC.Chicago@dol.gov* mailbox, or

2. Employers without Internet access may instead send written notification by:

(a) Facsimile to: (312) 886–1688; or

(b) U.S. Mail to: U.S. Department of Labor, Office of Foreign Labor Certification, Chicago National Processing Center, Attention: H–2B Program Unit, 11 West Quincy Court, Chicago, IL 60604–2105.

In order to ensure prompt and effective processing of the notification, DOL requests that the employer's notice include at a minimum the following information:

1. The reason(s) for notification or late notification, if applicable;

2. The H–2B temporary employment certification application Case Number(s);

3. The employer's name; address, telephone number, and Federal Employer Identification Number (FEIN).

4. The date of abandonment or separation from employment; and

5. The number of H–2B worker(s) and/or other worker(s) in corresponding employment who abandoned or was/were separated from employment, and the name(s) of each such H–2B worker and/or worker in corresponding employment and each employee's last known address.

The Chicago NPC will also accept a copy of the written notification of abandonment or separation from employment submitted by the employer to DHS as long as it contains all of the information listed above and is submitted to the Chicago NPC via one of the means enumerated in this IFR. Employers must retain records in accordance with documentation retention requirements outlined at 29 CFR 503.17. DOL penalties for this violation are different from DHS fines. The notification requirement serves different purposes for DHS and DOL, and DOL concludes it is fair and consistent to treat this violation in the same way it treats other violations of employers' H–2B obligations.

The Departments emphasize that the notification requirements in § 655.20(y) are not intended to be used as threats

against vulnerable foreign workers to keep them in abusive work situations. Further, the Departments caution that coercing workers into performing labor by threatening potential deportation or immigration enforcement may violate anti-trafficking laws. The Departments remind the public that DHS regulations already compel employers to notify DHS of early separations to assist the agency in keeping track of foreign nationals in the United States. *See* 8 CFR 214.2(h)(6)(i)(F), (h)(11)(i). Employers should note that DHS has its own notification requirements under 8 CFR 214.2(h)(6)(i)(F) that employers must comply with if: An H–2B worker fails to report for work within 5 work days after the employment start date; the H–2B labor or services for which H–2B workers were hired were completed more than 30 days early; or an H–2B worker absconds from the worksite or is terminated prior to the completion of the nonagricultural labor or services for which he or she was hired. Both OFLC's (which may share information with WHD) and DHS's awareness of early separations are critical to program integrity, allowing the agencies to appropriately monitor and audit employer actions. If not for proper notification, employers with histories of frequent and unjustified early dismissals of workers could continue to have an *Application for Temporary Employment Certification* certified and an *H–2B Petition* approved.

With respect to whether a termination actually was for cause, DOL reminds the public that WHD, as part of its enforcement practices, may investigate conditions behind the early termination of foreign workers to ensure that the dismissals were not affected merely to relieve an employer of its outbound transportation and three-quarter guarantee obligations. Further, § 655.20(n) already protects workers from a dismissal in retaliation for protected activities. However, some employer personnel rules set the abscondment threshold at 3 days. This regulation does not intrude upon or supersede employer attendance policies. The requirement that an employer provide appropriate notification if a worker fails to report for 5 consecutive working days does not preclude an employer from establishing a different standard for dismissing its workers. Further, the Departments do not intend the H–2B regulations to provide job protection to workers in the case of illness or injury that may result in absences and considers such determinations beyond its authority. The rule leaves it largely to employers to determine the worker behaviors that trigger a dismissal for cause, beyond the protected activities described in § 655.20(n) and the requirement in § 655.20(z) that the employer comply with all applicable employment-related laws.

z. Compliance with applicable laws (§ 655.20(z)). Section 655.20(z) requires H–2B employers to comply with all other applicable Federal, State, and local employment laws, similar to the 2008 rule's provision at § 655.22(d), and it explicitly references 18 U.S.C. 1592(a), which prohibits employers from holding or confiscating workers' immigration documents such as passports or visas under certain circumstances. Because the prohibition must include employers' attorneys and agents in order to achieve the intended worker protection, appropriate language is included in § 655.20(z) of this interim final rule to reflect that coverage.

aa. Disclosure of foreign worker recruitment (§ 655.20(aa)). Section 655.20(aa) requires the employer and its attorney and/or agents to provide a copy of any agreements with an agent or recruiter whom it engages or plans to engage in the recruitment of prospective H–2B workers under this *Application for Temporary Employment Certification* (§ 655.9), at the time of filing the application (§ 655.15(a)), as well as to disclose those persons and entities hired by or working for the recruiter or agent, and any of their agents or employees who recruit prospective foreign workers for the H–2B job opportunities offered by the employer. The Departments are adding this obligation to the list of Assurances and Obligations in this interim final rule, as it is a critical obligation that will significantly enhance the recruitment process, as explained in the preamble to §§ 655.9 and 655.15.

bb. Cooperation with investigators (§ 655.20(bb)). Section 655.20(bb) requires the employer to cooperate with any DOL employee who is exercising or attempting to exercise DOL's authority pursuant to 8 U.S.C. 1184(c), INA section 214(c). Including this provision in the list of employer obligations will facilitate enforcement if an employer fails to cooperate in any administrative or enforcement proceeding, and if that failure is determined to be a violation under these regulations. Requirements for employer cooperation with WHD investigations are set forth more fully in 29 CFR 503.25.

E. Processing of an Application for Temporary Employment Certification

1. § 655.30 Processing an Application and Job Order

Under this provision, upon receipt of an *Application for Temporary Employment Certification* and copy of the job order, the CO will promptly conduct a comprehensive review. The CO's review of the *Application for Temporary Employment Certification,* in most cases,[22] will no longer entail a determination of temporary need following *H–2B Registration.* Instead, this aspect of the CO's review is limited to verifying that the employer previously submitted a request for and was granted *H–2B Registration,* and that the terms of the *Application for Temporary Employment Certification* have not significantly changed from those approved under the *H–2B Registration.*

The interim final rule also requires the use of next day delivery methods, including electronic mail, for any notice or request sent by the CO requiring a response from the employer and the employer's response to such a notice or request. This provision also contains a long-standing program requirement that the employer's response to the CO's notice or request must be sent by the due date or the next business day if the due date falls on a Saturday, Sunday, or a Federal holiday.

2. § 655.31 Notice of Deficiency

This provision requires the CO to issue a formal Notice of Deficiency where the CO determines that the *Application for Temporary Employment Certification* and/or job order contains errors or inaccuracies, or fails to comply with applicable regulatory and program requirements. The CO must issue the Notice of Deficiency within 7 business days from the date on which the Chicago NPC receives the employer's *Application for Temporary Employment Certification* and job order. Once the CO issues a Notice of Deficiency to the employer, the CO will provide the SWA and the employer's attorney or agent, if applicable, a copy of the notice. The Notice of Deficiency will include the specific reason(s) why the *Application for Temporary Employment*

[22] As provided in the discussion of § 655.11, each employer filing an *Application for Temporary Employment Certification* is required under the interim final rule to establish temporary need through the registration process. However, in limited circumstances where the employer has applied for a temporary labor certification on an emergency basis under emergency procedures in § 655.17 without an approved *H–2B Registration,* the CO may be required to also make a determination of temporary need.

Certification and/or job order is deficient, identify the type of modification necessary for the CO to issue a Notice of Acceptance, and provide the employer with an opportunity to submit a modified *Application for Temporary Employment Certification* and/or job order within 10 business days from the date of the Notice of Deficiency. The Notice of Deficiency will also inform the employer that it may, alternatively, request administrative review before an Administrative Law Judge (ALJ) within 10 business days of the date of the Notice of Deficiency and instruct the employer how to file a request for such review in accordance with the administrative review provision under this subpart. Finally, the Notice of Deficiency will inform the employer that failing to timely submit a modified *Application for Temporary Employment Certification* and/or job order, or request administrative review, will cause the CO to deny that employer's *Application for Temporary Employment Certification.* The CO may issue multiple Notices of Deficiency, if necessary, to provide the CO with the needed flexibility to work with employers seeking to resolve deficiencies that are preventing acceptance of their *Application for Temporary Employment Certification.* For example, there are situations in which a response to a Notice of Deficiency raises other issues that must be resolved, requiring the CO to request more information. The CO will have the ability to address these situations.

3. § 655.32 Submission of a Modified Application or Job Order

The interim final rule permits the CO to deny any *Application for Temporary Employment Certification* where the employer neither submits, following request by the CO, a modification nor requests a timely administrative review, and such a denial cannot be appealed. The interim final rule also requires the CO to deny an *Application for Temporary Employment Certification* if the modification(s) made by the employer do not comply with the requirements for certification in § 655.50. A denial of a modified *Application for Temporary Employment Certification* may be appealed.

If the CO deems a modified application acceptable, the CO will issue a Notice of Acceptance and require the SWA to modify the job order in accordance with the accepted modification(s), as necessary. In addition to requiring modification before the acceptance of an *Application for Temporary Employment Certification,* this provision permits the CO to require the employer to modify a job order at any time before the final determination to grant or deny the *Application for Temporary Employment Certification* if the CO determines that the job order does not contain all the applicable minimum benefits, wages, and working conditions. The CO's ability to require modification(s) of a job order strengthens H–2B program integrity. In some cases, information may come to the CO's attention after acceptance indicating that the job order does not contain all the applicable minimum benefits, wages, and working conditions that are required for certification. This provision enables the CO to ensure that the job order meets all regulatory requirements.

The provision requires the CO to update the electronic job registry to reflect the necessary modification(s) and to direct the SWA(s) in possession of the job order to replace the job order in their active files with the modified job order. The provision also requires the employer to disclose the modified job order to all workers recruited under the original job order or *Application for Temporary Employment Certification.*

4. § 655.33 Notice of Acceptance

The interim final rule requires the CO to issue a formal notice accepting the employer's *Application for Temporary Employment Certification* for processing. Specifically, the CO will send a Notice of Acceptance to the employer (and the employer's attorney or agent, if applicable), with a copy to the SWA, within 7 business days from the CO's receipt of the *Application for Temporary Employment Certification* or modification, provided that the *Application for Temporary Employment Certification* and job order meet all the program and regulatory requirements.

The Notice of Acceptance directs the SWA: (1) To place the job order in intra- and interstate clearance, including (i) circulating the job order to the SWAs in all other States listed on the employer's *Application for Temporary Employment Certification* and job order as anticipated worksites and (ii) to any States to which the CO directs the SWA to circulate the job order; (2) to keep the job order on its active file and continue to refer U.S. workers to the employer until the end of the recruitment period defined in § 655.40(c), as well as transmit those instructions to all other SWAs to which it circulates the job order; and (3) to circulate a copy of the job order to certain labor organizations, where the job classification is traditionally or customarily unionized.

The Notice of Acceptance will direct the employer to recruit U.S. workers in accordance with employer-conducted recruitment provisions in §§ 655.40–655.46, as well as to conduct any reasonable additional recruitment the CO directs, consistent with § 655.46, within 14 calendar days from the date of the notice. The Notice of Acceptance will inform the employer that such employer-conducted recruitment is required in addition to SWA circulation of the job order in intrastate and interstate clearance under § 655.16. In addition, the Notice of Acceptance will require the employer to submit a written report of its recruitment efforts as specified in § 655.48. Finally, the Notice of Acceptance may require the employer to contact appropriate designated community-based organizations with the notice of the job opportunity.

5. § 655.34 Electronic Job Registry

The CO will post employers' H–2B job orders, including modifications and/or amendments approved by the CO, on an electronic job registry to disseminate the job opportunities to the widest audience possible. The electronic job registry was initially created to accommodate the posting of H–2A job orders, and DOL will expand it to include H–2B job orders. DOL will inform the public when the electronic job registry is available for the H–2B program. Once the registry is operational, the CO will post the job orders on the electronic job registry, after accepting an *Application for Temporary Employment Certification,* for the duration of the recruitment period, as provided in § 655.40(c). Although a job order may be circulated among multiple SWAs, only the job order placed with the initial SWA, which identifies all work locations, will be posted on the electronic job registry. The electronic job registry will be accessible via the internet to anyone seeking employment. We will work with the SWAs to devise procedures to further publicize the electronic job registry. At the conclusion of the recruitment period, we will maintain the job order on the electronic job registry in inactive status, making the information available for a variety of other public examination purposes.

6. § 655.35 Amendments to an Application or Job Order

This provision permits an employer to request to amend its *Application for Temporary Employment Certification* and/or job order to increase the number of workers, to change the period of employment, or to make other changes to the application, before the CO makes a final determination to grant or deny

the *Application for Temporary Employment Certification.* The provision permits an employer to seek such amendments only before certification, not after certification. This provision provides clarity to employers and workers alike of the limitations on and processes for amending an *Application for Temporary Employment Certification* and the need to inform any U.S. workers already recruited of the changed job opportunity. The provision recognizes that business is not static and employers can face changed circumstances from varying sources—from climatic conditions to cancelled contracts. Accordingly, we include this provision to provide some flexibility to enable employers to assess and respond to such changes.

In considering whether to approve the request, the CO will determine whether the proposed amendment(s) are sufficiently justified and must take into account the effect of the changes on the underlying labor market test for the job opportunity. We do not intend this provision to allow employers to amend their applications beyond the parameters contained in § 655.12; rather, part of the CO's review will involve comparing the requested amendments to the content of the approved *H–2B Registration.*

We have included certain limitations to ensure that these job opportunities are not misrepresented or materially changed as a result of such amendments. We expect that these parameters, which limit the extent of the change in number of workers or period of need permitted, and the CO review process to control the frequency with which post-acceptance and pre-certification job order amendments are requested or approved and maintain the integrity of the H–2B Registration process.

Specifically, the employer may request an amendment of the *Application for Temporary Employment Certification* and/or job order to increase the number of workers initially requested. However, amendments to increase the number of workers must be limited to no more than 20 percent (50 percent for employers requesting fewer than 10 workers) above the number specified in the *H–2B Registration.* In addition, the provision permits minor changes to the period of employment at any time before the CO's final determination. However, such amendments to the period of employment may not exceed 14 days and may not cause the total period to exceed 9 months, except in the event of a demonstrated one-time occurrence. This limitation to 14 days is designed to ensure that the employer had a legitimate need before initiating the registration process, and accurately estimated its dates of need. Although an H–2B registration covers the entire period of need for up to 3 years, this provision, by contrast, allows an employer to request a change of up to 14 days from the from the period listed on its *Application for Temporary Employment Certification,* allowing for up to 2 such changes from the initial dates provided in the registration, as long as the deviations do not result in a total period of need exceeding 9 months.

Under this provision, the employer must request any amendment(s) to the *Application for Temporary Employment Certification* and/or job order in writing and any such amendment(s) will not be effective until approved by the CO. After reviewing an employer's request to amend its *Application for Temporary Employment Certification* and/or job order, the CO will approve these changes if the CO determines the proposed amendment(s) are justified and will not negatively affect the CO's ability to make a timely temporary labor certification determination, including the ability to adequately test the U.S. labor market. Changes will not be approved that affect the underlying H–2B registration. Once the CO approves an amendment to the *Application for Temporary Employment Certification* and/or job order, the CO will submit to the SWA any necessary change(s) to the job order and update the electronic job registry to reflect the approved amendment(s).

F. Recruitment Requirements

This interim final rule maintains and expands some of the requirements relating to the recruitment of U.S. workers that were contained in the 2008 rule. The Departments conclude that, with expanded requirements, including the requirement that the employer contact its former U.S. workers and the requirement to conduct additional recruitment at the discretion of the CO, recruitment is more likely to identify qualified and available U.S. workers than under the 2008 rule and will better protect against the potential for adverse effect.

1. § 655.40 Employer-Conducted Recruitment

Unlike under the 2008 rule, this interim final rule requires that the employer conduct recruitment of U.S. workers after its *Application for Temporary Employment Certification* is accepted for processing by the CO.

Paragraph (a) contains the general requirement that employers must conduct recruitment of U.S. workers to ensure that there are not qualified U.S. workers who will be available for the positions listed in the *Application for Temporary Employment Certification* and provides that U.S. applicants can be rejected only for lawful job-related reasons. This general requirement to test the U.S. labor market is needed to ensure that the importation of foreign workers will not have an adverse effect on U.S. workers.

Paragraph (b) requires that employers complete specific recruitment steps outlined in §§ 655.42 through 655.46 within 14 days from the date of the Notice of Acceptance unless otherwise instructed by the CO. This paragraph further requires that all employer-conducted recruitment must be completed before the employer submits the recruitment report as required in § 655.48. We conclude that a 14-day recruitment period provides an appropriate timeframe for the employer to conduct the recruitment described in §§ 655.42 through 655.46, especially when combined with the longer SWA referral period discussed further below.

Paragraph (c) requires that employers must continue to accept referrals and applications of all U.S. applicants interested in the position until 21 days before the date of need. Separate from the employer-conducted recruitment, this interim final rule at § 655.16 requires the SWA, upon acceptance of the job order and *Application for Temporary Employment Certification* by the CO, to circulate the job order, and § 655.34 of this interim final rule provides that the CO will post the job order to the electronic job registry. The requirement that employers continue to accept all qualified U.S. applicants referred for employment by the SWA or who apply for the position directly with the employer until 21 days before the date of need balances the need to ensure an adequate test of the U.S. labor market without requiring the employer to incur any additional costs in conducting independent recruitment efforts beyond the sources and the 14 days specified in the Notice of Acceptance.

Paragraph (d) provides that where the employer wishes to conduct interviews with U.S. workers, it must do so by telephone or at a location where workers can participate at little or no cost to the workers. This provision does not require employers to conduct employment interviews under this provision. Rather, employers are barred from offering preferential treatment to potential H–2B workers, including any requirement to interview for the job

opportunity. In addition, this interim final rule ensures that employers conduct a fair labor market test by requiring employers that conduct interviews to conduct them by phone or provide a procedure for the interviews to be conducted in the location where the worker is being recruited so that the worker incurs little or no cost. Accordingly, an employer who requires a U.S. worker to undergo an interview must provide such worker with a reasonable opportunity to meet such a requirement. The purpose of these requirements is to ensure that that the employer does not use the interview process to the disadvantage of U.S. workers.

To ensure no adverse effect to U.S. workers, paragraph (e) requires that the employer must consider all U.S. applicants for the job opportunity and that the employer must accept and hire any applicants who are qualified and who will be available for the job opportunity.

Paragraph (f) requires the employer to prepare a recruitment report meeting the requirements of § 655.48.

2. § 655.41 Advertising Requirements

Section 655.41 of this interim final rule requires that all employer recruitment contain terms and conditions of employment no less favorable than those offered to the prospective H–2B workers and provide the terms and conditions of employment necessary to apprise U.S. workers of the job opportunity.

Paragraph (a) requires that all recruitment must, at a minimum, comply with the assurances applicable to job orders as set forth in § 655.18(a). While this requires advertising to conform to the job order assurances and include the minimum terms and conditions of employment, it does not require an advertisement to include the full text of the assurances applicable to job orders. Consistent with § 655.18(a), all job qualifications and requirements listed in the employer's advertising must be bona fide and consistent with normal and accepted job qualifications and requirements.

Paragraph (b) provides a list of the minimum terms and conditions of employment that must be included in all advertising, including a requirement that the employer make the appropriate disclosure when it is offering or providing board, lodging or facilities, as well as identify any deductions, if applicable, that will be applied to the employee's pay for the provision of such accommodations. In requiring that advertisements comply with the assurances from the job order and meet minimum content requirements, but not requiring that advertisements contain all of the text of the assurances from the job order, we strike a balance between the employer's cost in placing potentially lengthy advertisements and the need to ensure that entities disclose all necessary information to all potential applicants. In addition, as a continuing practice in the program, employers will be able to use abbreviations in the advertisements so long as the abbreviation clearly and accurately captures the underlying content requirement.

In order to help employers comply with these requirements, we provide below specific language which is sufficient on the issues of transportation; the three-fourths guarantee; and tools, equipment, and supplies to apprise U.S. applicants of those required items in the advertisement. As provided above, the employer may also abbreviate some of this language so long as the underlying guarantee can be clearly understood by a prospective applicant. The following statements in an employer's advertisements are permitted:

1. Transportation: Transportation (including meals and, to the extent necessary, lodging) to the place of employment will be provided, or its cost to workers reimbursed, if the worker completes half the employment period. Return transportation will be provided if the worker completes the employment period or is dismissed early by the employer. 2. Three-fourths guarantee: For certified periods of employment lasting fewer than 120 days: The employer guarantees to offer work for hours equal to at least three-fourths of the workdays in each 6-week period of the total employment period. For certified periods of employment lasting 120 days or more: The employer guarantees to offer work for hours equal to at least three-fourths of the workdays in each 12-week period of the total employment period. 3. Tools, equipment and supplies: The employer will provide workers at no charge all tools, supplies, and equipment required to perform the job.

The interim final rule at § 655.41(b)(14) requires all employer advertisements to direct applicants to apply for the job at the nearest SWA office because we conclude that allowing SWAs to apprise job applicants of the terms and conditions of employment is an essential aspect of ensuring an appropriate labor market test. However, notwithstanding the many benefits of being referred to the job opportunity by the SWA, U.S. workers may contact the employer directly, and the interim final rule at § 655.41(b)(1) requires that employers include their contact information to enable such direct contact. We anticipate that the enhanced role of the SWA in employee referrals and the additional duties inherent in that role will be offset through the elimination of the requirement for the SWA to conduct employment verification activities as discussed further below.

3. § 655.42 Newspaper Advertisements

As under the 2008 rule, this interim final rule at § 655.42(a) requires the employer to place two advertisements in a newspaper of general circulation for the area of intended employment that is appropriate to the occupation and the workers likely to apply for the job opportunity, at least one appearing in a Sunday edition. In addition this paragraph requires the employer to place the advertisement(s) in a language other than English where the CO determines it is appropriate. Further, we eliminate the employer's option under the 2008 rule to replace one of the newspaper advertisements with an advertisement in a professional, trade, or ethnic newspaper.

Newspapers of general circulation remain an important source for recruiting U.S. workers, particularly those interested in positions typically found in the H–2B program. Low-wage workers are less likely to have internet access than more skilled workers, and are thus more likely to search for jobs using traditional means. Particularly given that the CO has authority to require the newspaper advertisement to be published in a language other than English, newspapers continue to be a valuable source for recruitment. In addition, newspaper advertisements are also recognized as information sources likely to generate informal, word of mouth referrals. No single alternative method of advertising uniformly applies to the variety of H–2B job opportunities or is likely to reach as broad a potential audience for these types of job opportunities.

Paragraph (b) provides the CO with discretion to direct the employer, in place of a Sunday edition, to advertise in the regularly published daily print edition with the widest circulation in the area of intended employment if the job opportunity is located in a rural area that does not have a newspaper with a Sunday edition. This provision is similar to the 2008 rule, which required an employer to advertise in the regularly published daily edition with the widest circulation in the area of intended employment if the job opportunity was located in such an area.

Paragraph (c) provides that the newspaper advertisements must meet the requirements in § 655.41.

Paragraph (d) requires the employer to maintain documentation of its newspaper advertisements in the form of copies of newspaper pages (with date of publication and full copy of the advertisement), tear sheets of the pages of the publication in which the advertisements appeared, or other proof of publication furnished by the newspaper containing the text of the printed advertisements and the dates of publication, consistent with the document retention requirements in § 655.56. It further requires that if the advertisement was required to be placed in a language other than English, the employer must maintain a translation and retain it in accordance with § 655.56.

4. § 655.43 Contact With Former U.S. Employees

This provision requires employers to make reasonable efforts to contact by mail or other effective means its former U.S. workers who were employed by the employer in the same occupation at the place of employment during the previous year before the date of need listed in the *Application for Temporary Employment Certification.* This requirement expands the 2008 rule's requirement that employers contact former U.S. workers who have been laid off within 120 days of the employer's date of need. However, employers are not required to contact U.S. workers who were terminated for cause or who abandoned the worksite, as defined in § 655.20(y). The Departments believe that this provision will help ensure that the greatest number of U.S. workers, particularly those that have previously held these positions, have awareness of and access to these job opportunities.

Each employer must provide its former U.S. employees a full disclosure of the terms and conditions of the job order, and solicit their return to the job. Employers will be required to maintain documentation to be submitted in the event of an audit or investigation sufficient to prove contact with its former employees consistent with document retention requirements under § 655.56. This documentation may consist of a copy of a form letter sent to all former employees, along with evidence of its transmission (postage account, address list, etc.).

Although the requirement focuses on a longer period of time than the requirement under the 2008 rule, it is unlikely that it will impose a significantly greater burden on employers. Typically, employers will have laid off seasonal or temporary U.S. workers at the end of the period of need, which was up to 10 months under the 2008 rule. This means that such workers are those whom the employer would have been required to contact under § 655.15(h) under the 2008 rule. If for some reason, the employer did lay off some workers who were hired to work during the employer's period of temporary need, before the end of the period of need—*e.g.,* additional workers who were hired for a period of peakload need within the longer period of temporary need, the Departments believe that it would be most appropriate to give those workers the first opportunity to take the jobs. Generally, however, there will be little practical difference between the operation of the previous requirement and the operation of this requirement in the interim final rule except perhaps for seasonal jobs. In a seasonal program, reaching back to contact former employees who were employed over a cycle of a full year would be the minimum amount of time necessary to capture all of the seasonal activities for which H–2B workers are sought. For example, an oceanfront resort employer hires workers at the start of its season in May and releases them in September. The employer then seeks H–2B workers the following March, more than 60 days before the usual date of need. Reaching that particular workforce requires the employer to reach back to the time those employees were hired—the previous May—to ensure that the group of employees most likely to return to the employment are given the opportunity to do so.

The Departments recognize that collective bargaining agreements may require the employer to contact laid-off employees in accordance with specific terms governing recall and a recall period. The requirement in this section that the employer contact former employees employed by the employer during the prior year would not substitute for the terms in a collective bargaining agreement. The employer is separately obligated to comply with the terms and conditions of the bargaining agreement, which may include recall provisions that cover workers employed by the employer beyond the prior year.

The Departments also recognize that some unscrupulous employers may use termination as a means of retaliating against workers who complain about unlawful treatment or exercise their rights under the program. However, the requirement in this interim final rule that each employer affirmatively attest that it has not engaged in unfair treatment as defined in § 655.20(n), *i.e.,* that it has not retaliated against complaining employees, acts as a backstop against this prohibited activity and the possibility that an employer would be released from contacting such workers.

5. § 655.44 [Reserved]

6. § 655.45 Contact With Bargaining Representative, Posting Requirements, and Other Contact Requirements

Paragraph (a) of this section requires employers that are party to a CBA to provide written notice to the bargaining representative(s) of the employer's employees in the job classification in the area of intended employment by providing a copy of the *Application for Temporary Employment Certification* and the job order. The employer must maintain documentation that the application and job order were sent to the bargaining representative(s). This requirement will provide that each employer's existing U.S. workers receive timely notice of the job opportunities, thereby increasing the likelihood that those workers will apply for the available positions for the subsequent temporary period of need, and other U.S. workers, possibly including former workers, will be more likely to learn of the job opportunities as well. This paragraph further requires such employers to include information in their recruitment reports that confirms that the bargaining representative(s) was contacted and notified of the position openings and whether the organization referred qualified U.S. worker(s), including the number of referrals, or was non-responsive to the employer's requests.

Paragraph (b) requires that, where there is no bargaining representative of the employer's employees, the employer must post a notice to its employees of the job opportunities for at least 15 consecutive business days in at least two conspicuous locations at the place of intended employment or in some other manner that provides reasonable notification to all employees in the job classification and area in which work will be performed by the H–2B workers. Web posting can fulfill this requirement in some circumstances.

The posting of the notice at the employer's worksite, in lieu of formal contact with a representative when one does not exist, is intended to provide that all of the employer's U.S. workers are afforded the same access to the job opportunities for which the employer intends to hire H–2B workers. In addition, the posting of the notice may result in the sharing of information between the employer's unionized and nonunionized workers and therefore result in more referrals and a greater pool of qualified U.S. workers. This

interim final rule provides a degree of flexibility for complying with this requirement; specifically, the regulation includes the language ''or in some other manner that provides reasonable notification to all employees in the job classification and area in which the work will be performed by the H–2B workers.'' This permits the employer to devise an alternative method for disseminating this information to the employer's employees, for example, by posting the notice in the same manner and location as for other notices, such as safety and health occupational notices, that the employer is required by law to post. This provision further provides that electronic posting, such as displaying the notice prominently on any internal or external Web site that is maintained by the employer and customarily used for notices to employees about terms and conditions of employment, is sufficient to meet this posting requirement as long as the posting otherwise meets the requirements of this section. Finally, this paragraph requires the notice to meet the requirements of § 655.41 and that the employer maintain a copy of the posted notice and identify where and when it was posted in accordance with § 655.56.

Paragraph (c) provides, in addition to the requirements for notification to bargaining representatives or employees in this section, that the CO may also require the employer to contact community-based organizations to disseminate the notice of the job opportunity. Community-based organizations are an effective means of reaching out to domestic workers interested in specific occupations. ETA administers our nation's public exchange workforce system through a series of One-Stop Career Centers. These One-Stop Centers provide a wide range of employment and training services for workers through job training and outreach programs such as job search assistance, job referral and job placement services, and also provide recruitment services to businesses seeking workers. Community-based organizations with employment programs including workers who might be interested in H–2B job opportunities have established relationships with the One-Stop Career Center network. The One-Stop Center in or closest to the area of intended employment will be, in most cases, the designated point of contact the CO will give employers to use to provide notice of the job opportunity. This provides the employer with access not only to the community-based organization, but to a wider range of services of assistance to its goal of meeting its workforce needs. This contact is to be made when designated specifically by the CO in the Notice of Acceptance as appropriate to the job opportunity and the area of intended employment.

We note that, not unlike additional recruitment (discussed below), contact with community-based organizations is intended to broaden the pool of potential applicants and assist the many unemployed U.S. workers with finding meaningful job opportunities. These organizations are especially valuable because they are likely to serve those workers in greatest need of assistance in finding work and individuals who may be seeking positions in H–2B occupations that require little or no specialized knowledge. Although we will not require each employer to make this type of contact, this provision, where directed by the CO, will assist with fulfilling the intent of the H–2B program and enhancing the integrity of the labor market test.

7. § 655.46 Additional Employer-Conducted Recruitment

Where the CO determines that the employer-conducted recruitment described in §§ 655.42 through 655.45 is not sufficient to attract qualified U.S. workers who are likely to be available for a job opportunity, § 655.46 of this interim final rule provides the CO with discretion to require the employer to engage in additional reasonable recruitment activities. Paragraph (a) provides the CO with discretion to order additional reasonable recruitment where the CO has determined that there is a likelihood that U.S. workers are qualified and who will be available for the work, including, but not limited to, where the job opportunity is located in an Area of Substantial Unemployment. This discretion may be exercised, including in Areas of Substantial Unemployment where appropriate, where additional recruitment efforts will likely result in more opportunities for and a greater response from available and qualified U.S. workers. In addition, we recognize that the increased rate of technological innovation, including its implications for communication of information about job opportunities, is changing the way many U.S. workers search for and find jobs. In part due to these changes, the inclusion of this requirement is intended to allow the CO flexibility to keep pace with the ever-changing labor market trends.

Areas of Substantial Unemployment by their nature have a higher likelihood of worker availability; DOL's recognition of worker availability in these areas is a strong indicator that these open job opportunities may have more receptive potential populations. However, Areas of Substantial Unemployment are only one example of a situation in which the CO has discretion to order additional recruitment. This discretion permits DOL to ensure the appropriateness and integrity of the labor market test and determine the appropriate level of recruitment based on the specific situation. The COs (with advice from the SWAs, which are familiar with local employment patterns and real-time market conditions), are well-positioned to judge where additional recruitment may or may not be required as well as the sources that should be used by the employer to conduct such additional recruitment. It is also within the CO's discretion to determine that such additional efforts are unlikely to result in additional meaningful applications for the job opportunity.

Additional positive recruitment under this paragraph will be conducted in addition to, and occur within the same time period as, the circulation of the job order and the other mandatory employer-conducted recruitment described above. Thus, additional recruitment will not result in any delay in certification.

Paragraph (b) provides that, if the CO elects to require additional recruitment, the CO will describe the number and type of additional recruitment efforts required. This paragraph also provides a non-exclusive list of the types of additional recruitment that may be required by the CO, including, where appropriate: advertising on the employer's Web site or another Web site; contact with additional community-based organizations that have contact with potential worker populations; additional contact with labor unions; contact with faith-based organizations; and reasonable additional print advertising. When assessing the appropriateness of a particular recruitment method, the CO will take into consideration all options at her/his disposal, including relying on the SWA experience and expertise with local labor markets, where appropriate, and will consider both the cost and the likelihood that the additional recruitment will identify qualified and available U.S. workers, and where appropriate opt for the least burdensome method(s). CO-ordered efforts to contact community-based organizations and/or One-Stop Career Centers under this section are in addition to the requirements in §§ 655.16 and 655.45.

Paragraph (c) provides that, where the CO requires additional recruitment, the CO will specify the documentation or other supporting evidence that must be maintained by the employer as proof that the additional recruitment requirements were met. Documentation must be maintained as required in § 655.56.

8. § 655.47 Referrals of U.S. Workers

Section 655.47 of this interim final rule requires that SWAs refer for employment only individuals who have been informed of the material terms and conditions of the job opportunity and are qualified and will be available for employment. Unlike the 2008 rule, this interim final rule does not require that the SWAs conduct employment (I–9) eligibility verification.

In light of limited resources, we have determined that the requirement under the 2008 rule that SWAs conduct employment eligibility verification of job applicants was duplicative of the employer's responsibility under the INA. In addition, the INA provides that SWAs may, but are not required to, conduct such verification for those job applicants they refer to employers. DHS regulations permit employers to rely on the employment eligibility verification voluntarily performed by a State employment agency in certain limited circumstances.

The elimination of the requirement that SWAs conduct employment eligibility verification will allow the SWAs to focus their staff and resources on ensuring that U.S. workers who come to them are apprised of job opportunities for which the employer seeks to hire H–2B workers, which is one of the basic functions of the SWAs under their foreign labor certification grants, and to ensure such workers are qualified and available for the job opportunities. This does not mean that every referral must be assisted by SWA staff. To the contrary, many H–2B referrals are not staff-assisted but are instead self-referrals (*e.g.,* electronic job matching systems), and we have no intention of interfering with the current processes established by most SWAs to handle these job orders, since the material terms and conditions of employment will be available for self-review by U.S. applicants. However, to the extent that SWA staff is directly involved in a referral, we expect that the referrals made would be only of qualified workers. If staff are directly involved in the screening process, SWAs will be required to ascertain that the unemployed U.S. applicants who request referral to the job opportunity are sufficiently informed about the job opportunity, including the start and end dates of employment, and that they commit to accepting the job offer if extended by the employer. We do not expect this to be an additional burden on SWA staff.

The Departments do not presume that the judgment of the SWAs as to an applicant's qualifications is irrebuttable or a substitute for the employer's business judgment with respect to any candidate's suitability for employment. However, to the extent that the employer does not hire a SWA referral who was screened and assessed as qualified, the employer will have a heightened burden to demonstrate to DOL that the applicant was rejected only for lawful, job-related reasons.

9. § 655.48 Recruitment Report

Consistent with the requirements of the 2008 rule, paragraph (a) continues to require the employer to submit to the Chicago NPC a signed recruitment report. Unlike the 2008 rule, however, this interim final rule requires the employer to send the recruitment report on a date specified by the CO in the Notice of Acceptance instead of at the time of filing its *Application for Temporary Employment Certification.* This change accommodates the new recruitment model under this interim final rule under which the employer does not begin its recruitment until directed by the CO in the Notice of Acceptance. In addition, paragraph (a) clarifies that where recruitment is conducted by a job contractor or its employer-client, both joint employers must sign the recruitment report, consistent with § 655.19(e).

Paragraph (a) further details the information the employer is required to include in the recruitment report, including the recruitment steps undertaken and their results, as well as other pertinent information. The provision requires the employer to provide the name and contact information of each U.S. worker who applied or was referred for the job opportunity. This reporting allows DOL to ensure the employer has met its obligation and the agency has met its responsibility to determine whether there were insufficient U.S. workers who are qualified and available to perform the job for which the employer seeks certification. In addition, when WHD conducts an investigation, WHD may contact U.S. workers listed in the report to verify the reasons given by the employer as to why they were not hired, where applicable.

Paragraph (b) requires the employer to update the recruitment report throughout the referral period to ensure that the employer accounts for contact with each prospective U.S. worker. The employer is not required to submit the updated recruitment report to DOL, but is required to retain the report and make it available in the event of a post-certification audit, a WHD investigation, or upon request by the CO.

DOL notes that it continues to reserve the right to post any documents received in connection with the *Application for Temporary Employment Certification* and will redact information accordingly.

G. Temporary Labor Certification Determinations

1. § 655.50 Determinations

This section corresponds to 20 CFR 655.32(a) and (b) in the 2008 rule. Paragraph (a) generally authorizes the OFLC Administrator and center-based COs to certify or deny *Applications for Temporary Employment Certification* for H–2B workers. It also authorizes the Administrator to redirect applications to the OFLC National Office. Paragraph (b) requires the CO to determine whether to certify (including partially certify) or deny an application. It requires the CO to certify an application only when the employer has fully complied with requirements for H–2B temporary labor certification, including the criteria established in § 655.51.

2. § 655.51 Criteria for Certification

This section requires, as conditions of certification, that the employer have a valid *H–2B Registration* and have demonstrated full compliance with the requirements of this subpart. In making a determination about the availability of U.S. workers for the job opportunity, the CO will treat, as available, individuals whom the employer rejected for any reason that was not lawful or job-related. Paragraph (c) makes clear that DOL will not grant certification to employers that have failed to comply with one or more sanctions or remedies imposed by final agency actions under the H–2B program.

3. § 655.52 Approved Certification

This section generally corresponds to 20 CFR 655.32(d) in the 2008 rule, but has been updated to better reflect current practices and DOL's experience. In cases where the application is approved, this interim final rule requires that the CO use electronic mail or other next day delivery methods to send the Final Determination letter to the employer and, when applicable, a copy to the employer's representative. The requirement for next-day delivery is designed to add efficiency and economy

to the certification process. The requirement to advise the employer's attorney or agent, when applicable, is based on DOL's program experience with complications or miscommunications that can arise between employers and their agents or attorneys. Even when an employer is represented, it makes sense for that employer to receive and maintain the original, approved certification, as the employer attests to and is primarily responsible for meeting the obligations created by the *Application for Temporary Employment Certification.* Should the *Application for Temporary Employment Certification* be filed electronically, the employer must retain the approved temporary labor certification. As noted earlier in the discussion about electronic filing, upon receipt of the original certified ETA Form 9142B, the employer or its agent or attorney, if applicable, must complete the footer on the original Appendix B, retain the original Appendix B, and submit a signed copy of Appendix B, together with the original certified ETA Form 9142B directly to USCIS. Under the document retention requirements in § 655.56, the employer must retain a copy of the temporary labor certification and the original signed Appendix B.

4. § 655.53 Denied Certification

This section generally corresponds to 20 CFR 655.32(e) in the 2008 rule, but has been updated in ways similar to § 655.52, above. In cases where the application is denied, this provision, as in § 655.52, requires that the CO use electronic mail or other means of next day delivery to send the Final Determination letter to the employer and, when applicable, a copy to the employer's attorney or agent. The Final Determination letter must state the reasons for the denial, and cite the relevant regulatory provisions that govern. The letter must also advise the employer of its right to seek administrative review of the determination and of the consequences, should the employer elect not to appeal.

5. § 655.54 Partial Certification

This section generally corresponds to 20 CFR 655.32(f) in the 2008 rule. It grants the CO authority to issue a partial certification that reflects either a shorter-than-requested period of need or a lower-than-requested number of H–2B workers, or both. For each qualified, available U.S. worker the SWA has referred or who applies directly with the employer, and whom the employer has accepted or has rejected for reasons that are unlawful or unrelated to the job, the CO will reduce by one the number of H–2B workers certified. To issue a partial certification, the CO will amend the application and return it and a Final Determination letter to the employer, with a copy to the employer's representative. The letter must state the reasons for the reduction, and governing legal authority; when appropriate, address the availability of U.S. workers in the occupation; explain the employer's right to seek administrative review; and describe the consequences, should the employer elect not to appeal.

6. § 655.55 Validity of Temporary Employment Certification

This section mirrors 29 CFR 503.18 and corresponds to 20 CFR 655.34(a) and (b) in the 2008 rule, establishing the period of time and scope for which an *Application for Temporary Employment Certification* is valid. Under this provision, a temporary labor certification is valid only for the period of authorized employment. The certification is also valid only for the number of H–2B positions, the area of intended employment, the job classification and specific services, and the employer listed on the approved application. The sponsoring employer may not transfer the certification to another employer, except where the other employer is a successor in interest to the sponsoring employer. These limitations on validity are critical to the integrity of the certification and the broader H–2B program. They are also consistent with the prohibition on transfers of an *H–2B Registration,* and with the features DOL has put in place for certifications in the permanent program. *See* Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity; Final Rule, 72 FR 27904, 27918 (May 17, 2007).

7. § 655.56 Document Retention Requirements of H–2B Employers

This section brings together recordkeeping requirements that appeared in separate paragraphs throughout the 2008 rule, including 20 CFR 655.6(e), 655.10(i), and 655.15(c) and (j). These requirements are similar to those in the WHD provisions of this interim final rule, at 29 CFR 503.17. Under § 655.56, employers must retain documents and records proving compliance with this subpart and the WHD regulation at 29 CFR part 503, including but not limited to the documents listed in paragraph (c). Paragraph (c) lists, among other things, the *H–2B Registration,* the *H–2B Petition,* documents related to recruitment of U.S. workers, payroll records, and copies of contracts with agents or recruiters. Paragraph (b) requires the employer to retain relevant records for three years from the date of certification (for approved applications), date of adjudication (for denied applications), or date DOL received the employer's letter of withdrawal (for withdrawn applications). Employers must be prepared to produce these records and documents for DOL or for other federal agencies in the event of an audit or investigation. Under paragraph (d), employers must make these documents and records available to WHD within 72 hours following a request. This interim final rule also provides that, if the *Application for Temporary Employment Certification* and the *H–2B Registration* are filed electronically, the employer must sign and retain a copy of each adjudicated *Application for Temporary Employment Certification,* including any approved modifications, amendments, or extensions.

This requirement is substantively similar to the record retention requirement currently in place for H–2B employers. In addition, employers keeping records under this provision may keep those records electronically. Hence, this requirement does not create significant additional burden. Further, the records this provision covers serve a critical purpose in the operation and integrity of the H–2B program. For example, in the past, DOL has used employer records to make basic decisions related to the certification, verify compliance with program requirements, and confirm the nature of payments under contracts with agents or recruiters.

8. § 655.57 Determinations Based on the Unavailability of U.S. Workers

This section addresses employers for which certified numbers have been reduced due to the existence of qualified, available U.S. workers who later fail to report for work or fail to stay for the period of the contract. In such cases, the employer may request a new determination from the CO, who must make a determination within 72 hours after receiving the complete request. The employer must submit its request directly to the CO, attach a statement signed by the employer, and include contact information for every U.S. worker whom the employer claims has become unavailable and the reason for nonavailability.

If the CO denies a new determination, the employer may appeal. If the CO cannot identify sufficient available U.S. workers, the CO will grant the

employer's request for a new determination. However, even when the CO makes a new determination, the employer may submit additional requests for new determinations in the future.

H. Post Certification Activities

Sections 655.60 through 655.63 concern actions an employer may take after an *Application for Temporary Employment Certification* has been adjudicated, including making a request for extension of certification, appealing a decision of the CO, and withdrawing an *Application for Temporary Employment Certification.* In addition, this interim final rule codifies the DOL's practice of maintaining a publicly-accessible electronic database of employers that have applied for H–2B certification.

1. § 655.60 Extensions

Under the interim final rule, there will be instances when an employer will have a reasonable need for an extension of the time period that was not foreseen at the time the employer originally filed the *Application for Temporary Employment Certification.* This provision provides flexibility to the employer in the event of such circumstances while maintaining the integrity of the certification and the determination of temporary need.

The provision requires that the employer submit its request to the CO in writing and provide documentation showing that the extension is needed and that the employer could not have reasonably foreseen the need. Except in extraordinary circumstances, extensions are available only to employers whose original certified period of employment is less than the 9-month maximum period allowable in this subpart.[23] Extensions differ from amendments to the period of need because extensions are requested after certification, while amendments are requested before certification. Extensions will only be granted if the employer demonstrates that the need for the extension arose from unforeseeable circumstances, such as weather conditions or other factors beyond the control of the employer (including unforeseen changes in market conditions). If an employer receives an extension, the employer must immediately provide a copy of the approved extension to its workers. An employer denied an extension may appeal the decision by following the procedures set forth in § 655.61.

2. § 655.61 Administrative Review

This provision sets forth the procedures for BALCA review of a decision of a CO. Subparagraph (a) provides the timeframe within which requests must be made and sets forth the various requirements related to the request, including that requests must contain only legal argument and be limited to evidence that was actually submitted to the CO before the date the CO's determination was issued. This provision does not provide for de novo review.

The substance of this provision is the same as that in the 2008 rule. However, this provision does not refer to the particular decision of the CO that may be appealed, such as the denial of temporary labor certification. Rather, this provision refers generally to the decisions of the CO that may be appealed, where authorized in this subpart. These decisions are identified in the section of the interim final rule that discusses the CO's authority and procedure for making that particular decision. Additionally, this provision increases from 5 business days to 7 business days: the time in which the CO will assemble and submit the appeal file in § 655.61(b); the time in which the CO may file a brief in § 655.61(c); and the time BALCA should provide a decision upon the submission of the CO's brief in § 655.61(f).

3. § 655.62 Withdrawal of an Application for Temporary Employment Certification

Under this provision, an employer may withdraw an *Application for Temporary Employment Certification* before it is adjudicated. Such request must be made in writing.

4. § 655.63 Public Disclosure

This provision codifies DOL's practice of maintaining, apart from the electronic job registry, an electronic database accessible to the public containing information on all employers that apply for H–2B temporary labor certifications. The database will continue to include non-privileged information such as the number of workers the employer requests on an application, the date an application is filed, and the final disposition of an application. The continued accessibility of such information will increase the transparency of the H–2B program and process and provide information to those currently seeking such information from the Departments through FOIA requests.

I. Integrity Measures

Sections 655.70 through 655.73 have been grouped together under the heading Integrity Measures, describing those actions DOL plans to take to ensure that an *Application for Temporary Employment Certification* filed with DOL in fact complies with the requirements of this subpart.

The Departments have not elected to establish procedures to allow for workers and organizations of workers to intervene and participate in the audit, revocation, and debarment processes. Such procedures would be administratively infeasible and inefficient and would cause numerous delays in the adjudication process. For example, we would have to identify which workers and/or organizations of workers should receive notice and should be allowed to intervene. Processing delays would be exacerbated by the fact that once identified, we would have to provide additional time and resources to notify the parties and provide them with the opportunity to prepare and present their information, regardless of whether they have any specific interest or information about the particular proceedings at hand. Workers and worker advocates continue to have the opportunity to contact the OFLC or WHD with any findings or concerns that they have about a particular employer or certification, even without a formal notice and intervention process in place.

1. § 655.70 Audits

This section outlines the process under which the CO will conduct audits of adjudicated temporary employment certification applications. These provisions are similar to the 2008 rule. The Departments' mandate to ensure that qualified workers in the United States are not available and that the foreign worker's employment will not adversely affect wages and working conditions of similarly employed U.S. workers serves as the basis for the Departments' authority to audit adjudicated applications, even if the employer's application was ultimately withdrawn after adjudication or denied. Adjudicated applications include those that have been certified, denied, or withdrawn after certification. There is real value in auditing those applications because they could be used to establish a record of employer compliance or non-compliance with program requirements and because the information they contain assists DOL in determining whether it needs to further investigate or debar an employer or its

[23] If extraordinary circumstances warrant an extension beyond the 9-month period, consistent with DHS regulations, the maximum period of H–2B employment including the extension period generally cannot exceed one year. See 8 CFR 214.2(h)(6)(ii)(B).

agent or attorney from future labor certifications.

Paragraph (a) provides the CO with sole discretion to choose which *Applications for Temporary Employment Certification* will be audited, including selecting applications using a random assignment method. When an *Application for Temporary Employment Certification* is selected for audit, paragraph (b) requires the CO to send a letter to the employer and, if appropriate, a copy of the letter to the employer's attorney or agent, listing the documentation the employer must submit and the date by which the documentation must be sent to the CO. Paragraph (b) also provides that an employer's failure to fully comply with the audit process may result in the revocation of its certification or in debarment, under §§ 655.72 and 655.73, respectively, or require the employer to undergo assisted recruitment in future filings of an *Application for Temporary Employment Certification,* under § 655.71.

Paragraph (c) permits the CO to request additional information and/or documentation from the employer as needed in order to complete the audit. Paragraph (d) provides that the CO may provide any findings made or documents received in the course of the audit to DHS or other enforcement agencies, as well as WHD. The CO may also refer any findings that an employer discriminated against a qualified U.S. worker to the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices.

2. § 655.71 CO-Ordered Assisted Recruitment

Paragraph (a) of this provision permits the CO to require an employer to participate in assisted recruitment for any future *Application for Temporary Employment Certification,* if the CO determines as a result of an audit or otherwise that a violation that does not warrant debarment has occurred. This provision will also assist those employers that, due to either program inexperience or confusion, have made mistakes in their *Application for Temporary Employment Certification* that indicate a need for further assistance from DOL.

Under paragraph (b) the CO will notify the employer (and its attorney or agent, if applicable) in writing of the requirement to participate in assisted recruitment for any future filed *Application for Temporary Employment Certification* for a period of up to 2 years. The assisted recruitment will be at the discretion of the CO, and determined based on the unique circumstances of the employer.

As set forth in paragraph (c), the assisted recruitment may consist of, but is not limited to, reviewing the employer's advertisements before posting and directing the employer where such advertisements are to be placed and for how long, requiring the employer to conduct additional recruitment, requesting and reviewing copies of all advertisements after they have been posted, and requiring the employer to submit proof of contact with past U.S. workers, and proof of SWA referrals of U.S. workers. If an employer materially fails to comply with the requirements of this section, paragraph (d) provides that the employer's application will be denied and the employer may be debarred from future program participation under § 655.73.

3. § 655.72 Revocation

Under this section, OFLC can revoke an approved H–2B temporary labor certification under certain conditions, including where there is fraud or willful misrepresentation of a material fact in the application process as defined in § 655.73(d), or a substantial failure to comply with the terms and conditions of the certification, as defined in § 655.73(d) and (e). Discussion of the standards used in determining willful misrepresentations and substantial failures is discussed in the preamble to 29 CFR 503.19 (Violations) of this interim final rule. OFLC may also revoke a certification upon determining that the employer failed to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, audit, or law enforcement function, or that the employer failed to comply with one or more sanctions or remedies imposed by WHD, or with one or more decisions or orders of the Secretary of Labor, with respect to the H–2B program.

The procedures for revocation begin with OFLC sending the employer a Notice of Revocation. Upon receiving the Notice of Revocation, the employer has two options: (1) It may submit rebuttal evidence or (2) appeal the revocation under the procedures in § 655.61. If the employer does not file rebuttal evidence or an appeal within 10 business days of the date of the Notice of Revocation, the Notice will be deemed final agency action and will take effect immediately at the end of the 10-day period. If the employer chooses to file rebuttal evidence, and the employer timely files that evidence, OFLC will review it and inform the employer of the final determination on revocation within 10 business days of receiving the rebuttal evidence.

If OFLC determines that the certification should be revoked, OFLC will inform the employer of its right to appeal under § 655.61. The employer must file the appeal of OFLC's determination within 10 business days, or OFLC's decision becomes the final decision of the Secretary and will take effect immediately after the 10-day period.

If the employer chooses to appeal either in lieu of submitting rebuttal evidence, or after OFLC makes a determination on the rebuttal evidence, the appeal will be conducted under the procedures contained in § 655.61. The timely filing of either the rebuttal evidence or an administrative appeal stays the revocation pending the outcome of those proceedings. If the temporary labor certification is ultimately revoked, OFLC will notify DHS and the Department of State.

Section 655.72(c) lists an employer's continuing obligations to its H–2B and corresponding workers if the employer's H–2B certification is revoked. The obligations include reimbursement of actual inbound transportation, visa, and other expenses (if they have not been paid), payment of the workers' outbound transportation expenses, payment to the workers of the amount due under the three-fourths guarantee; and payment of any other wages, benefits, and working conditions due or owing to workers under this subpart.

When an employer's certification is revoked, the revocation applies to that particular certification only; violations relating to a particular certification will not be imputed to an employer's other certifications in which there has been no finding of employer culpability. However, in some situations, OFLC may revoke all of an employer's existing labor certifications where the underlying violation applies to all of the employer's certifications. For instance, if OFLC finds that the employer meets either the basis for revocation in subparagraph (a)(3) of this section (failure to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, audit, or law enforcement function) or in subparagraph (a)(4) of this section (failure to comply with sanctions or remedies imposed by WHD or with decisions or orders of the Secretary of Labor with respect to the H–2B program), this finding could provide a basis for revoking any and all of the employer's existing labor certifications. Additionally, where OFLC finds that violations of paragraphs (a)(1) or (a)(2) of this section affect all of the

employer's certifications, such as where an employer misrepresents its legal status, OFLC also may revoke that employer's certifications. Lastly, where an employer's certification has been revoked, OFLC would take a more careful look at the employer's other certifications to determine if similar violations exist that would warrant their revocation.

The Departments recognize the seriousness of revocation as a remedy; accordingly, the bases for revocation reflect violations that significantly undermine the integrity of the H–2B program. OFLC intends to use the authority to revoke only when an employer's actions warrant such a severe consequence. OFLC does not intend to revoke certifications if an employer commits minor mistakes.

4. § 655.73 Debarment

This interim final rule revises the debarment provision from the 2008 rule to strengthen the enforcement of H–2B labor certification requirements and to clarify the basis under which debarment may be applied. Under § 655.73(a), OFLC may debar an employer if it finds that the employer: willfully misrepresented a material fact in its *H–2B Registration,* approved *Application for Temporary Employment Certification,* or *H–2B Petition;* substantially failed to meet any of the terms and conditions of *H–2B Registration,* approved *Application for Temporary Employment Certification,* or *H–2B Petition;* or willfully misrepresented a material fact to the Department of State during the visa application process. Section 655.73(a)(2) defines a ''substantial failure'' to mean a willful failure to comply that constitutes a significant deviation from the terms and conditions of such documents, in accordance with the statutory definition of ''substantial failure'' in 8 U.S.C. 1184(c)(14)(D), INA section 214(c)(14)(D).

Section 655.73(d) provides the standard for determining whether a violation was willful. Section 655.73(e) describes the factors that OFLC may consider in determining whether a violation constitutes a significant deviation from the terms and conditions of the *H–2B Registration,* approved *Application for Temporary Employment Certification,* or *H–2B Petition.* This list of factors is not exclusive, but it offers some guidance as to what OFLC generally considers when determining whether a violation would warrant debarment. The factors are the same factors used by WHD to determine whether a violation is significant under 29 CFR 503.19(c) of this interim final rule. The preamble for 29 CFR 503.19 explains these definitions in detail.

Section 655.73(f) provides a comprehensive but not exhaustive list of violations that would warrant debarment where the standards in § 655.73(d)–(e) are met. This is an updated list of debarrable violations from the 2008 rule. The most significant differences are that a single act, as opposed to a pattern or practice of such actions, would be sufficient to merit debarment and that the following violations would be considered debarrable:

- Improper layoff or displacement of U.S. workers or workers in corresponding employment (§ 655.73(f)(4));
- A violation of the requirements of § 655.20(o) or (p) concerning fee shifting and related matters (§ 655.73(f)(10));
- A violation of any of the anti-discrimination provisions listed in § 655.20(r) (§ 655.73(f)(11));
- Failure to comply with the assisted recruitment process (§ 655.73(f)(7)); and
- A material misrepresentation of fact during the registration or application process (§ 655.73(f)(14)).

The procedures for debarment are similar to the debarment procedures contained in the 2008 rule. They begin with OFLC sending the employer, attorney, or agent a Notice of Debarment. Upon receiving the Notice of Debarment, the party has two options: It may submit rebuttal evidence or request a hearing. If the party does not file rebuttal evidence or request a hearing within 30 days, the Notice will be deemed final agency action and will take effect immediately at the end of the 30-day period. If the party timely files rebuttal evidence, OFLC will review it and inform the party of the final determination on debarment within 30 days of receiving the rebuttal evidence. If OFLC determines that the party should be debarred, OFLC will inform the party of its right to request a hearing. The party must request a hearing of OFLC's determination within 30 days, or OFLC's decision becomes the final decision of the Secretary of Labor and will take effect immediately at the end of the 30-day period. The timely filing of either the rebuttal evidence or a hearing request stays the debarment pending the outcome of those proceedings.

If the employer chooses to request a hearing either in lieu of submitting rebuttal evidence, or after OFLC makes a determination on the rebuttal evidence, the hearing will be conducted before an Administrative Law Judge (ALJ) under the procedures contained in 29 CFR part 18. After the hearing, the ALJ must affirm, reverse, or modify OFLC's determination. The ALJ's decision becomes the final agency action unless either party seeks review of the decision with the Administrative Review Board (ARB) within 30 days. If the ARB declines to accept the petition or does not issue a notice accepting the petition for review within 30 days, the ALJ's decision becomes the final agency action. If the ARB accepts the petition for review, the ALJ's decision is stayed until the ARB issues a decision.

Paragraph (h) of this section provides that copies of final DOL debarment decisions will be forwarded to DHS and DOS promptly. *See also* 8 CFR 214.1(k) (stating that upon debarment by the Department of Labor, USCIS may deny any petition filed by that petitioner for nonimmigrant status under section 101(a)(15)(H) for a period of at least 1 year but not more than 5 years). Where it is warranted, DOL will notify additional agencies, such as DOJ, of the violations.

WHD also has independent debarment authority under this interim final rule. *See* 29 CFR 503.24 and the corresponding preamble. Section 655.73(h) clarifies that while WHD and OFLC will have concurrent debarment jurisdiction, the two agencies will coordinate their activities so that a specific violation for which debarment is imposed will be cited in a single debarment proceeding. An important distinction between the OFLC and WHD debarment procedures is that the WHD debarment procedures do not provide for a 30-day rebuttal period because WHD debarments arise from investigations during which the employer has ample opportunity to submit any evidence and arguments in its favor.

Finally, § 655.73(i) provides that an employer, agent, or attorney who is debarred by OFLC or WHD from the H–2B program will also be debarred from all other foreign labor certification programs administered by DOL for the time period in the final debarment decision. Many employers, agents and attorneys participate in more than one foreign labor certification program administered by DOL. However, under the 2008 rule, a party that was debarred under the H–2B program could continue to file applications under DOL's other foreign labor programs. Under this interim final rule DOL will refuse to accept applications filed by or on behalf of a debarred party under the H–2B program in any of DOL's foreign labor certification programs.

Although DOL does not have the authority to routinely seek debarment of entities that are not listed on the ETA

Form 9142, in appropriate circumstances, DOL may pierce the corporate veil in order to more effectively remedy the violations found. Piercing the corporate veil may be necessary to foreclose the ability of individual principals of a company or legal entity to reconstitute under another business entity.

Debarment of Agents and Attorneys

This interim final rule does not limit debarment to employers. Under § 655.73(b), agents and attorneys of the employer may be debarred for their own violations as well as their participation in an employer's violation (under the 2008 rule agents could only be debarred for their participation in an employer's violation). As discussed under § 655.8, the Departments have had concerns about the role of agents in the program, and whether their presence and participation have contributed to problems with program compliance, such as the passing on of prohibited costs to employees. However, the Departments recognize that the vast majority of employers file H–2B temporary employment certification applications using an agent, and that many of these agents are intimately familiar with the H–2B program requirements, and help guide employers through the process. The Departments believe that, in order to improve program integrity and compliance, these agents and attorneys should be accountable for their own program violations, just as their employer-clients are.

The agents and attorneys who file applications on behalf of employers certify under penalty of perjury on the ETA Form 9142B *Application for Temporary Employment Certification* that everything stated on the application is true and correct. However, for example, a bad actor agent may pass on prohibited fees to workers in violation of the prohibition on collecting such fees in § 655.20(o) and 29 CFR 503.16(o) while affirming that everything on the application is true and correct, including the employer's declaration that its agents and/or attorneys have not sought or received prohibited fees. In addition, § 655.20(p) and 29 CFR 503.16(p) require an employer to contractually prohibit an agent or recruiter from seeking or receiving payments from prospective employees. This creates a potential loophole, under which an employer may contractually prohibit the attorney or agent from collecting prohibited fees, yet the attorney or agent independently charges the workers for prohibited fees. In this situation, the employer will not be debarred for the independent violation of the agent or attorney because the employer has not committed any violation, provided the employer did not know or have reason to know of such independent violation. The 2008 rule did not provide a mechanism for holding the attorney or agent accountable for such a violation absent a link to an employer violation. This interim final rule closes that loophole by applying debarment to independent violations by attorneys and agents, recognizing that agents and attorneys should be held accountable for their own independent willful violations of the H–2B program, separate from an employer's violation. This concept applies throughout the program sanction sections, including the OFLC and WHD debarment provisions at § 655.73(b) and 29 CFR 503.24(b), as well as the WHD sanctions and remedies section, as discussed further in the preamble at 29 CFR 503.20. These enhanced compliance measures apply only to the agents and attorneys who are signatories on the ETA Form 9142, as these agents and attorneys have become directly involved with the H–2B program and have made attestations to DOL.

The Departments do not intend to make attorneys or agents strictly liable for debarrable offenses committed by their employer clients, nor do we intend to debar attorneys who obtain privileged information during the course of representation about their client's violations or whose clients disregard their legal advice and commit willful violations. DOL will be sensitive to the facts and circumstances in each particular instance when considering whether an attorney or agent has participated in an employer's violation; DOL will seek to debar only those attorneys or agents who work in collusion with their employer-clients to either willfully misrepresent material facts or willfully and substantially fail to comply with the regulations. Similarly, where employers have colluded with their agents or attorneys to commit willful violations, we will consider debarment of the employer as well.

OFLC and WHD publicly post a list of employers, agents, or attorneys who have been debarred under all of the labor certification programs. Where circumstances warrant, DOL may decide to report debarred attorneys to State bar associations using the information provided in the ETA Form 9142, which provides a field for the attorney's State bar association number and State of the highest court where the attorney is in good standing.

Period of Debarment

Under this interim final rule, an employer, attorney, or agent may not be debarred for less than 1 year nor more than 5 years from the date of the final debarment decision. This increases the maximum debarment period, which was 3 years in the 2008 rule. The 1 to 5-year range for the period of debarment is consistent with the H–2B enforcement provisions in the INA, and the Departments believe that it is appropriate to apply the same standard in our regulations. 8 U.S.C. 1184(c)(14)(A)(ii), INA section 214(c)(14)(A)(ii); *see also* 8 CFR 214.1(k). The Departments do not intend to debar employers, attorneys, or agents who make minor, unintentional mistakes in complying with the program, but rather those who commit a willful misrepresentation of a material fact, or a substantial failure to meet the terms and conditions, in the *H–2B Registration, Application for Prevailing Wage Determination, Application for Temporary Employment Certification,* or *H–2B Petition.* Additionally, just because OFLC has the authority to debar a party for up to 5 years does not mean that would be the result for all debarment determinations, as OFLC retains the discretion to determine the appropriate period of debarment based on the severity of the violation.

The debarment timeline varies greatly depending on the timing of when violations are discovered through OFLC audits, WHD targeted investigations, or WHD investigations initiated by complaints. In other words, there is no one time within a season when a debarment proceeding might be initiated. Additionally, various factors affect the timing of an investigation that may lead to debarment, including the complexity of the case and the number of violations involved. Parties subject to debarment also have the right to appeal the debarment decision. Thus, DOL cannot ensure any particular timing for the debarment process, or that the timing would align before an employer obtains authorization to bring in H–2B workers for another season.

V. Addition of 29 CFR Part 503

Effective January 18, 2009, pursuant to INA section 214(c)(14)(B), DHS transferred to DOL enforcement authority for the provisions in section 214(c)(14)(A)(i) of the INA that govern petitions to admit H–2B workers. *See also* 8 CFR 214.2(h)(6)(ix) (stating that the Secretary of Labor may investigate employers to enforce compliance with the conditions of a petition and Department of Labor-approved

temporary labor certification to admit or otherwise provide status to an H–2B worker). This enforcement authority has been further delegated within the DOL to the Administrator of WHD.[24] The 2008 rule contained the regulatory provisions governing ETA's processing of the employer's *Application for Temporary Employment Certification* and WHD's enforcement responsibilities in ensuring that the employer had not willfully misrepresented a material fact or substantially failed to meet a condition of such application or the DHS Form I–129, Petition for a Nonimmigrant Worker for an H–2B worker.

The Departments have carefully reviewed the 2008 rule, and this interim final rule provides substantive changes to both the certification and enforcement processes to enhance protection of U.S. and H–2B workers.

This interim final rule includes a new part, 29 CFR part 503, to further define and clarify the protections for workers. This part and 20 CFR part 655, subpart A, have added workers in corresponding employment to the protected worker group, imposed additional recruitment obligations and employer obligations for laid off U.S. workers, and increased wage protections for H–2B workers and workers in corresponding employment. Additionally, the Departments have enhanced WHD's enforcement role in administrative proceedings following a WHD investigation, such as by allowing WHD to pursue debarment rather than simply recommending to ETA that it debar an employer as it did under the 2008 rule.

To ensure consistency and clear delineation of responsibilities between DOL agencies implementing and enforcing H–2B provisions, this new part 503 was written in close collaboration with ETA and is being published concurrently with ETA's interim final rule in 20 CFR part 655, subpart A, to amend the employer certification process.

A. General Provisions and Definitions

Sections 503.0 through 503.8 provide general background information about the H–2B program and its operation. Section 503.1 is similar to the 2008 rule provision at 20 CFR 655.1; it explains the standards governing the H–2B program, the respective roles of ETA and WHD, and the consultative role played by DOL. Section 503.2 is similar to the 2008 rule provision at 20 CFR 655.2; it explains in particular that WHD does not enforce compliance with the provisions of the H–2B program in the Territory of Guam. Section 503.3 describes how DOL will coordinate both internally and with other agencies.

1. § 503.4 Definition of Terms

This section contains definitions that are identical to those contained in 20 CFR part 655, subpart A, except that this section contains only those definitions applicable to this part. The preamble to 20 CFR 655.5 contains the relevant discussion of these definitions.

2. § 503.5 Temporary Need

This section mirrors the requirements set forth in 20 CFR 655.6; the preamble to that section includes a full discussion of this provision.

3. § 503.6 Waiver of Rights Prohibited

This section prohibits an employer from seeking to have workers waive or modify any rights granted them under these regulations. Under this provision, any agreement purporting to waive or modify such rights is void, with limited exceptions. The Departments recognize the vulnerability of foreign H–2B workers, and believe that the non-waiver principle is important to ensure that unscrupulous employers do not induce waiver of rights under the program. Such waiver would also undermine the required H–2B wages and working conditions, which are necessary to prevent an adverse effect on U.S. workers. This provision is also consistent with similar prohibitions against waiver of rights under other laws, such as the Family and Medical Leave Act, *see* 29 CFR 825.220(d), and the H–2A program, *see* 29 CFR 501.5.

4. § 503.7 Investigation Authority of Secretary of Labor

This section retains the authority established under 20 CFR 655.50 of the 2008 rule, and affirms WHD's authority to investigate employer compliance with these regulations and WHD's obligation to protect the confidentiality of complainants. This section also discusses the reporting of violations. Complaints may be filed by calling WHD at 866–4US–WAGE or by contacting a local WHD office. Contact information for local offices is available online at *http://www.dol.gov/whd/america2.htm.*

5. § 503.8 Accuracy of Information, Statements, Data

This section notes that information, statements, and data submitted in compliance with 8 U.S.C. 1184(c), INA section 214(c), or these regulations are subject to 18 U.S.C. 1001, under which entities that make false representations to the government are subject to penalties, including a fine of up to $250,000 and/or up to 5 years in prison.

B. Enforcement Provisions

1. § 503.15 Enforcement

This section provides that the investigation, inspection, and law enforcement functions that carry out the provisions of 8 U.S.C. 1184(c), INA section 214(c), and the regulations in this interim final rule pertain to the employment of H–2B workers, any worker in corresponding employment, or any U.S. worker improperly rejected for employment or improperly laid off or displaced. WHD investigates complaints filed by both foreign and U.S. workers affected by the H–2B program, as well as concerns raised by other federal agencies, such as DHS or DOS, regarding particular employers and agents. WHD also conducts targeted or directed (*i.e.,* not complaint-based) investigations of H–2B employers to evaluate program compliance. WHD's enforcement authority is outlined in the preamble under 20 CFR 655.2 and the addition of 29 CFR part 503, and was discussed in detail in the 2008 rule, 73 FR 78020, 78046–47 (civil monetary penalties and remedies). The Departments reaffirm that DOL—and within DOL, WHD—is authorized to conduct the enforcement activities described in this interim final rule.

Corresponding workers, as defined under 20 CFR 655.5, are included in these enforcement provisions in order to ensure that U.S. workers are not adversely affected by the employment of H–2B workers. The preamble at 20 CFR 655.5 discusses the rationale for including corresponding workers in this interim final rule. The Departments believe that giving corresponding workers this means of redress is critical to effectuating their mandate to ensure that the certification and employment of H–2B aliens does not harm similarly-situated U.S. workers. Further, it helps to prevent situations where U.S. workers who are employed alongside H–2B workers are not afforded the pay, benefits, and worker protections that their H–2B counterparts enjoy.

2. § 503.16 Assurances and Obligations of H–2B Employers

The assurances and obligations described in this section are identical to those in 20 CFR 655.20. The preamble to 20 CFR 655.20 contains the relevant discussion of the assurances and obligations for employers participating in the H–2B program.

[24] Sec'y of Labor Order No. 01–2014 (Dec. 19, 2014).

3. § 503.17 Document Retention Requirements of H–2B Employers

The document retention requirements in this section are similar to those in 20 CFR 655.56, with minor differences related to OFLC's and WHD's separate interests. The preamble to 20 CFR 655.56 discusses these recordkeeping requirements. Employers must retain documents and records proving compliance with the regulations, including but not limited to the specific documents listed in this section that require, for example, retention of documentation showing employers' recruitment efforts, workers' earnings, and reimbursement of transportation and subsistence costs incurred by workers. This section does not require employers to create any new documents, but simply to preserve those documents that are already required for participation in the H–2B program. The Departments believe that these documentation retention requirements and a retention period of 3 years will be sufficient for purposes of WHD's enforcement responsibilities in this interim final rule, which, as discussed in the preamble introducing this part, have been augmented by the addition of workers in corresponding employment to the protected worker group, additional recruitment obligations and employer obligations for laid off U.S. workers, and increased wage protections for H–2B workers and workers in corresponding employment.

Employers are required to make such records available to WHD within 72 hours following a request by WHD. This time frame is the same under the FLSA, where employers who maintain records at a central recordkeeping office, other than in the place(s) of employment, are required to make records available within 72 hours following notice from WHD. See 29 CFR 516.7. This provision, which has been in place for decades, has not created undue burden for employers; indeed, as many H–2B employers are likely covered by the FLSA, this provision results in no additional burden. A full discussion of the use of electronic records can be found in the preamble to 20 CFR 655.56.

4. § 503.18 Validity of Temporary Labor Certification

This section mirrors 20 CFR 655.55, and corresponds to 20 CFR 655.34 (a) and (b) in the 2008 rule, providing the time frame and scope for which an *Application for Temporary Employment Certification* is valid. It explains that the temporary labor certification is only valid for the period of time between the beginning and ending dates of employment, and is only valid for the number of H–2B positions, the job classification and specific services to be performed, and the employer listed on the certification. Further, the certification may not be transferred to another employer unless that employer is a successor in interest to the employer to which the certification was issued.

5. § 503.19 Violations

Under this section, the Departments specify the types of violations that may be cited as a result of an investigation. However, the definitions and concepts used in this section apply to all violations under the H–2B program, regardless of whether the violation results in revocation imposed by OFLC pursuant to 20 CFR 655.72, debarment imposed by OFLC pursuant to 20 CFR 655.73 or WHD pursuant to § 503.24, monetary or other remedies assessed by WHD pursuant to § 503.20, or civil money penalties assessed by WHD pursuant to § 503.23.

Under paragraphs (a)(1) and (3) of this section, a violation may consist of a willful misrepresentation of a material fact on the *H–2B Registration,* the *Application for Temporary Employment Certification,* or the *H–2B Petition,* or to the Department of State during the visa application process. Under paragraph (a)(2) of this section, a violation may consist of a substantial failure to meet any of the conditions of the *H–2B Registration, Application for Temporary Employment Certification,* or *H–2B Petition.* A ''substantial failure'' is defined as ''a willful failure to comply that constitutes a significant deviation from the terms and conditions of such documents.''

Violations under the H–2B program, both in the 2008 rule and this interim final rule, have been defined in accordance with the INA's provisions regarding H–2B violations. Specifically, INA section 214(c)(14)(A), 8 U.S.C. 1184(c)(14)(A), sets forth two potential violations under the H–2B program: (1) ''a substantial failure to meet any of the conditions of the petition'' and (2) ''a willful misrepresentation of a material fact in such petition.'' The INA further defines a ''substantial failure'' to be a ''willful failure to comply . . . that constitutes a significant deviation from the terms and conditions of a petition.'' 8 U.S.C. 1184(c)(14)(D), INA section 214(c)(14)(D). The *H–2B Petition* includes the approved *Application for Temporary Employment Certification. See* § 503.4; 20 CFR 655.5.

Based on this statutory language, it is the Departments' view that non-willful violations are not cognizable under the H–2B program. In this interim final rule, the basis for determining violations continues to be either a misrepresentation of material fact or a substantial failure to comply with terms and conditions, both of which will be determined to be a violation if the evidence surrounding the violation establishes that it is willful. *See* § 503.19(a)(1) & (2) (WHD violations, which lead to remedies, civil monetary penalties, and/or debarment), 20 CFR 655.72(a)(1) & (2) (OFLC revocation), 20 CFR 655.73(a)(1)–(3) (OFLC debarment). Paragraph (b) of this section sets out when a violation qualifies as willful. To determine whether a violation is willful, DOL will consider whether the employer, attorney, or agent knows its statement is false or that its conduct is in violation, or shows reckless disregard for the truthfulness of its representation or for whether its conduct satisfies the required conditions. *See* § 503.19(b); 20 CFR 655.73(d). This is consistent with the longstanding definition of willfulness. *See McLaughlin* v. *Richland Shoe Co.,* 486 U.S. 128 (1988); *see also Trans World Airlines, Inc.* v. *Thurston,* 469 U.S. 111 (1985).

Further, tracking the INA language, 8 U.S.C. 1184(c)(14)(D), INA section 214(c)(14)(D), a substantial failure continues to be defined as willful as well as a significant deviation from the terms or conditions of a petition. *See* § 503.19(a)(2), 20 CFR 655.72(a)(2), 20 CFR 655.73(a)(2). Paragraph (c) of this section provides guidance on determining whether a failure to comply constitutes a significant deviation from the terms and conditions of the *H–2B Registration, Application for Temporary Employment Certification,* or *H–2B Petition,* and provides a non-exhaustive list of factors that WHD may consider. The factors are the same factors used by OFLC to determine whether a substantial failure is a ''significant deviation'' for purposes of debarment under 20 CFR 655.73 and are similar to the factors used by WHD to determine the amount of civil monetary penalties (CMPs) to be assessed under § 503.23.

When WHD encounters violations that do not rise to the level of willfulness, it puts the party on notice regarding future compliance. WHD will consider subsequent violations committed with the knowledge that such acts or omissions violate H–2B program requirements to be willful. In evaluating whether a first-time violation constitutes a willful violation, WHD will look at all circumstances, including the fact that employers submit a signed *Application for Temporary Employment Certification* attesting under penalty of perjury that that they know and accept the obligations of the program, which

are listed clearly in Appendix B of the *Application,* as well as submitting a signed *H–2B Petition,* which requires employers to certify under penalty of perjury that the information is true and accurate to the best of their knowledge. *See* § 503.19(d).

6. § 503.20 Sanctions and Remedies—General

This section sets forth the remedies that WHD will pursue when it determines that there has been a violation(s), as described in § 503.19. These remedies are largely the same types of remedies WHD pursued in its enforcement under the 2008 rule, see 20 CFR 655.65, upon determining that a violation had occurred. Remedies include but are not limited to the recovery of unpaid wages, recovery of prohibited recruitment fees paid or impermissible deductions, and wages due for improperly placing workers in areas of employment or in occupations other than those identified on the *Application for Temporary Employment Certification;* enforcement of the provisions of the job order, 8 U.S.C. 1184(c), INA section 214(c), 29 CFR part 655, subpart A, or the regulations in this part; assessment of civil money penalties (CMPs); and make-whole relief for any person who has been discriminated against, as well as reinstatement and other make-whole relief for U.S. workers who were improperly denied employment. These remedies may be sought from the employer, the employer's successor in interest, or from the employer's agent or attorney, as appropriate. WHD may also seek debarment, concurrent with ETA's debarment authority. WHD's debarment authority is discussed under § 503.24.

a. *Liability for prohibited fees collected by foreign labor recruiters.* As the preamble to the 2008 rule emphasized, see 73 FR 78037, and as DHS regulations have made clear, *see* 8 CFR 214.2(h)(6)(i)(B), the recruitment of foreign workers is an expense to be borne primarily by the employer and not by the foreign worker, who generally should not have to pay a fee as a condition of obtaining access to the job opportunity. Examples of exploitation of foreign workers, who in some instances have been required to give recruiters thousands of dollars to secure a job, have been widely reported. The Departments are concerned about the exploitation of workers who have heavily indebted themselves to secure a place in the H–2B program, and believe that such exploitation may adversely affect the wages and working conditions of U.S. workers, driving down wages and working conditions for all workers, foreign and domestic. The Departments' general prohibition on collecting placement or recruitment fees, directly or indirectly, as a condition of H–2B employment is consistent with Executive Order and regulatory changes in the federal contracting arena, prohibiting charging of recruitment fees to employees as part of the Federal Government's efforts to enhance protections against trafficking in persons. *See, e.g.,* Strengthening Protections Against Trafficking in Persons in Federal Contracts, Exec. Order No. 13627 (Sept. 25, 2012); 80 FR 4967 (Jan. 29, 2015); *see also* 8 U.S.C. 1375b (requiring pamphlet advising of temporary workers' rights and available protections against human trafficking).

The Departments believe that requiring employers to incur the costs of recruitment is reasonable, even when taking place in a foreign country. However, the Departments recognize that an employer's ability to control the actions of agents and subcontractors across international borders is constrained, just as the Departments' ability to enforce regulations across international borders is constrained. As discussed in the preamble to 20 CFR 655.20(p), the Departments are requiring that the employer, as a condition of applying for temporary labor certification for H–2B workers, contractually forbid any foreign labor contractor or recruiter (or any agent or employee of such agent or recruiter) whom the employer engages in recruitment of prospective H–2B workers to seek or receive payments from prospective employees. DOL will attempt to ensure the bona fides of such contracts and will work together with DHS, whose regulations also generally preclude the approval of an *H–2B Petition* and provide for denial or revocation if the employer knows or has reason to know that the worker has paid, or has agreed to pay, prohibited fees to a recruiter, facilitator, agent, and similar employment service as a condition of an offer or maintaining condition of H–2B employment. *See* 8 CFR 214.2(h)(6)(i)(B). As explained in WHD Field Assistance Bulletin No. 2011–2, any fee that facilitates an employee obtaining the visa in order to be able to work for that employer will be considered a recruitment fee, which must be borne by the H–2B employer. This is consistent with the DHS regulations. Although employees may voluntarily pay some fees to independent third-party facilitators for services such as assisting the employee to access the internet or in dealing with DOS, such fees may be paid by employees only if they are truly voluntary and not made a condition of access to the job opportunity.

When employers use recruiters, and in particular when they impose the contractual prohibition on collecting prohibited fees, they must make it abundantly clear that the recruiter and its agents or employees, whether in the United States or abroad, are not to receive remuneration from the foreign worker recruited in exchange for access to a job opportunity or in exchange for having that worker maintain that job opportunity. For example, evidence showing that the employer paid the recruiter no fee or an extraordinarily low fee, or continued to use a recruiter about whom the employer had received credible complaints, could be an indication that the contractual prohibition was not bona fide. In addition, where WHD determines that workers have paid these fees and the employer cannot demonstrate the requisite bona fide contractual prohibitions, WHD will require the employer to reimburse the workers in the amount of these prohibited fees. However, where an employer has complied in good faith with this provision and has contractually prohibited the collection of prohibited fees from workers, and exercised reasonable diligence to ensure that its agents and others involved in the recruitment process, whether in the United States or abroad, adhere to this contractual prohibition, there is no willful violation.

b. *Agent and attorney liability.* For the reasons stated in the discussion under Debarment of Agents and Attorneys in 20 CFR 655.73, agent and attorney signatories to Form 9142B will be liable for their independent willful violations of the H–2B program, as well as their participation in an employer's violation. As noted earlier under § 503.19 a willful misrepresentation of a material fact or a willful failure to meet the required terms and conditions occurs when the employer, attorney, or agent knows its statement is false or that its conduct is in violation, or shows reckless disregard for the truthfulness of its representation or for whether its conduct satisfies the required conditions. Under § 503.20(b), remedies will be sought directly from the employer or its successor, or from the employer's agent or attorney, where appropriate. For example, it would be appropriate to seek reimbursement of prohibited fees to affected workers from an attorney or agent, as opposed to an employer, where the employer has contractually prohibited the attorney or agent from collecting such fees, the employer has exercised reasonable

diligence in determining such fees were not collected, yet the agent or attorney does so unbeknownst to the employer, despite the employer having affirmed on the *Application for Temporary Employment Certification* that everything in the application is true and correct, including the employer's attestation that ''[t]he employer and its attorney, agents and/or employees have not sought or received payment of any kind from the H–2B worker for any activity related to obtaining temporary labor certification, including but not limited to payment of the employer's attorney or agent fees, application fees, or recruitment costs.'' On the other hand, it would not be appropriate to hold the attorney or agent liable for unpaid wages when an employer fails to pay the required wage during the period of the application where the attorney or agent was uninvolved in such a violation.

c. *Make-whole relief.* Make-whole relief in this section means that the party subjected to the violation is restored to the position, both economically and in terms of employment status, that the party would have occupied had the violation never taken place. Make-whole relief includes equitable and monetary relief such as reinstatement, hiring, front pay, reimbursement of monies illegally demanded or withheld, or the provision of specific relief such as the cash value of transportation or subsistence payments that the employer was required to, but failed to provide, in addition to the recovery of back wages, where appropriate.

d. *Workers who have returned to their home countries.* The Departments recognize that workers who have been subjected to H–2B violations often return to their home countries, and that it is more difficult for workers who live outside the United States to participate in investigations or proceedings and recover damages. The Departments do not prohibit such participation by workers who may have returned to their home country, and DOL often distributes back wages to workers who have experienced violations and have returned to their home countries. Where appropriate given the circumstances in any specific investigation or proceeding, the Departments might seek a means for the worker to travel to the U.S. to participate in such proceedings.

7. § 503.21 Concurrent Actions

Under this section, the Departments clarify the different roles and responsibilities of OFLC and WHD, and note that both agencies have concurrent jurisdiction to impose debarment. Section 503.3(c) is intended to protect the employer from being debarred by both entities for a single violation.

8. § 503.22 Representation of the Secretary of Labor

The Solicitor of Labor will continue to represent the Administrator, WHD and the Secretary of Labor in all administrative hearings under 8 U.S.C. 1184(c)(14), INA section 214(c), and these regulations.

9. § 503.23 Civil Money Penalty Assessment

This interim final rule utilizes a CMP assessment scheme similar to the CMP assessment contained in the 2008 rule, with additional and clarifying language specifying that WHD may find a separate violation for each failure to pay an individual worker properly or to honor the terms or conditions of the worker's employment, as long as the violation meets the willfulness standard and/or substantial failure standard in § 503.19. CMPs represent a penalty for non-compliance, and are payable to WHD for deposit with the Treasury.

Similar to the CMPs in the 2008 rule, the CMP assessments set CMPs at the amount of back wages owed for violations related to wages and impermissible deductions or prohibited fees, and at the amount that would have been earned but for an illegal layoff or failure to hire, up to $10,000 per violation. There is also a catch-all CMP provision for any other violation that meets the standards in § 503.19. Section 503.23(e) sets forth the factors WHD will consider in determining the level of penalties to assess for all violations but wage violations, which are similar to the factors WHD used to determine the level of CMPs assessed under 20 CFR 655.65(g) in the 2008 rule. The maximum CMP amount is set at $10,000 in order to be consistent with the statutory limit under 8 U.S.C. 1184(c)(14)(A), INA section 214(c)(14)(A).

10. § 503.24 Debarment

Under this section, WHD has the authority, upon finding a violation that meets the standards in § 503.19, to debar an employer, agent or attorney for not less than 1 year or more than 5 years. Section 503.24(a) contains a non-exhaustive list of acts or omissions that may constitute debarrable violations. Section 503.24(e) clarifies that while WHD and OFLC will have concurrent debarment jurisdiction, the two agencies will coordinate their activities so that a specific violation for which debarment is imposed will be cited in a single debarment proceeding. While OFLC has more expertise in the application and recruitment process, and will retain specific authority to debar for failure to comply with the Notice of Deficiency and assisted recruitment processes, WHD has extensive expertise in conducting workplace investigations under numerous statutes, and has been enforcing H–2B program violations since the 2008 rule became effective on January 18, 2009.

Providing WHD with the ability to order debarment, along with or in lieu of other remedies, will streamline and simplify the administrative process, and eliminate unnecessary bureaucratic hurdles by removing extra steps. Under the 2008 rule, WHD conducted investigations of H–2B employers and assessed back wages, civil money penalties, and other remedies, which the employer had the right to challenge administratively. However, WHD could not order debarment, no matter how egregious the violations, and instead was required to take the extra step of recommending that OFLC issue a Notice of Debarment based on the exact same facts, which then had to be litigated again by OFLC. Allowing WHD to impose debarment along with the other remedies it can already impose in a single proceeding will simplify and speed up this duplicative enforcement process, and result in less bureaucracy for employers who have received a debarment determination. Instead, administrative hearings and appeals of back wage and civil money penalties, which the WHD already handles, will now be consolidated with challenges to debarment actions based on the same facts, so that an employer need only litigate one case and file one appeal rather than two. This means that both matters can be resolved more expeditiously.

Moreover, WHD has extensive debarment experience under regulations implementing other programs, such as H–2A, H–1B, the Davis-Bacon Act, and the Service Contract Act. *See, e.g.,* 29 CFR 5.12. As discussed in the preamble to the 2008 rule, ''[t]he debarment of entities from participating in a government program is an inherent part of an agency's responsibility to maintain the integrity or that program.'' 73 FR 78020, 78044. WHD can assist OFLC to regulate the entities that appear before DOL, and in particular, can take more efficient action to debar based on violations WHD finds as a result of its investigations.

WHD's debarment procedures at § 503.24(d) include procedural protections similar to the procedures in OFLC's debarment proceedings at 20 CFR 655.73, including notice of

debarment, the right to a hearing before an Administrative Law Judge (ALJ), and the right to seek review of an ALJ's decision by the Administrative Review Board (ARB). However, an important distinction between the OFLC and WHD debarment procedures is that the WHD debarment procedures do not provide for a 30-day rebuttal period because WHD debarments arise from investigations during which the employer has ample opportunity to submit any evidence and arguments in its favor. During the course of an investigation, WHD contacts and interviews both the employer and workers. WHD investigators discuss potential violations with the employer and, when requested, with his or her legal representative, providing the employer ample notice and an opportunity to provide any information relevant to WHD's final determination. Rather than a formal, 30-day rebuttal period, employers have numerous opportunities during the course of a WHD investigation and during a final conference to provide critical information regarding violations that may lead to debarment.

The discussion of the time period for debarment in the preamble to OFLC's debarment provision at 20 CFR 655.73 applies equally to WHD's period of debarment. For the reasons stated under Debarment of Agents and Attorneys in 20 CFR 655.73, WHD may also debar agents and attorneys for their own independent violations as well as their participation in employer violations.

Section 503.24(f) provides that an employer, agent, or attorney who is debarred by OFLC or WHD from the H–2B program will also be debarred from all other foreign labor certification programs administered by DOL for the time period in the final debarment decision. Many employers, agents and attorneys participate in more than one foreign labor certification program administered by DOL. However, under the 2008 rule, a party that was debarred under the H–2B program could continue to file applications under DOL's other foreign labor programs. Under this interim final rule, DOL will refuse to accept applications filed by or on behalf of a debarred party under the H–2B program in any of DOL's foreign labor certification programs. Paragraph (e) of this section also provides that copies of final debarment decisions will be forwarded to DHS and DOS promptly.

Although DOL does not have the authority to routinely seek debarment of entities that are not listed on the ETA Form 9142, in appropriate circumstances, DOL may pierce the corporate veil in order to more effectively remedy the violations found. Piercing the corporate veil may be necessary to foreclose the ability of individual principals of a company or legal entity to reconstitute under another business entity.

11. § 503.25 Failure To Cooperate With Investigators

This provision prohibits interference or refusal to cooperate with a DOL investigation or enforcement action. In addition, it describes the penalties for failure to cooperate. Specifically, it notes the federal criminal laws prohibiting interference with federal officers in the course of official duties and permits WHD to recommend revocation to OFLC, initiate debarment proceedings, and/or assess CMPs for failures to cooperate that meet the violation standards set forth in § 503.19.

12. § 503.26 Civil Money Penalties—Payment and Collection

This provision instructs employers regarding how to submit payment of any CMPs owed. This section is administrative in nature and slightly modifies the provision from the 2008 rule at 20 CFR 655.65(j).

C. Administrative Proceedings

This interim final rule generally adopts the applicable administrative proceedings from the 2008 rule at 20 CFR 655.70–655.80. *See* 29 CFR 503.40–503.56. As explained in § 503.40(a), these procedures and rules prescribe the administrative appeal process that will be applied with respect to a WHD determination to assess CMPs, to debar, to enforce provisions of the job order or obligations under 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, subpart A, or the regulations in this part, and/or to the collection of monetary relief. Paragraph (b) of § 503.40 provides that the administrative appeals process prescribed by subpart C will apply to determinations (as described in paragraph (a)) involving the *H–2B Petition* regardless of the date of the violation. As discussed supra, WHD has been delegated enforcement authority for the provisions of section 214(c)(14)(A)(i) of the INA. Under this authority, WHD may impose administrative remedies (including civil money penalties) that it determines to be appropriate where it finds, after notice and the opportunity for a hearing, a violation of the *H–2B Petition* (*i.e.,* a substantial failure to meet any of the conditions of or a willful misrepresentation of a material fact on the *H–2B Petition*). The administrative appeals process prescribed by subpart C of this interim final rule will apply to such determinations and hearings, regardless of the date of the violation, as subpart C contains procedural rules; therefore, they apply to the enforcement proceedings for violations that occurred before the enactment of this interim final rule.

The administrative procedures begin with WHD notifying the party in writing regarding WHD's determination (§§ 503.41, 503.42). A party that wishes to appeal WHD's determination must request an ALJ hearing within 30 days after the date of the determination (§ 503.43). The determination will take effect unless the appeal is timely filed, staying the determination pending the outcome of the appeal proceedings (§ 503.43(e)).

The ALJ hearing will be conducted in accordance with 29 CFR part 18 (§ 503.44). The ALJ will prepare a decision following a hearing within 60 days after completion of the hearing and closing of the record (§ 503.50(a)). This decision will constitute the final agency order unless a party petitions the ARB to review the decision within 30 days and the ARB accepts a party's petition for review (§ 503.50(e)).

A party that wishes to review the ALJ's decision must, within 30 days, petition the ARB to review the decision, specifying the issue(s) stated in the ALJ decision giving rise to the petition and the reason(s) why the party believes the decision is in error (§ 503.51(a)–(b)). If the ARB does not accept the petition for review within 30 days, the decision of the ALJ is deemed the final agency action (§ 503.51(c)). When the ARB determines to review a petition, either on its own or by accepting a party's petition, it will serve notice on the ALJ and all parties to the proceeding (§ 503.51(d)). The ARB will notify the parties of the issue(s) raised, the form in which submissions will be made and the timeframe for doing so (§ 503.53). Upon receipt of the ARB's notice, the Office of Administrative Law Judges (OALJ) will forward a copy of the hearing record to the ARB (§ 503.52).

Section 503.54 provides the requirements for submission of documents to the ARB. The ARB's decision will be issued within 90 days from the notice granting the petition (§ 503.55). The official record of every completed administrative hearing will be maintained by the Chief ALJ, or, where the case was the subject of administrative review, the ARB (§ 503.56).

For the reasons stated in the preamble under Integrity Measures (20 CFR 655.70–655.73), the Departments have not adopted additional procedures allowing workers a right to intervene

and participate in every case. The importance of worker communication with WHD by filing complaints, participating in investigations, and serving as witnesses in administrative or judicial proceedings cannot be overstated; it is essential in carrying out WHD's enforcement obligations. However, WHD notes that workers already participate in WHD investigations, which involve interviews with workers regarding program compliance. It is WHD's practice to provide notice to the individual complainants and their designated representatives and/or any third-party complainants when WHD completes an investigation by providing them a copy of the WHD Determination Letter. To further protect their interests, workers can seek, and have sought, intervention upon appeal to an ALJ. *See* 20 CFR 18.10(c) and (d).

VI. Administrative Information

A. Executive Orders 12866 and 13563

Under Executive Order (E.O.) 12866 and E.O. 13563, the Departments must determine whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and to review by the OMB. Section 3(f) of the E.O. defines an economically significant regulatory action as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

The Departments have determined that this rule is an economically significant regulatory action under section 3(f)(1) of E.O. 12866. This regulation would have an annual effect on the economy of $100 million or more; however, it would not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, or public health or safety in a material way. The Departments also have determined that this rule is a significant regulatory action under sec. 3(f)(4) of E.O. 12866. Accordingly, OMB has reviewed this rule.

The results of the Departments' cost-benefit analysis under this Part (VI.A) are meant to satisfy the analytical requirements under Executive Orders 12866 and 13563. These longstanding requirements ensure that agencies select those regulatory approaches that maximize net benefits—including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity—unless otherwise required by statute. The Departments did not use the cost-benefit analysis under this Part (VI.A) for purposes forbidden by or inconsistent with the Immigration and Nationality Act, as amended

Need for Regulation

The Departments have determined that there is a need for this interim final rule in light of the litigation, described in the preamble, challenging DOL's authority to independently issue its own legislative rules in the H–2B program. *See Bayou Lawn & Landscape Servs. et al.* v. *Sec'y of Labor,* 613 F.3d 1080 (11th Cir. 2013) (holding that employers are likely to prevail on their allegation that DOL lacks H–2B rulemaking authority). *But see La. Forestry Ass'n* v. *Perez,* 745 F.3d 653 (3d Cir. 2014) (holding that DOL *does* have H–2B rulemaking authority). In particular, because of the district court's order in *Perez* v. *Perez,* No. 14–cv–682 (N.D. Fla. Mar. 4, 2015), vacating the 2008 rule and permanently enjoining DOL from enforcing it, DOL immediately ceased processing requests for prevailing wage determinations and applications for temporary labor certification in the H–2B program. Although on March 18, 2015, the *Perez* district court temporarily stayed the vacatur order, DOL cannot operate the H–2B program and cannot fulfill its consultative role and provide advice to DHS without regulations that set the framework, procedures, and applicable standards for receiving, reviewing, and issuing H–2B prevailing wages and temporary labor certifications.[25] Without advice from DOL, DHS in turn has no means by which to adequately test the domestic labor market or determine whether there are available U.S. workers to fill the employer's job opportunity. Moreover, DHS is precluded by regulation from processing any H–2B petition without a temporary labor certification from DOL. *See* 8 CFR 214.2(h)(6)(iii)(C). Therefore, the Departments have determined that this interim final rule is necessary in order to ensure the continued operation and enforcement of the H–2B program.

1. Alternatives

The Departments considered a number of alternatives: (1) Promulgating the policy changes contained in the interim final rule; (2) issuing the 2008 rule as the interim final rule; (3) and adopting various aspects of those two rules. The Departments conclude that this interim final rule retains the best features of the 2008 rule and adopts additional provisions to allow DOL to best achieve its policy objectives, consistent with its mandate under the H–2B program.

DOL had previously examined these same issues in a notice-and-comment rulemaking that was finalized in 2012; before issuing the 2012 final rule, DOL carefully considered the hundreds of substantive comments that were received and made a number of modifications to the provisions that had been in the proposed rule based upon those comments. DOL's implementation of the 2012 final rule was enjoined in the *Bayou* litigation, and DOL continued to operate the H–2B program based on the 2008 rule.

However, in light of the *Perez* vacatur order, the Departments have reevaluated the policy choices made in both the 2008 and the 2012 final rules, to determine the best ways for DOL to fulfill its responsibility to grant H–2B temporary labor certifications only when there are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers, and when the employment of H–2B workers will not adversely affect the wages and working conditions of U.S. workers similarly employed. The Departments conclude, as DOL discussed in the preamble to the 2012 final rule, that the provisions of the 2008 rule do not adequately protect U.S. workers and fail to ensure the integrity of the program. The Departments conclude that the policy choices made in this interim final rule best allow DOL to fulfill its responsibilities under the H–2B program and to provide the appropriate consultation to DHS.

3. Economic Analysis

DOL derives its estimates by comparing the baseline, that is, the program benefits and costs under the 2008 rule, against the benefits and costs associated with the implementation of the provisions in this interim final rule. The benefits and costs of the provisions of this interim final rule are estimated as incremental impacts relative to the

[25] On April 15, 2015, the federal district court in the Northern District of Florida issued an order effectively permitting DOL to continue issuing temporary labor certifications under the H–2B program through May 15, 2015.

baseline. Thus, benefits and costs attributable to the 2008 rule are not considered as benefits and costs of this interim final rule. We explain how the actions of workers, employers, and government agencies resulting from the interim final rule are linked to the expected benefits and costs.

DOL sought to quantify and monetize the benefits and costs of this interim final rule where feasible. Where DOL was unable to quantify benefits and costs—for example, due to data limitations—DOL described them qualitatively. The analysis covers 10 years (2015 through 2024) to ensure it captures major benefits and costs that accrue over time.[26] DOL has sought to present benefits and costs both undiscounted and discounted at 7 percent and 3 percent.

In addition, DOL provides an assessment of transfer payments associated with certain provisions of the interim final rule.[27] Transfer payments, as defined by OMB Circular A–4, are payments from one group to another that do not affect total resources available to society. Transfer payments are associated with a distributional effect, but do not result in additional benefits or costs to society. The rule would alter the transfer patterns and increase the transfers from employers to workers. The primary recipients of transfer payments reflected in this analysis are U.S. workers and H–2B workers. The primary payors of transfer payments reflected in this analysis are H–2B employers, and under the rule, those employers who choose to participate are likely to be those that have the greatest need to access the H–2B program. When summarizing the benefits or costs of specific provisions of this interim final rule, DOL presents the 10-year averages to reflect the typical annual effect.

The inputs used to calculate the costs of this interim final rule are described below.

a. Number of H–2B Workers

DOL estimates that from FY 2013–2014, an average of 87,998 H–2B positions were certified per year. Because the number of H–2B visas is statutorily limited, only a portion of these certified positions were ultimately filled by foreign workers.

The number of visas available in any given year in the H–2B program is 66,000, assuming no statutory changes in the number of visas available. Some costs, such as travel, subsistence, visa and border crossing, and reproducing the job order apply to these 66,000 workers. Employment in the H–2B program represents a very small fraction of the total employment in the U.S. economy, both overall and in the industries represented in this program. The H–2B program's annual cap of 66,000 visas issued per year (33,000 allocated semi-annually) represents approximately 0.05 percent of total nonfarm employment in the U.S. economy (134.8 million).[28] The number of visas per year does not fully capture the number of H–2B workers in the United States at any given time as there are exceptions to the H–2B cap; additionally, a nonimmigrant's H–2B classification may be extended for qualifying employment for a total stay of up to three years without being counted against the cap. DOL assumes that half of all H–2B workers entering the United States (33,000) in any year stay at least one additional year, and half of those workers (16,500) will stay a third year, for a total of 115,500 H–2B workers employed at any given time. This suggests that 57 percent of H–2B workers (66,000/115,500) are new entrants in a given year. Extending the analysis to the 115,500 H–2B workers we estimate are in the country at any given time, the number of H–2B workers represents approximately 0.09 percent of total nonfarm employment.

According to H–2B program data for FY 2013–2014, the average annual numbers of H–2B positions certified in the top five industries were as follows:

Landscaping Services—33,438
Construction—8,357
Amusement, Gambling, and Recreation—7,939
Food Services and Drinking Places—7,098
Janitorial Services—5,857[29]

These employment numbers represent the following percentages of the total employment in each of these industries:[30]

Landscaping Services—5.78 percent (33,438/578,970)
Construction—0.11 percent (8,357/7,316,240)
Amusement, Gambling, and Recreation—0.52 percent (7,939/1,518,405)
Food Services and Drinking Places—0.07 percent (7,098/10,057,301)
Janitorial Services—0.59 percent (5,857/991,423)

As these data illustrate, the H–2B program represents a small fraction of the total employment even in each of the top five industries in which H–2B workers are found.

b. Number of Affected Employers

DOL estimates that from FY 2013–2014, an average of 4,657 unique employers applied for H–2B workers,[31] and of these, an average of 3,955 were granted certifications. Several of the interim final rule's provisions (the requirement for employers to translate the job order from English to a language understood by the foreign workers, and payment of visa and visa-related fees) will predominantly or only apply to employers that ultimately employ H–2B workers. As there is no available source of data on the number of H–2B employer applicants who ultimately employ H–2B workers, DOL conservatively assumes that all certified H–2B employer applicants who are granted certification for H–2B workers will ultimately employ H–2B workers.

c. Number of Corresponding Workers

Several provisions of the interim final rule extend to workers in corresponding employment, defined as those non-H–2B workers who perform work for an H–2B employer, where such work is substantially the same as the work included in the job order, or is substantially the same as other work performed by H–2B workers.[32] Corresponding workers are U.S. workers employed by the same employer performing substantially the same tasks at the same locations as the H–2B workers, and they are entitled to at least the same terms and conditions of employment as the H–2B workers. Corresponding workers might be

[26] For the purposes of the cost-benefit analysis, the 10-year period starts on June 1, 2015.

[27] The specific provisions associated with transfer payments are: Wages paid to corresponding workers; payments for transportation, subsistence, and lodging for travel to and from the place of employment; and visa-related fees.

[28] U.S. Bureau of Labor Statistics (BLS). 2015. Employees on Nonfarm Payrolls by Major Industry Sector, 2005–2014. Available at *http://www.bls.gov/webapps/legacy/cesbtab1.htm.*

[29] Another industry, Forest Services, made the initial list of the top five industries, but it is not included in this analysis because the only data available for forestry also include various agriculture, fishing and hunting activities. Relevant data for forestry only were not available.

[30] U.S. Census Bureau. 2015. Available at *http://www.census.gov/econ/census/*. DOL obtained 2012 Economic Census data for the following industries: Landscaping Services; Janitorial Services; Food Services and Drinking Places; and Amusement, Gambling, and Recreation. The 2012 Economic Census did not publish data for the Construction industry because the data did not meet publication standards. In its place, DOL uses 2007 Economic Census data for the Construction industry.

[31] DOL estimates the number of unique employer applicants for FY 2013–2014 by multiplying the number of unique employers granted certification (3,955) by the ratio of unique applicants to unique employers granted certification over FY 2007–2009 (1.1774).

[32] This analysis sometimes uses the shorthand ''U.S. workers'' to refer to these workers.

temporary or permanent; that is, they could be employed under the same job order as the H–2B workers for the same period of employment, or they could have been employed before the H–2B workers, and might remain after the H–2B workers leave. However, the interim final rule excludes two categories of workers from the definition of corresponding employment. Corresponding workers are entitled to the same wages and benefits that the employer provides to H–2B workers, including the three-fourths guarantee, during the period covered by the job order. The corresponding workers would also be eligible for the same transportation and subsistence payments as the H–2B workers if they travel a long distance to reach the job site and cannot reasonably return to their residence each workday. In addition, as a result of the enhanced recruiting in this rule, including the new electronic job registry, certain costs may be avoided as employers are able to find U.S. workers in lieu of some H–2B workers. DOL believes that the costs associated with hiring a new U.S. worker would be lower than the costs associated with hiring an H–2B worker brought to the United States from abroad because the costs of visa and border crossing fees to be paid for by the employer will be avoided and travel costs may likely be less (or zero for workers who are able to return to their residence each day).

There are no reliable data sources on the number of corresponding workers at work sites for which H–2B workers are requested or the hourly wages of those workers. DOL does not systematically collect data regarding what have been defined as corresponding employees, and therefore cannot identify the numbers of workers to whom the obligations would apply. DOL extensively examined alternative data sources that might be used to accurately estimate the number of corresponding workers.

First, DOL evaluated whether WHD field staff could provide reliable information on the number of corresponding workers employed by H–2B employers based on the data gathered during investigations. This information has not been relevant to WHD investigations because the 2008 rule did not have a definition of corresponding employees and did not protect such incumbent workers; it protected only workers who were newly hired in response to the employer's required H–2B recruitment activities. Anecdotal information from investigations indicates that the number of U.S. workers similarly employed varies widely among the companies investigated. However, no reliable data on the number of workers in corresponding employment compared to the number of H–2B workers is available, because no definition of corresponding employment existed in the 2008 rule. It also is unclear whether the limited numbers available in WHD investigations reflect the number of U.S. workers who were working during the pay period that WHD conducted the on-site investigation or the number who worked there at any point during the two-year period typically covered by an investigation. Further, there is no data regarding the length of the employment of the U.S. workers. Therefore, it is impossible to compare the pattern of employment of U.S. and H–2B workers. Finally, the limited data that is available did not represent a random sample of H–2B employers, but just the subset of employers that WHD had some reason to investigate.

Second, DOL reviewed a random sample of 225 certified and partially certified applications from FY 2010 submitted by employers in response to Requests for Information (RFIs) during the application process. While the 2011 version of ETA Form 9142B includes an optional item on the number of non-family full-time equivalent employees, that number includes all employees and not only the employees in corresponding employment. (*See also* the instructions to the Form 9142, which inform the employer to ''[e]nter the number of full-time equivalent (FTE) workers the employer employs.'') Moreover, even if this number accounted for the number of corresponding employees, none of the applications in the random sample used the 2011 version of the form. Of the 225 applications reviewed, two applications gave the current number of employees as part of the other information submitted. Additionally, DOL examined data in 34 payroll tables that were provided to supplement the application. The payroll tables reported data by month for at least one year from 2007 to 2010 and included information such as the total number of workers, hours worked, and earnings for all workers performing work covered by the job order. These workers were broken down into categories for permanent workers (those already employed and performing the certified job) and for temporary workers (both H–2B workers and U.S. workers similarly employed who responded to the job order). DOL divided the total payroll by the total hours worked across the two categories of workers to estimate an average hourly wage per permanent and temporary worker. DOL compared the total number of workers in months where permanent workers were paid either more than or less than temporary employees for those months in which both were employed.

DOL found 7,548 temporary and 10,310 permanent worker-months (defined as one worker, whether full- or part-time, employed one month) in the 34 payroll tables examined. Of these, permanent employees were paid more than temporary employees in 9,007 worker-months, and were paid less than temporary employees in 1,303 worker-months. This suggests that the rule would have no impact on wages for 87 percent of permanent workers (9,007/10,310). Conversely, 13 percent of permanent workers (1,303/10,310) were paid less than temporary employees and would receive an increase in wages as a result of the rule. Calculating the ratio of 1,303 permanent worker-months to 7,548 temporary worker-months when permanent workers are paid less than temporary workers suggests that for every temporary worker-month, there are 0.17 worker-months where the permanent worker wage is less than the temporary worker wage. Extrapolating this ratio based on DOL's estimate that there are a total of 115,500 H–2B employees at any given time, suggests that 19,939 permanent workers (115,500 $\times$ 0.17) would be eligible for pay raises due to the rule.

DOL also calculated the percentage difference in the corresponding and temporary worker wages in months where temporary workers were paid more. On average, corresponding workers earning less than temporary employees would need their wages to be increased by 4.5 percent to match temporary worker wages.

For several reasons, however, DOL did not believe it was appropriate to use the data in the payroll tables to extrapolate to the entire universe of H–2B employers. First, because of the selective way in which these payroll records were collected by DOL, the distribution of occupations represented in the payroll tables is not representative of the distribution of occupations in H–2B temporary employment certification applications. The 34 payroll tables examined by DOL included the following occupations:

Nonfarm Animal Caretakers (12 payroll tables)
Landscaping and Groundskeeping Workers (4 payroll tables)
Maids and Housekeeping Cleaners (4 payroll tables)
Cooks (2 payroll tables)
Waiters and Waitresses (2 payroll tables)

Forest and Conservation Workers (2 payroll tables)
Dishwashers (1 payroll table)
Dining Room and Cafeteria Attendants and Bartender Helpers (1 payroll table)
Separating, Filtering, Clarifying, Precipitating, and Still Machine Setters, Operators, and Tenders (1 payroll table)
Food Cooking Machine Operators and Tenders (1 payroll table)
Floor Sanders and Finishers (1 payroll table)
Production Workers, All Other (1 payroll table)
Receptionists and Information Clerks (1 payroll table)
Grounds Maintenance Workers, All Other (1 payroll table)

The four payroll tables for landscaping and groundskeeping workers made up only 12 percent of the payroll tables, while applications for these workers represented 35 percent of FY 2010 applications.[33] Conversely, the 12 payroll tables from nonfarm animal caretakers made up 35 percent of the payroll tables in the sample, while applications for such workers made up only six percent of the FY 2010 applications.[34]

Second, the total number of payroll tables or payroll records provided to DOL was very small. DOL found only 34 payroll tables in 225 randomly selected applications. Furthermore, payroll records in H–2B temporary employment certification applications are provided in specific response to an RFI or in the course of a post-adjudication audit. In both instances the primary purpose of these records is to demonstrate compliance with program requirements, usually either to demonstrate proactively that the need for workers is a temporary need, or to demonstrate retroactively compliance with the wage obligation. Because payroll tables were submitted in response to an RFI rather than as a matter of routine in the application process, it is not clear that the data in the limited number of payroll tables for a given occupation are representative of all workers within that occupation in the H–2B program. Something triggered the RFI, presumably some indication that the need for temporary workers was not apparent, and therefore these applications are not representative of the 85 percent of applications that did not require a payroll table.

Third, the payroll wage information in these tables is provided at the group level, and DOL is unable to estimate how many individual corresponding workers are paid less than temporary workers in any given month. The payroll tables only allow a gross estimate of whether corresponding or temporary workers were paid more, on average, in a given month. Because wages would only increase for those U.S. workers currently making less than the prevailing wage, this information is necessary to determine the effect the rule would have on workers in corresponding employment. Finally, DOL has no data regarding the number of employees who would fall under the two exclusions in the definition of corresponding employment.

DOL, therefore, cannot confidently rely on the payroll tables alone and has no other statistically valid data to quantify the total number of corresponding workers or the number that would be eligible for a wage increase to match the H–2B workers. Nevertheless, DOL believes that the payroll tables show that the impact of the corresponding employment provision would be relatively limited, both as to the number of corresponding workers who would be paid more and as to the amount their wages would increase.

Based on all the information available to us, including the payroll tables and DOL's enforcement experience, DOL attempted to quantify the impact of the corresponding employment provision. DOL notes that the 2008 rule already protected U.S. workers hired in response to the required recruitment, including those U.S. workers who were laid off within 120 days of the date of need and offered reemployment. Therefore, this interim final rule will have no impact on their wages. This interim final rule simply extends the same protection to other employees performing substantially the same work included in the job order or substantially the same work that is actually performed by the H–2B workers, with the exception of the aforementioned incumbent employees. DOL believes that a reasonable estimate is that H–2B workers make up 75 to 90 percent of the workers in the particular job and location covered by a job order; DOL assumes, therefore, that 10 to 25 percent of the workers will be U.S. workers newly covered by the interim final rule's coverage of corresponding workers. This assumption does not discount for the fact, as noted above, that some of these U.S. workers are already covered by the prevailing wage requirement or could be covered by one of the two exclusions from the definition of corresponding employment. Carrying forward with its estimate that there are a total of 115,500 H–2B workers employed at any given time, DOL thus estimates that there will be between 12,833 (if 90 percent are H–2B workers) and 38,500 (if 75 percent are H–2B workers) U.S. workers newly covered by the corresponding employment provision.

d. Wages Used in the Analysis

In this analysis, DOL uses the most recent OES wage data available from BLS, and its most recent estimate of the ratio of fringe benefit costs to wages, 44.1 percent.[35] To represent the hourly compensation rate for an administrative assistant/executive secretary, DOL uses the median hourly wage ($23.70) for SOC 43–6011 (Executive Secretaries and Executive Administrative Assistants).[36] The hourly compensation rate for a human resources manager is the median hourly wage of $48.46 for SOC 11–3121 (Human Resources Managers).[37] Both wage rates are multiplied by 1.441 to account for private-sector employee benefits.

For registry development and maintenance activities, DOL uses fully loaded rates based on an Independent Government Cost Estimate (IGCE) produced by OFLC in 2010,[38] which are inclusive of direct labor and overhead costs for each labor category.[39] DOL inflates these fully loaded wage rates to 2014 values using the CPI–U, published by the U.S. Bureau of Labor Statistics.[40]

The 2014 wages used in the analysis are summarized in Table 3.

[33] Applications for landscaping and groundskeeping workers similarly made up 35 percent of the total number (1,893/5,467) of applications in FY 2014.

[34] In FY 2014, applications for nonfarm animal caretakers made up only 3 percent of the total number of applications (178/5,467).

[35] U.S. Bureau of Labor Statistics (BLS). 2015. Employer Costs for Employee Compensation, December 2014, news release text. March 11, 2015. Available at *http://www.bls.gov/news.release/ecec.nr0.htm* (accessed on March 12, 2015).

[36] U.S. Bureau of Labor Statistics (BLS). 2014a. Occupational Employment and Wages, May 2013, 43–6011 Executive Secretaries and Executive Administrative Assistants. April 1, 2014. Available at *http://www.bls.gov/oes/current/oes436011.htm* (accessed on March 12, 2015).

[37] U.S. Bureau of Labor Statistics (BLS). 2014b. Occupational Employment and Wages, May 2013, 11–3121 Human Resources Managers. April 1, 2014. Available at *http://www.bls.gov/oes/current/oes113121.htm* (accessed on March 12, 2015).

[38] OFLC. 2010. Independent Government Cost Estimates.

[39] DOL would not typically use a wage that included overhead costs, but here DOL uses the services of a contractor to develop the registry, and therefore the fully loaded wage is more reflective of costs.

[40] U.S. Bureau of Labor Statistics. 2015. Available at *http://data.bls.gov/cgi-bin/surveymost?cu* (accessed on March 18, 2015).

TABLE 3—WAGES USED IN THE ANALYSIS

Occupation	Hourly wage	Loaded wage [a]	CPI–U adjusted wage [b]
Administrative Assistant	$24	$34	N/A
HR Manager	48	70	N/A
Program Manager	N/A	138	150
Computer Systems Analyst II	N/A	92	100
Computer Systems Analyst III	N/A	110	119
Computer Programmer III	N/A	90	98
Computer Programmer IV	N/A	108	117
Computer Programmer Manager	N/A	124	135
Data Architect	N/A	105	114
Web Designer	N/A	125	136
Database Analyst	N/A	78	85
Technical Writer II	N/A	85	92
Help Desk Support Analyst	N/A	55	60
Production Support Manager	N/A	126	137

[a] Source: OFLC. 2010. Independent Government Cost Estimate (IGCE). Accounts for 44.1 percent fringe.
[b] Adjusted using CPI–U (2014 annual) and CPI–U (2010 annual), or 236.736/218.056
N/A: Not applicable.
Sources: BLS, 2015; BLS, 2014a; BLS, 2014b.

e. H–2B Employment in the Territory of Guam

Subject to the transfer of authority to DOL, this interim final rule applies to H–2B employers in the Territory of Guam only in that it requires them to obtain prevailing wage determinations in accordance with the process defined at 20 CFR 655.10. Because that transfer has not been effectuated, this analysis does not reflect any costs related to employment in Guam.

4. Subject-by-Subject Analysis

DOL's analysis below considers the expected impacts of the interim final rule provisions against the baseline (*i.e.,* the 2008 rule). The sections detail the costs of provisions that provide additional benefits for H–2B and/or workers in corresponding employment, expand efforts to recruit U.S. workers, enhance transparency and worker protections, and reduce the administrative burden on SWAs.

a. Three-Fourths Guarantee

In order to ensure that the capped H–2B visas are appropriately made available to employers based on their actual need for workers, and to ensure that U.S. workers can realistically evaluate the job opportunity, DOL asserts that employers should accurately state their beginning and end dates of need and the number of H–2B workers needed. To the extent that employers submit *Applications for Temporary Employment Certification* accurately reflecting their needs, the three-fourths guarantee provision should not represent a cost to employers, particularly given the 12-week and 6-week periods over which to calculate the guarantee.

b. Application of H–2B Wages to Corresponding Workers

There are two cohorts of corresponding workers: (1) The U.S. workers hired in the recruitment process and (2) other U.S. workers who work for the employer and who perform the substantially the same work as the H–2B workers, other than those that fall under one of the two exclusions in the definition. The former are part of the baseline for purposes of the wage obligation, as employers have always been required to pay U.S. workers recruited under the H–2B program the same prevailing wage that H–2B workers get. Of the latter group of corresponding workers, some will already be paid a wage equal to or exceeding the H–2B prevailing wage so their wages represent no additional cost to the employer. Those who are currently paid less than the H–2B prevailing wage will have to be paid at a higher rate, with the additional cost to the employer equal to the difference between the former wage and the H–2B wage.

As discussed above, DOL was unable to identify a reliable source of data providing the number of corresponding workers at work sites for which H–2B workers are requested or the hourly wages of those workers. Nevertheless, DOL has attempted to quantify the impacts associated with this provision. All increases in wages paid to corresponding workers under this provision represent a transfer from participating employers to U.S. workers.

In the absence of reliable data, DOL can reasonably assume that H–2B workers make up 75 to 90 percent of the workers in a particular job and location covered by the job order, with the remaining 10 to 25 percent of workers being corresponding workers newly covered by the rule's wage requirement. When these rates are applied to its estimate of the total number of H–2B workers (115,500) employed at any given time, DOL estimates that the number of corresponding workers newly covered by the corresponding employment provision will be between 12,833 and 38,500. This is an overestimate of the rule's impact since some of the employees included in the 10–25 percent proportion of corresponding workers are those hired in response to required recruitment and are therefore already covered by the existing regulation, and some employees will fall within one of the two exclusions under the definition.

The prevailing wage calculation represents a typical worker's wage for a given type of work. The prevailing wage calculation is based on the current wages received by all workers in the occupation and area of intended employment. Based on OES data,[41] DOL estimated that the weighted mean wage for the top five occupations in the H–2B program [42] reflects approximately the 60th percentile of the wage distribution of those occupations. Therefore, it is reasonable to assume that 40 percent of the corresponding workforce earns a wage that is equal to or greater than the calculated prevailing wage. Conversely,

[41] Bureau of Labor Statistics, Occupational Employment Statistics, May 2014 data, *http://www.bls.gov/oes/#data.*

[42] Landscaping and Groundskeeping Workers (SOC code: 37–3011); Maids and Housekeeping (SOC code: 37–2012); Amusement and Recreation Attendants (SOC code: 39–3091); Forest and Conservation Workers (SOC code: 45–4011); and Meat, Poultry, and Fish Cutters and Trimmers (SOC code: 51–3022).

it would be reasonable to assume that 60 percent of the workers in corresponding employment earn less than the prevailing wage and would have their wages increased as a result of the interim final rule. Applying this rate to DOL's estimate of the number of workers covered by the corresponding employment provision would mean that the number of newly covered workers who would receive a wage increase is between 7,700 and 23,100.

These newly covered U.S. workers who are currently paid below the new H–2B prevailing wage as established in the final wage rule promulgated simultaneously with this interim final rule (generally the OES mean in the area of intended employment) are likely to receive a wage increase that would be the difference between the new H–2B prevailing wage and their current wage. DOL estimated the weighted wage differences between workers at the 10th percentile and workers at the OES mean ($3.22), between workers at the 25th percentile and workers at the OES mean ($2.39), and between workers at the 50th percentile and workers at the OES mean ($1.03), respectively, for the top five occupations of the H–2B program. Using these weighted average hourly wage differences, DOL assumes that the wage increases for newly covered corresponding workers will be distributed between three hourly wage intervals: 10 percent of newly covered corresponding workers will receive an average hourly wage increase of $3.22; 15 percent will receive an average hourly wage increase of $2.39; and 35 percent will receive an hourly wage increase of $1.03.

Finally, DOL estimates that these workers in corresponding employment will have their wages increased for 1,365 hours of work. This assumes that every H–2B employer is certified for the maximum period of employment of nine months (39 weeks), and that every corresponding worker averages 35 hours of work per week for each of the 39 weeks. This is an upper-bound estimate since it is based on every employer voluntarily providing in excess of the number of hours of work required by the three-fourths guarantee for the maximum number of weeks that can be certified.

Therefore, based on all the assumptions noted above, DOL estimates the total annual transfer incurred due to the increase in wages for newly covered workers in corresponding employment ranges from $18.21 million to $54.62 million. See Table 4.

TABLE 4—TRANSFER OF CORRESPONDING WORKER WAGES

Hourly wage increase	Percent corresponding employees	Corresponding employees	Total cost
H–2B Workers Are 90% of Occupation at Firm			
$0.00	40	5,133	$0
$3.22	10	1,283	5,633,075
$2.39	15	1,925	6,271,563
$1.03	35	4,492	6,303,264
Total	100	12,833	18,207,902
H–2B Workers Are 75% of Occupation at Firm			
$0.00	40	15,400	$0
$3.22	10	3,850	16,903,617
$2.39	15	5,775	18,814,688
$1.03	35	13,475	18,898,641
Total	100	38,500	54,616,946

Source: DOL assumptions

Also, based on DOL's review of available information on the characteristics of industries employing H–2B workers, there will be natural limit on the number of corresponding workers whose wages might be affected by the revised rule. DOL found that two of the top five industries that most commonly employ H–2B workers are landscaping services and janitorial services. Establishments in these industries tend to be small: Approximately seven percent of janitorial service and three percent of landscaping establishments have more than 50 year-round employees; and 83 percent of janitorial services and 91 percent of landscaping establishments have fewer than 20 year-round employees.[43] Further, 20 percent of janitorial service firms and 30 percent of firms in landscaping do not operate year-round.[44] Therefore, DOL believes that a majority of H–2B employers are small-sized firms whose workforces are composed predominately of H–2B workers.

Finally, to the extent that firms in landscaping and janitorial services incur increased payroll costs, those increased costs are unlikely to have a significant aggregate impact. A U.S. Bureau of Economic Analysis (BEA) input-output analysis of the economy demonstrates that the demand for ''Services to Buildings and Dwellings'' (the sector in which janitorial and landscaping services are classified) is highly diffused throughout the economy.[45]

BEA calculates Direct Requirements tables that indicate the dollar amount of input from each industry necessary to produce one dollar of a specified industry's output. These results show that building services account for a relatively negligible proportion of production costs: Of 389 sectors, building services account for less than $0.01 for each dollar of output in 379 sectors, and less than $0.005 for each dollar of output in 369 sectors. The largest users of these services tend to be

[43] United States Census Bureau, 2007 Economic Census, *http://www.census.gov/econ/census/data/*.

[44] United States Census Bureau, 2007 Economic Census, *http://www.census.gov/econ/census/data/*.

[45] U.S. Department of Commerce, Bureau of Economic Analysis, Direct Requirements/After Redefinitions/Producer Value (2007), *http://www.bea.gov/industry/io_annual.htm.*.

retail trade, government and educational facilities, hotels, entertainment, and similar sectors. In other words, these services do not impact industrial productivity or the production of commodities that will result in large impacts that ripple throughout the economy. To further place this in perspective, Services to Buildings and Dwellings, upon which this characterization is based, includes more than just the janitorial and landscaping service industries. The estimated 39,295 H–2B workers hired by these industries account for only 2.2 percent of employment in the Services to Buildings and Dwellings sector, even including impacts through corresponding employee provisions (described above as limited), and are only a small fraction of the already small direct requirements figures for this sector.

Therefore, based on the characteristics of industries that use H–2B workers, only a relatively small fraction of employees and firms in those industries likely will be affected by corresponding worker provisions.

However, because DOL does not have data on the number of corresponding workers or their wages relative to prevailing wages, it cannot project firm-level impacts to those firms that do have permanent corresponding workers. Standard labor economic models suggest that an increase in the cost of employing U.S. workers in corresponding employment would reduce the demand for their labor. Because employers cannot replace U.S. workers laid off 120 days before the date of need or through the period of certification with H–2B workers, DOL concludes that there would be no short-term reduction in the employment of corresponding workers among participating employers. In the long-run, however, these firms might be reluctant to hire additional permanent staff. The extent to which such unemployment effects might result from the prevailing wage provision will be a function of: The number of permanent staff requiring wage increases; the underlying demand for the product or service provided by the firm during off-peak periods; and the firm's ability to substitute for labor to meet that off-peak demand for its products or services. First, the fewer the number of permanent staff receiving wage increases, the smaller the increase in the cost of producing the good or service. Second, the demand for labor services is a ''derived demand.'' That is, if the product or service provided has few substitutes, purchasers would prefer to pay a higher price rather than do without the product. Third, some goods and services are more difficult to produce than others by substituting equipment or other inputs for labor services. In summary, if increased wages result in a small overall cost increase, demand for the product is inelastic, and there are few suitable substitutes for labor in production, then unemployment effects are likely to be relatively small.

c. Transportation to and From the Place of Employment for H–2B Workers

The interim final rule requires H–2B employers to provide workers—both H–2B workers and those in corresponding employment who are unable to reasonably return to their permanent residences each day—with transportation and daily subsistence to the place of employment from the place from which the worker has come to work for the employer, whether in the United States or abroad, if the worker completes 50 percent of the period of the job order. The employer must also pay for or provide the worker with return transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer if the worker completes the period of the job order or is dismissed early. The impacts of requiring H–2B employers to pay for employees' transportation and subsistence represent transfers from H–2B employers to workers because they represent distributional effects, not a change in society's resources.[46]

To estimate the transfer related to transportation, DOL first calculated the average number of certified H–2B positions per year during FY 2013–2014 from the 10 most common countries of origin, along with each country's proportion of this total.[47] These figures, presented in Table 5, are used to create weighted averages of travel costs in the analysis below.

TABLE 5—NUMBER OF H–2B WORKERS BY COUNTRY OF ORIGIN, FY 2013

Country	Number of workers	Percent of total
Mexico	88,322	84.1
Jamaica	5,827	5.6
Guatemala	2,734	2.6
United Kingdom	1,414	1.3
South Africa	1,009	1.0
Philippines	922	0.9
El Salvador	478	0.5
Honduras	409	0.4
Canada	337	0.3
Romania	306	0.3
Total	104,984	100

Source: Department of Homeland Security, 2015.

DOL calculates transportation costs by adding two components: The estimated cost of a bus or ferry trip from a regional city[48] to the consular city to obtain a visa, and the estimated cost of a trip from the consular city to St. Louis. Workers from Mexico and Canada (85 percent of the total) are assumed to travel by bus; workers from all other

[46] For the purpose of this analysis, H–2B workers are considered temporary residents of the United States.

[47] U.S. Department of Homeland Security (DHS). 2013. Yearbook of Immigration Statistics. Available at *http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2013/NI/nonimmsuptable2d.xls* (accessed on March 18, 2015).

[48] Where possible, DOL used a selection of cities to represent travel from different regions of the country.

countries, by air. Because this interim final rule requires an employer to hire U.S. applicants until 21 days before the date of need, employers will not have to pay a premium for refundable fares. This analysis, therefore, includes only the cost for non-refundable tickets.

The travel cost estimates are presented in Table 6. DOL estimated the round-trip transportation costs by doubling the weighted average one-way cost (for a round-trip travel cost of $836), then multiplying by the annual number of H–2B workers entering the United States (66,000). DOL estimates average annual transfer payments associated with transportation expenditures to be approximately $55.2 million. Employers likely are already paying some of this cost, either voluntarily in order to secure the workers or because of the employer's obligations under the FLSA Under the FLSA, the majority of H–2B employers are required to pay for the proportion of inbound and outbound transportation costs that would otherwise bring a worker's earnings below the minimum wage in the first and last workweeks of employment. However, it is not possible to determine how much of the cost of transportation employers currently are paying. To the extent that this does already occur, this transportation transfer is an upper-bound estimate. DOL also believes it has over-estimated this transfer for the additional reason that inbound transportation is only due for workers who complete 50 percent of the job order and outbound transportation is due only for those who complete the full job order or are dismissed early.

TABLE 6—COST OF TRAVEL FOR H–2B WORKERS

Item	Value
New entrants per year	66,000
Mexico	
One way travel (bus)—Hometown to Monterrey [49]	$52
One way travel (bus)—Monterrey to Juarez [50]	78
One way travel (bus)—El Paso to St. Louis [51]	230
Total one way travel	360
Jamaica	
One way travel (bus)—Hometown to Kingston [52]	1
One way travel (air)—Kingston to St. Louis [53]	502
Total one way travel	503
Guatemala	
One way travel (bus)—Hometown to Guatemala City [54]	2
One way travel (air)—Guatemala City to St. Louis [55]	758
Total one way travel	760
United Kingdom	
One way travel (bus or rail)—Hometown to London [56]	32
One way travel (air)—London to St. Louis [57]	2,006
Total one way travel	1,143
South Africa	
One way travel (bus)—Hometown to Johannesburg [58]	57
One way travel (air)—Johannesburg to St. Louis [59]	1,323
Total one way travel	1,380
Philippines	
One way travel (ferry)—Hometown to Manila [60]	40
One way travel (air)—Manila to St. Louis [61]	1,735
Total one way travel	1,775
El Salvador	
One way travel (bus)—Hometown to San Salvador [62]	1
One way travel (air)—San Salvador to St. Louis [63]	472
Total one way travel	473
Honduras	
One way travel (bus)—Hometown to Tegucigalpa [64]	23

TABLE 6—COST OF TRAVEL FOR H–2B WORKERS—Continued

Item	Value
One way travel (air)—Tegucigalpa to St. Louis[65]	748
Total one way travel	771
Canada	
One way travel (air)—Hometown to Ottawa[66]	175
One way travel (bus)—Ottawa to St. Louis[67]	189
Total one way travel	353
Romania	
One way travel (bus)—Hometown to Bucharest[68]	28
One way travel (air)—Bucharest to St. Louis[69]	1,396
Total one way travel	1,424
All	
One way travel—Weighted average	418
Roundtrip travel—Weighted average	836
Total Travel Costs—H–2B Workers	55,190,325

d. Transportation to and From the Place of Employment for Corresponding Workers

The interim final rule also requires the employer provide inbound and outbound transportation to and from the place of employment for corresponding workers who are unable to return daily to their permanent residences. DOL estimates an approximate unit cost for each traveling corresponding worker by taking the average of the cost of a bus ticket to St. Louis from Fort Wayne, IN ($86), Pittsburgh, PA ($135), Omaha, NE ($88), Nashville, TN ($81), and Palmdale, CA ($230).[70] Averaging the cost of travel from these five cities results in an average one way cost of $124, and a round-trip cost of $248 (see Table 7).

TABLE 7—UNIT COSTS OF CORRESPONDING WORKER TRAVEL

One way travel to St. Louis, MO	Cost
Fort Wayne, IN	$86
Pittsburgh, PA	135
Omaha, NE	88
Nashville, TN	81
Palmdale, CA	230
One way travel—Average	124
Round-trip travel	248

Source: Greyhound, 2015.

Because DOL has no basis for estimating the number of workers in corresponding employment who will travel to the job from such a distance that they are unable to return daily to their permanent residence, or to estimate what percentage of them will remain on the job through at least half or all of the job order period, DOL is unable to further estimate the total transfer involved.

[49] Omnibus de México. 2015. Venta en Línea. Available at *http://www.odm.com.mx/* (accessed on March 12, 2015). Averages cost of a bus ticket to Monterrey from: Tampico (690 pesos), Actopan (875 pesos); and Acámbaro (835 pesos). Converted from pesos to U.S. dollars at the rate of 0.065 pesos per dollar for an average cost of $52.

[50] Omnibus de México. 2015. Venta en Línea. Available at *http://www.odm.com.mx/* (accessed on March 12, 2015). The cost of a bus ticket from Monterrey to Ciudad Juarez is 1200 pesos, converted from pesos to U.S. dollars at the rate of 0.065 pesos per dollar for a cost of $78.

[51] Greyhound. 2015. Tickets. Available at *https://www.greyhound.com/farefinder/* (accessed on March 12, 2015).

[52] Jamaica Guide. 2015. Jamaica Buses. Available at *http://caribya.com/jamaica/buses/* (accessed on March 12, 2015).

[53] Orbitz. 2015. Home page. Available at *http://www.orbitz.com/* (accessed on March 12, 2015).

[54] Virtual Tourist. 2015. Guatemala City Transportation. Available at *http://www.virtualtourist.com/travel/Caribbean_and_Central_America/Guatemala/Departamento_de_Guatemala/Guatemala_City-1671108/Transportation-Guatemala_City-TG-C-1.html* (accessed on March 12, 2015).

[55] Orbitz. 2015. Home page. Available at *http://www.orbitz.com/* (accessed on March 12, 2015).

[56] Megabus. 2011. Megabus UK home page. Available at *http://uk.megabus.com/default.aspxhttp\:uk.megabus.com* (accessed on July 10, 2011) and Raileasy. 2011. Raileasy home page. Available at *https://www.raileasy.co.uk/* (accessed on July 10, 2011); average of the cost of a bus ticket from three cities in England to London (GBP 15) and a train from Northern Ireland to London (GBP 50); Converted at the rate of 1.36 GBP per USD for an average of $32.

[57] Orbitz. 2015. Home page. Available at *http://www.orbitz.com/* (accessed on March 12, 2015).

[58] Computicket. 2015. Computicket home page. Available at *http://www.computicket.com/web/bus_tickets/* (accessed on March 12, 2015). The maximum bus fare from one of the farthest cities (Cape Town) to Johannesburg is 715 Rand, which is approximately $57 (= 715 Rand × 0.08).

[59] Orbitz. 2015. Home page. Available at *http://www.orbitz.com/* (accessed on March 12, 2015).

[60] Lonely Planet. 2015. Ferry travel in the Philippines. Available at *http://www.lonelyplanet.com/philippines/transport/getting-around* (accessed on March 12, 2015).

[61] Orbitz. 2015. Home page. Available at *http://www.orbitz.com/* (accessed on March 12, 2015).

[62] Rome2Rio. 2015. Home page. Available at *https://www.rome2rio.com/s/Santa-Ana-El-Salvador/San-Salvador* (accessed on March 18, 2015).

[63] Orbitz. 2015. Home page. Available at *http://www.orbitz.com/* (accessed on March 18, 2015).

[64] Rome2Rio. 2015. Home page. Available at *http://www.rome2rio.com/s/Tegucigalpa/San-Pedro-Sula* (accessed on March 18, 2015).

[65] Orbitz. 2015. Home page. Available at *http://www.orbitz.com/* (accessed on March 18, 2015).

[66] Air Canada. 2011. Air Canada home page. Available at *http://www.aircanada.com* (accessed on July 10, 2011).

[67] Greyhound. 2015. Tickets. Available at *https://www.greyhound.com/farefinder/* (accessed on March 12, 2015).

[68] Lonely Planet. 2015. Getting around Romania. Available at *http://www.lonelyplanet.com/romania/transport/getting-around/bus/* (accessed on March 12, 2015). According to Lonely Planet, ''Figure on about 3 to 4 lei for every 20km travelled.'' The travel distance from one of the farthest cities (Baia Mare) to Bucharest is approximately 600 km, so the maximum cost would be 120 lei (= 4 lei × 600km/20km), which is approximately $28 (= 120 lei × 0.236).

[69] Orbitz. 2015. Home page. Available at *http://www.orbitz.com/* (accessed on March 12, 2015).

[70] Greyhound. 2015. Tickets. Available at *https://www.greyhound.com/farefinder/* (accessed on March 12, 2015).

e. Subsistence Payments

DOL estimated the transfer related to subsistence payments by multiplying the annual cap set for the number of H–2B workers generally entering the United States (66,000) by the subsistence per diem ($11.86), and the round-trip travel time for the top 10 H–2B countries (4 days—3 days to account for travel from the worker's home town to the consular city to obtain a visa and from the consular city to the place of employment, and 1 day to account for the workers' transportation back to their home town). Multiplying by 66,000 new entrants per year and the subsistence per diem of $11.86 results in average annual transfers associated with the subsistence per diem of approximately $3.1 million (see Table 8). Again, this is an upper-bound estimate because the inbound subsistence reimbursement only is due for workers who complete 50 percent of the period of the job order and outbound subsistence is due only for those who complete the full job order period or are dismissed early.

TABLE 8—TRANSFER OF SUBSISTENCE PAYMENTS

Cost component	Value
New entrants per year	66,000
Subsistence Per Diem	$11.86
One way travel days—Inbound	3
One way travel days—Outbound	1
Round-trip travel days	4
Total annual subsistence transfer for H–2B workers	3,131,040

This provision applies not only to H–2B workers, but also to workers in corresponding employment on H–2B worksites who are recruited from a distance at which the workers cannot reasonably return to their residence within the same workday. Assuming that each worker can reach the place of employment within 1 day and thus would be reimbursed for a total of 2 round-trip travel days at a rate of $11.86 per day, each corresponding worker would receive $23.72 in subsistence payments. DOL was unable to identify adequate data to estimate the number of corresponding workers who are unable to return to their residence daily or, as a consequence, the percent of corresponding workers requiring payment of subsistence costs; thus, the total cost of this transfer could not be estimated.

f. Lodging for H–2B Workers

Any expenses incurred between a worker's hometown and the consular city are within the scope of inbound transportation and subsistence costs, which also includes lodging costs while H–2B workers travel from their hometown to the consular city to wait to obtain a visa and from there to the place of employment. DOL estimates that H–2B workers will spend an average of two nights in an inexpensive hostel-style accommodation and the costs of those stays in consular cities of the 10 most common countries of origin are as follows: Monterrey (Mexico), $13.81; Kingston (Jamaica), $22.72; Guatemala City (Guatemala), $13.25; London (United Kingdom), $38.66; Pretoria (South Africa), $17.55; Manila (Philippines), $11.25; San Salvador (El Salvador), $10.00; Tegucigalpa (Honduras), $15.78; Ottawa (Canada), $25.06; and Bucharest (Romania), $10.38.[71] Using the number of certified H–2B workers from the top 10 countries of origin, DOL calculates a weighted average of $14.13 for one night's stay, and $28.27 for two nights' stay. Multiplying by the 66,000 new entrants per year suggests total transfers associated with travel lodging of $1.9 million per year (see Table 9). This cost would not apply to U.S. workers.

TABLE 9—COST OF LODGING FOR H–2B WORKERS

Cost component	Value
New entrants per year	66,000
Nights in hostel	2
City	**Lodging Cost**
Monterrey (Mexico)	$13.18
Kingston (Jamaica)*	22.72
Guatemala City (Guatemala)	13.25
London (United Kingdom)	38.66
Pretoria (South Africa)	17.55
Manila (Philippines)	11.15
San Salvador (El Salvador)	10.00
Tegucigalpa (Honduras)	15.78
Ottawa (Canada)	25.06
Bucharest (Romania)	10.38
Weighted Average—One Night	14.13
Weighted Average—Two Nights	28.27
Total Cost of Lodging	1,865,637

Source: Assumed foreign workers stayed in dormitory style accommodations at these hostels unless otherwise noted. *Foreign workers will stay at private accommodations at this hostel since dormitory style facilities were not provided.

g. Visa and Consular Fees

Under the 2008 rule, visa-related fees—including fees required by the Department of State for scheduling and/or conducting an interview at the Consulate—may be paid by the temporary worker. This interim final rule, however, requires employers to pay visa fees and associated consular expenses. Requiring employers to bear the full cost of their decision to hire foreign workers is a necessary step

[71] HostelWorld.com. Available at *http://www.hostelworld.com/* (accessed on March 13, 2015).

toward preventing the exploitation of foreign workers with its concomitant adverse effect on U.S. workers. As explained in the Preamble, government-mandated fees such as these are integral to the employer's choice to use the H–2B program to bring temporary foreign workers into the United States.

The reimbursement by employers of visa application fees and fees for scheduling and/or conducting an interview at the consular post is a transfer from employers to H–2B workers. DOL estimates the total cost of these expenses by adding the cost of an H–2B visa and any applicable appointment and reciprocity fees. The H–2B visa fee is $160 in all of the 10 most common countries of origin. We have not attributed a cost with respect to Canada because Canadian citizens traveling to the United States for temporary employment generally do not need a visa,[72] resulting in a weighted average visa fee of $159. The same countries charge the following appointment fees: Mexico ($0),[73] Jamaica ($10),[74] Guatemala ($12),[75] the U.K. ($0),[76] South Africa ($0),[77] Philippines ($10),[78] El Salvador ($0), Honduras ($0), Canada ($0),[79] and Romania ($11),[80] for a weighted average appointment fee of $1.02. Additionally, South Africa charges a reciprocity fee of $85, resulting in a weighted average of $0.84.[81] Multiplying the weighted average visa cost, appointment fee, and reciprocity fee by the 66,000 H–2B workers entering the United States annually results in an annual average transfer of visa-related fees from H–2B employers to H–2B workers of $10.6 million (see Table 10). Again, this is an upper-bound estimate because many H–2B employers already are paying these fees in order to ensure compliance with the FLSA's minimum wage requirements.

TABLE 10—COST OF VISA AND CONSULAR FEES

Cost component	Value
New Entrants per Year	66,000
Visa Application Fee	
Mexico	$160
Jamaica	160
Guatemala	160
United Kingdom	160
South Africa	160
Philippines	160
El Salvador	160
Honduras	160
Canada	0
Romania	160
Weighted Average Visa Fee	159
H–2B Visa—Total Costs	10,525,028
Appointment Fee	
Mexico	0.00
Jamaica	10.00
Guatemala	12.00
United Kingdom	0.00
South Africa	0.00
Philippines	10.00
El Salvador	0.00
Honduras	0.00
Canada	0.00
Romania	11.00
Weighted Average Appointment Fee	1.02
Appointment Fee—Total Costs	67,236
Reciprocity Fee	
Mexico	0.00
Jamaica	0.00
Guatemala	0.00
United Kingdom	0.00
South Africa	85.00
Philippines	0.00
El Salvador	0.00
Honduras	0.00
Canada	0.00
Romania	0.00
Weighted Average Reciprocity Fee	0.84
Reciprocity Fee—Total Costs	55,627
Total Costs	
Total Visa and Consular Fees	10,647,891

Sources: Given in text.

h. Enhanced U.S. Worker Referral Period

The interim final rule ensures that U.S. workers are provided with better access to H–2B job opportunities by requiring employers to continue to hire any qualified and available U.S. worker referred to them from the SWA until 21 days before the date of need, representing an increase in the recruitment period compared to the baseline. The rule also introduces expanded recruitment provisions, including requiring employers to notify their current workforce of the job opportunity and contact their former U.S. employees from the previous year. The enhanced recruitment period and activities improve the information exchange between employers, SWAs, the public, and workers about job availability, increasing the likelihood that U.S. workers will be hired for those jobs.

The benefits to U.S. workers also apply to sections ''i'' through ''j'' below, which discuss additional provisions aimed at further improving the recruitment of U.S. workers.

The extension of the referral period in this interim final rule will likely result in more U.S. workers applying for these jobs, requiring more SWA staff time to process additional referrals. DOL does not have estimates of the additional number of U.S. applicants, and thus is unable to estimate the costs to SWAs associated with this provision.

DOL believes that hiring a U.S. worker will cost employers less than hiring an H–2B worker, as transportation and subsistence expenses will likely be reduced, if not avoided entirely. The cost of visa fees will be entirely avoided if U.S. workers are hired. Because DOL has not identified appropriate data to estimate any increase in the number of U.S. workers that might be hired as a result of the interim final rule's enhanced recruitment, it is unable to estimate total cost savings. Likewise, the enhanced recruitment period along with more extensive recruitment activities and a number of program changes that should make these job opportunities more desirable should generate an increased number of local referrals for whom no

[72] U.S. Department of State. 2015. Citizens of Canada and Bermuda—*http://travel.state.gov/content/visas/english/visit/canada-bermuda.html* (accessed on March 13, 2015).

[73] Consulate General of the United States—Monterrey—Mexico. 2015. Temporary worker. Available at *http://monterrey.usconsulate.gov/work_visa.html* (accessed on March 13, 2015).

[74] The U.S. Visa Information Service in Jamaica. 2011. How the Online System Works. Available at *http://www.usvisa-jamaica.com/jam/* (accessed on July 22, 2011).

[75] Embassy of the United States—Guatemala. 2011. Application Process. Available at *http://guatemala.usembassy.gov/niv_how_to_apply.html#appointment* (accessed on July 22, 2011).

[76] Embassy of the United States—London—U.K. 2011. MRV Application Fee. Available at *http://london.usembassy.gov/fee.html* (accessed on July 22, 2011).

[77] The U.S. Visa Information Service in South Africa. 2011. Fee Payment Options. Available at *http://usvisa-info.com/en-ZA/selfservice/us_fee_payment_options* (accessed on July 22, 2011).

[78] Embassy of the United States—Manila—Philippines. 2011. Visa Point™—The Online Visa Information and Appointment System. Available at *http://manila.usembassy.gov/wwwhvpnt.html* (accessed on July 22, 2011).

[79] U.S. Department of State. 2011a. Citizens of Canada, Bermuda and Mexico—When is a Visa Required? Available at *http://travel.state.gov/visa/temp/without/without_1260.html* (accessed on July 22, 2011).

[80] Embassy of the United States—Bucharest—Romania. 2011. Non Immigrant Visas. Available at *http://romania.usembassy.gov/visas/visa_application_process.html* (accessed on July 22, 2011).

[81] U.S. Department of State. 2015. Reciprocity by Country. Available at *http://travel.state.gov/content/visas/english/fees/reciprocity-by-country.html* (accessed on March 13, 2015).

transportation or subsistence costs will be incurred. Since the number of such workers cannot be estimated with precision, these cost saving are not factored into this analysis; however, DOL is confident the actual overall costs to employers for transportation and subsistence will be lower than the estimates provided here.

i. Additional Recruitment Directed by the CO

Under the interim final rule, an employer may be directed by the CO to conduct additional recruitment if the CO has determined that there may be qualified U.S. workers available, particularly when the job opportunity is located in an area of substantial unemployment. This provision applies to all employer applicants regardless of whether they ultimately employ H–2B workers. Therefore, DOL estimates costs using the estimated number of unique employer applicants for FY 2013–2014 (4,657). DOL conservatively estimates that 50 percent of these employer applicants (2,329) will be directed by the CO to conduct additional recruitment.

To estimate the cost of a newspaper advertisement, DOL calculates the cost of placing a classified advertisement in the following newspapers: The Virginian Pilot ($574.00),[82] The Austin Chronicle ($76.60),[83] The Gainesville Sun ($569.24),[84] Plaquemines (LA) Gazette ($70.00),[85] Aspen Times ($513.00),[86] and Branson Tri-Lakes News ($104.00),[87] for an average cost of $318. Employers may use other means of recruiting, such as listings on Monster.com ($375) [88] and Career Builder ($419).[89] Because so many newspapers include posting of the advertisement on their Web sites and/or Career Builder in the cost of the print advertisement, DOL bases the estimate on the cost of newspaper recruiting. Multiplying the number of unique employer applicants who will be directed to conduct additional recruitment (2,329) by the average cost of a newspaper advertisement ($318) results in a total cost for newspaper ads of $0.7 million.

DOL estimates that no more than 10 percent of employer applicants (*i.e.,* 20 percent of those directed to conduct additional recruiting) will need to translate the advertisement in order to recruit workers whose primary language is not English. DOL calculated translation costs for translating a one-page document from English to any language to be $21.95.[90] Multiplying the number of employers performing translation (466) by the translation cost results in total translation costs of $0.01 million.

To account for labor costs in posting additional ads, DOL multiplies the estimated number of unique employer applicants required to conduct additional recruiting (2,329) by the estimated time required to post the advertisement (0.08 hours, or 5 minutes) and the loaded hourly compensation rate of an administrative assistant/executive secretary ($34.15). The result, $0.01 million, is added to the average annual cost of CO-directed recruiting activities for a total of approximately $0.8 million (see Table 11).

TABLE 11—COST OF ADDITIONAL RECRUITING

Cost component	Value
Number of unique H–2B employer applicants	4,657
Percent directed to conduct additional recruiting	50%
Employer applicants conducting additional recruiting	2,329
Newspaper advertisement—Unit cost	$318
Total Cost of Newspaper Ad	$740,463
Percent of employer applicants needing to perform translation	10%
Employers performing translation	466
English to any language (two day delivery)	$22
Total Cost of Translation	$10,222
Time to post advertisement (hours)	0.08
Administrative Assistant hourly wage w/fringe	$34.15
Total Cost of Labor to Post Newspaper Ad	$6,362
Total Cost	
Total Cost of Additional Recruiting	$757,047

Sources: BLS, 2011a; BLS, 2011b; U.S. Census, 2008; ServiceScape 2015; Consulted the following publications for their rates on employment classifieds: Branson Tri-Lake News; Aspen Times; The Austin Chronicle; The Gainesville Sun; Plaquemines Gazette; The Virginian Pilot.

It is possible that employers will incur costs from interviewing applicants who are referred to H–2B employers by the additional recruiting activities. However, DOL is unable to quantify the impact.

j. Electronic Job Registry

Under the interim final rule, DOL will post and maintain employers' H–2B job orders, including modifications approved by the CO, in a national and publicly accessible electronic job registry. The electronic job registry will serve as a public repository of H–2B job orders for the duration of the referral period. The job orders will be posted in the registry by the CO upon the acceptance of each submitted *Application for Temporary Employment Certification.* The posting of the job orders will not require any additional effort on the part of H–2B employers or SWAs.

i. Benefits

The electronic job registry will improve the visibility of H–2B jobs to U.S. workers. In conjunction with the longer referral period under the interim final rule, the electronic job registry will expand the availability of information about these jobs to U.S. workers, and therefore improve their employment opportunities. In addition, the establishment of an electronic job registry will provide greater transparency of DOL's administration of

[82] The Virginian Pilot, available at *http://selfserve.pilotezads.com/vp-adportal/classified/index.html.* Selected the Platinum package for 14 days (accessed on March 12, 2015).

[83] The Austin Chronicle. 2015. Place an Ad. Selected the Gold Plan. Available at *http://austinchronicle.adperfect.com/?catid=33631&chanid=C0A801411d5931FD07Ggh2E376AE&clsid=621631* (accessed on March 12, 2015).

[84] The Gainesville Sun, available at *http://gainesvillesun.adperfect.com/.* Selected Employment Print and Online option (Thursday through Sunday). The latter option was for two weeks.

[85] The Plaquemines Gazette, available at *http://plaqueminesgazette.com/?page_id=118.* For this newspaper selected $5 per day ad for 14 days.

[86] Contacted the classified ad staff for the Aspen Times. They do not give quotes over the phone because it depends on the number of lines, length of time published, and other variables. The staff member stated employment classifieds could run at least $300 up to $1,000. The rate of $513 was used for this publication.

[87] Contacted the classified ad staff on March 12, 2015. The paper is only published on Wednesday and Saturdays of each week. For a 30-word ad, for one week is $32 and for two weeks is $64. For one month, it is $104.

[88] Monster.com. 2015. Job Postings Inventory. Available at *http://hiring.monster.com/indexProspect.Redux.aspx* (accessed on March 12, 2015).

[89] CareerBuilder. 2015. Job Posting. Available at *https://www.careerbuilder.com/JobPoster/ECommerce/CartOrderSummary.aspx?cblid=epjobbtn&sc_cmp2=JP_HP_PostJobButton&sslRedirectCnt=1* (accessed on March 12, 2015).

[90] ServiceScape. 2015. How it Works—Cost Calculator. Available at *http://www.servicescape.com/help.asp* (accessed on March 12, 2015).

the H–2B program to the public, members of Congress, and other stakeholders. Transferring these job orders into electronic records for the electronic job registry will result in a more complete, real-time record of job opportunities for which H–2B workers are sought. Employers seeking temporary workers, in turn, will likely experience an increase in job applications from U.S. workers, and thus may not incur the additional expenses of hiring H–2B workers. DOL, however, is not able to estimate the increase in job applications resulting from the electronic job registry, and thus is unable to quantify this benefit.

ii. Costs

The establishment of an electronic job registry in this interim final rule represents increased maintenance costs to DOL. DOL estimates that first-year costs will be 25 percent of the first-year costs under the H–2A program (25 percent of $561,365, or $140,341) and that subsequent year costs will be 10 percent of the costs under the H–2A program (10 percent of $464,341, or $46,434). Using the loaded hourly rate for all relevant labor categories ($1,342) suggests that 105 labor hours will be required in the first year, and 35 labor hours will be required in subsequent years (see Table 12).

TABLE 12—COST OF ELECTRONIC JOB REGISTRY

Cost component	Value
Sum of All Labor Category Loaded Wages	$1,342
Registry development and maintenance hours—Year 1	105
Registry maintenance hours—Year 2–10	35
Cost to DOL to Develop and Maintain Job Registry—Year 1	$140,341
Cost to DOL to Maintain Job Registry—Year 2–10	$46,434

k. Disclosure of Job Order

The interim final rule requires an employer to provide a copy of the job order to H–2B workers outside the United States no later than the time at which the worker applies for the visa, and to workers in corresponding employment no later than the day that work starts. For H–2B workers changing employment from one certified H–2B employer to another, the copy must be provided no later than the time the subsequent H–2B employer makes an offer of employment. The job order must be translated to a language understood by the worker.

DOL estimates two cost components for the disclosure of job orders: the cost of reproducing the document containing the terms and conditions of employment, and the cost of translation.

The cost of reproducing job orders does not apply to employers of reforestation workers because the Migrant and Seasonal Agricultural Worker Protection Act already requires these employers to make this disclosure in a language common to the worker. According to H–2B program data for FY 2013–2014, 89.1 percent of H–2B workers work in an industry other than reforestation, suggesting that the job order will need to be reproduced for 102,911 (89.1 percent of 115,500) H–2B workers. DOL estimates the cost of reproducing the terms and conditions document by multiplying the number of affected H–2B workers (102,911) by the number of pages to be photocopied (3) and by the cost per photocopy ($0.09). DOL estimates average annual costs of reproducing the document containing the terms and conditions of employment to be approximately $0.03 million (see Table 13).

DOL estimates that 91.6 percent of H–2B workers from the top 10 countries of origin do not speak English,[91] so approximately 3,621 H–2B employers will need to translate their job orders. DOL assumes that an employer hires all of its H–2B workers from a country or set of countries that speak the same foreign language; thus, only one translation is necessary per employer needing translation. The estimate of the cost of translating a 3-page document into English from languages spoken in the top 10 countries of origin is $56.85.[92] Multiplying the number of H–2B employers who will need to translate the job order (3,621) by the cost of translation ($56.85) suggests that translation costs will total $0.2 million (see Table 13).

Summing the costs of reproducing and translating the job order results in total costs related to disclosure of the job order of $0.2 million (see Table 13).

TABLE 13—COST OF DISCLOSURE OF JOB ORDER

Cost component	Value
Reproducing Job Order	
H–2B workers	115,500
Percent workers not in reforestation	89.1%
Affected workers	102,911
Pages to be photocopied	3
Cost per page	$0.09
Cost per job order	$0.27
Total Cost of Reproducing Document	$27,786
Translating Job Order	
Number of unique certified H–2B employers	3,955
Percent workers needing translation	91.6%

[91] U.S. Department of Homeland Security (DHS). 2013. Yearbook of Immigration Statistics. Available at *http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2013/NI/nonimmsuptable2d.xls* (accessed on March 18, 2015).

[92] ServiceScape. 2015. How it Works—Cost Calculator. Available at *http://www.servicescape.com/help.asp* (accessed on March 12, 2015).

TABLE 13—COST OF DISCLOSURE OF JOB ORDER—Continued

Cost component	Value
Employers performing translation	3,621
English to any language—3 page document, 2 day delivery	$56.85
Total Translation Cost	$205,868
Total Cost	
Total Cost of Disclosure of Job Order	$233,654

Sources: DHS, 2009; ServiceScape, 2015.

l. Use of Post-Filing Recruitment Model

The 2008 rule used an attestation-based model: employers conducted the required recruitment before submitting an *Application for Temporary Employment Certification* and, based on the results of that effort, applied for certification from DOL for a number of foreign workers to fill the remaining openings. Employers simply attested that they had undertaken the necessary activities and made the required assurances to workers. DOL has determined that this attestation-based model did not provide sufficient protection to workers. The recruitment process under this interim final rule occurs after the *Application for Temporary Certification* is filed so that employers have to demonstrate—and not merely attest—that they have performed an adequate test of the labor market. Therefore, the primary effect of the interim final rule is to change the timing of recruitment rather than to change the substantive requirements.

Using a post-filing recruitment model in which employers demonstrate compliance with program obligations before certification will improve worker protections and reduce various costs for several different stakeholders. Greater compliance will provide improved administration of the program, conserving government resources at both the State and Federal levels. In addition, employers will be subject to fewer requests for additional information and denials of Applications, decreasing the time and expense of responding to these DOL actions. Finally, it will result in the intangible benefit of increased H–2B visa availability to those employers who have conducted bona fide recruitment around an actual date of need. DOL, however, is not able to estimate the economic impacts of these several effects and is therefore unable to quantify the related benefits.

Requiring post-filing recruitment will impose minimal costs on employers because they will not be required to produce new documents, but only to supplement their recruitment report with additional information (including the additional recruitment conducted, means of posting the job opportunity, contact with former U.S. workers, and contact with labor organizations where the occupation is customarily unionized).

DOL estimated two costs for post-filing recruitment: the material cost of reproducing and mailing the documents, and the associated labor cost. DOL estimated material costs equal to $2,492, calculated by multiplying the number of unique certified H–2B employers (3,955) by the estimated additional number of pages that must be submitted (3) and the additional postage required to ship those pages ($0.21). DOL estimated labor cost of $10,806 by multiplying the number of unique certified H–2B employers (3,955) by the time needed to reproduce and mail the documents (0.08 hours, or 5 minutes) and the hourly labor compensation of an administrative assistant/executive secretary ($34.15). Summing these two components results in incremental costs of $0.01 million per year associated with post-filing recruitment (see Table 14).

TABLE 14—COST OF POST-FILING RECRUITMENT

Cost component	Value
Postage Costs	
Number of unique certified H–2B employers	3,955
Additional pages to submit	3
Additional postage	$0.21
Total Postage Costs	$2,492
Labor Costs to Photocopy and Mail Documents	
Number of unique certified H–2B employers	3,955
Labor time to photocopy and mail documents (hours)	0.08
Administrative Assistant hourly wage with fringe	$34.15
Total Labor Costs to Photocopy and Mail Documents	$10,806
Total Cost	
Total Costs of Post-Filing Recruitment	$13,297

Sources: In January 2014, first class mail increased temporarily to 49 cents for one ounce while two ounces would be 70 cents. So the extra postage is 70 cents − 49 cents, or 21 cents. See the latest first class mail prices at *http://pe.usps.com/cpim/ftp/manuals/dmm300/Notice123.pdf* on page 1 (accessed on March 12, 2015).

n. Document Retention

Under the interim final rule, H–2B employers must retain documentation in addition to that required by the 2008 rule. DOL assumes that each H–2B employer will purchase a filing cabinet at a cost of $67.99 [93] in which to store the additional documents starting in the first year of the rule. To obtain the cost of storing documents, DOL multiplies the number of unique certified H–2B employers (3,955) by the cost per file cabinet for a total one-time cost of $0.3 million (see Table 15). This cost is likely an overestimate since the 2008 rule also required document retention and many employers who already use the H–2B program will already have bought a file cabinet to store the documents they were required to retain under that rule.

TABLE 15—COST OF DOCUMENT RETENTION

Cost component	Value
Number of unique certified H–2B employers	3,955
Filing cabinet	$67.99
Total Document Retention Costs	$268,900

Source: Office Depot, 2015.

m. SWA Administrative Burden

Under this interim final rule, SWAs will see both additions to and reductions from the baseline workload. Additional responsibilities that the SWAs will take on include contacting labor organizations to inform them about a job opportunity when the occupation or industry is customarily unionized, and accepting and processing a likely larger number of U.S. applicants during the extended recruitment period. DOL, however, does not have reliable data to measure these increased activities and is therefore unable to provide an estimate of the increased workload.

In contrast, SWAs will not be responsible for conducting employment eligibility verification activities. These activities included completion of Form I–9 and vetting of application documents by SWA personnel.

Under the 2008 rule, SWAs were required to complete Form I–9 for applicants who are referred through the SWA to non-agricultural job orders, and inspect and verify the employment eligibility documents furnished by the applicants. Under this interim final rule, SWAs will not be required to complete this process, resulting in cost savings. Due to a lack of data on the number of SWA referrals, DOL is not able to quantify this cost reduction.

n. Read and Understand the Rule

During the first year that the interim final rule will be in effect, H–2B employer applicants will need to learn about the new processes and requirements. DOL estimates the cost to read and understand the rule by multiplying the average number of unique H–2B employer applicants in FY 2013–2014 (4,657) by the time required to read the new rule and associated educational and outreach materials (3 hours), and the loaded hourly wage of a human resources manager ($69.83). In the first year of the rule, this amounts to labor costs of approximately $1.0 million (see Table 16).

TABLE 16—COST TO READ AND UNDERSTAND RULE

Cost component	Value6
Number of unique H–2B employer applicants	4,657
Time to read rule and materials (hours)	3
HR Manager hourly wage	$69.83
Total Cost to Read and Understand Rule	$975,607

Sources: The median hourly wage rate was obtained Occupational and Employment Statistics, 2013, Bureau of Labor Statistics, accessed from: *http://www.bls.gov/oes/current/oes_nat.htm#13-0000.*

o. Job Posting Requirement

The interim final rule requires employers applying for H–2B certification to post a notice of the job opportunity in two conspicuous locations at the place of anticipated employment (when there is no union representative) for at least 15 consecutive days. This provision entails additional reproduction costs. To obtain the total cost incurred due to the job posting requirement, DOL multiplied the average number of unique H–2B employer applicants FY 2013–2014 (4,657) by the cost per photocopy ($0.09) and the number of postings per place of employment (2), which amounts to $838 per year (see Table 17).

TABLE 17—COST OF JOB POSTING REQUIREMENT

Cost component	Value
Number of unique H–2B employer applicants	4,657
Job postings per work site	2
Cost per photocopy	$0.09
Total Cost to Post Job Opportunity	$838

p. Workers' Rights Poster

In addition, the interim final rule requires employers to post and maintain in a conspicuous location at the place of employment a poster provided by DOL which sets out the rights and protections for workers. The poster must be in English and, to the extent necessary and as provided by DOL, foreign language(s) common to a significant portion of the workers if they are not fluent in English. To estimate the cost of producing workers' rights posters, DOL multiplied the estimated number of unique certified H–2B employers (3,955) by the cost of downloading and printing the poster ($0.09). In total, the cost of producing workers' rights posters is $356 per year (see Table 18). If an employer needs to download and print additional versions of the poster in languages other than English, this would result in increased costs.

TABLE 18—COST OF WORKERS' RIGHT POSTER

Cost component	Value
Number of unique certified H–2B employers	3,955
Cost per poster	$0.09
Total Cost of Workers' Rights Poster	$356

5. Summary of Cost-Benefit Analysis

Table 19 presents a summary of the costs associated with this interim final rule. Because of data limitations on the number of corresponding workers and U.S. workers expected to fill positions currently held by H–2B workers, DOL was not able to monetize any costs of the rule that would arise as a result of deadweight losses associated with higher employment costs under the interim final rule. However, because the size of the H–2B program is limited, DOL expects that any deadweight loss would be small. The monetized costs displayed are the annual summations of the calculations described above. The total undiscounted costs of the rule in

[93] Price at Office Depot. Vertical file cabinets. Available at *http://www.officedepot.com/a/browse/vertical-metal-file-cabinets/N=5+5015858cbxRefine=311457&recordsPerPageNumber=24&No=0/* (accessed on March 12, 2015).

Years 1–10 are expected to total approximately $11.85 million.

TABLE 19—TOTAL COSTS AND TRANSFERS—UNDISCOUNTED

Cost component	Year 1 costs	Year 2–10 costs	Year 1–10 costs
Transfers			
Corresponding Workers' Wages—90 Percent.	$18,207,902	$18,207,902	$182,079,024
Corresponding Workers' Wages—75 percent.	$54,616,946	$54,616,946	$546,169,461
Transportation	$55,190,325	$55,190,325	$551,903,254
Subsistence	$3,131,040	$3,131,040	$31,310,400
Lodging	$1,865,637	$1,865,637	$18,656,366
Visa and Border Crossing Fees	$10,647,891	$10,647,891	$106,478,908
Total Transfers—Low	$87,241,061	$87,241,061	$890,427,952.48
Total Transfers—High	$125,451,839	$125,451,839	$1,254,518,389.50
Annual Costs to Employers			
Additional Recruiting	$757,047	$757,047	$7,570,469
Disclosure of Job Order	$233,654	$233,654	$2,336,540
Elimination of Attestation-Based Model.	$13,297	$13,297	$132,972
Post Job Opportunity	$838	$838	$8,383
Workers' Rights Poster	$356	$356	$3,560
Total Annual Costs to Employers.	$1,005,192	$1,005,192	$10,051,923
First Year Costs to Employers			
Read and Understand Rule	$975,607	$0	$975,607
Document Retention	$268,900	$0	$268,900
Total First Year Costs to Employers.	$1,244,507	$0	$1,244,507
Costs to Government			
Electronic Job Registry	$140,341	$46,434	$558,248
Enhanced U.S. Worker Referral Period.	Not Estimated	Not Estimated	Not Estimated
Total Costs to Government	$140,341	$46,434	$558,248
Total Costs			
Total Costs and Transfers—Low	$91,432,836	$90,094,422	$902,282,631
Total Costs and Transfers—High	$127,841,880	$126,503,465	$1,266,373,068
Total Transfers—Low	$89,042,795	$89,042,795	$890,427,952
Total Transfers—High	$125,451,839	$125,451,839	$1,254,518,390
Total Costs	$2,390,041	$1,051,626	$11,854,679

Note: Totals may not sum due to rounding.

Summing the present value of the costs in Years 1–10 results in total discounted costs over 10 years of $9.24 million to $10.58 million (with 7 percent and 3 percent discounting, respectively) (see Table 20). The total transfers over 10 years range from $669.18 million to $942.80 million and from $792.92 million to $1,112.81 million with 7 percent and 3 percent discounting, respectively. The annual average cost is $0.92 million with 7 percent discounting and $1.06 million with 3 percent discounting. The annual average transfers range from $66.92 million to $94.28 million with 7 percent discounting and from $79.29 to $111.28 million with 3 percent discounting.

TABLE 20—TOTAL COSTS AND TRANSFERS—SUM OF PRESENT VALUES

Cost component	Year 1–10 costs
Present Value—7% Discounting	
Total Costs & Transfers—Low	$678,418,918
Total Costs & Transfers—High	952,041,337
Total Transfers—Low	669,177,286
Total Transfers—High	942,799,706

TABLE 20—TOTAL COSTS AND TRANSFERS—SUM OF PRESENT VALUES—Continued

Cost component	Year 1–10 costs
Total Costs	9,241,631
Present Value—3% Discounting	
Total Costs & Transfers—Low	$792,917,817
Total Costs & Transfers—High	1,112,811,640
Total Transfers—Low	782,339,698
Total Transfers—High	1,102,233,521

TABLE 20—TOTAL COSTS AND TRANSFERS—SUM OF PRESENT VALUES—Continued

Cost component	Year 1–10 costs
Total Costs	10,578,119

Note: Totals may not sum due to rounding.

Because DOL was not able to monetize any benefits for this interim final rule due to the lack of adequate data, the monetized costs exceed the monetized benefits both at a 7 percent and a 3 percent discount rate.

DOL was unable to identify data to provide monetary estimates of several important benefits to society, including increased employment opportunities for U.S. workers and enhancement of worker protections for U.S. and H–2B workers. These important benefits (and cost reductions) result from the following provisions of this interim final rule: the enhanced U.S. worker referral period, additional recruiting directed by the CO, the electronic job registry, transportation to and from the place of employment, payment of visa and consular fees, the job posting requirement, and enhanced integrity and enforcement provisions. Because the enhanced referral period extends the time during which jobs are available to U.S. workers, it increases the likelihood that U.S. workers are hired for those jobs. In addition, the electronic job registry will improve the visibility of H–2B jobs to U.S. workers and enhance their employment opportunities. In addition, the establishment of an electronic job registry will provide greater transparency with respect to DOL's administration of the H–2B program to the public, members of Congress, and other stakeholders.

The changes and increased protections for workers will result in an improved ability on the part of workers and their families to meet their costs of living and spend money in their local communities. These protections may also decrease turnover among U.S. workers and thereby decrease the costs of recruitment and retention to employers. Reduced worker turnover is associated with lower costs to employers arising from recruiting and training replacement workers. Because seeking and training new workers is costly, reduced turnover leads to savings for employers. Research indicates that decreased turnover costs partially offset increased labor costs.[94] In addition, greater worker protections may increase a worker's productivity by incentivizing the worker to work harder. Thus, the additional costs may be partially offset by higher productivity. A strand of economic research, commonly referred to as ''efficiency wages,'' indicates that employees may interpret the greater protections as a signal of the employer's good will and reciprocate by working harder, or they put in more effort in order to reduce the risk of losing the job because it is now seen as more valuable.[95] All of these benefits, however, are difficult to quantify due to data limitations.

Several unquantifiable benefits result in the form of cost savings. As more U.S. workers are hired as a result of this interim final rule, employers will avoid visa and consular fees for positions that might have otherwise been filled with H–2B workers; it is also likely that transportation costs will be lower. Under the 2008 rule, SWAs were required to complete Form I–9 for non-agricultural job orders, and inspect and verify the employment eligibility documents furnished by the applicants. Under this interim final rule, SWAs will not be required to complete this process, resulting in cost savings to SWAs. DOL was not able to quantify these cost savings due to a lack of data regarding the number of I–9 verifications SWAs have been performing for H–2B referrals.

After considering both the quantitative and qualitative impacts of this interim final rule, DOL has concluded that the societal benefits of the rule justify the societal costs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements the APA, 5 U.S.C. 553(b), and that are likely to have a significant economic impact on a substantial number of small entities. Under the APA, a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). This interim final rule is exempt from the requirements of the APA because DOL and DHS have made a good cause finding, *supra,* that a general notice of proposed rulemaking is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B). Therefore, the requirements of the RFA applicable to notices of proposed rulemaking, 5 U.S.C. 603, do not apply to this interim final rule. Accordingly, the Departments are not required to either certify that the interim final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis. Nevertheless, for informational purposes DOL and DHS refer the public to the initial and final regulatory flexibility analyses that DOL completed in the 2012 rulemaking process. *See* 76 FR 15166; 77 FR 10132. DOL and DHS refer to the public to the rulemaking docket on regulations.gov in connection with that rule (RIN 1205–AB58) to obtain further information about DOL's regulatory flexibility analyses under the 2012 rule.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. The interim final rule has no Federal mandate, which is defined in 2 U.S.C. 658(6) to include either a Federal intergovernmental mandate or a Federal private sector mandate. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector that is not voluntary. A decision by a private entity to obtain an H–2B worker is purely voluntary and is, therefore, excluded from any reporting requirement under the Act.

SWAs are mandated to perform certain activities for the Federal Government under the H–2B program, and receive grants to support the performance of these activities. Under the 2008 rule, the SWA role was changed to accommodate the attestation-based process. The current regulation requires SWAs to accept and place job orders into intra- and interstate clearance, review referrals, and verify employment eligibility of the applicants who apply to the SWA to be referred to the job opportunity. Under the interim final rule the SWA will continue to play a significant and active role. The Departments continue to require that employers submit their job orders to the SWA having jurisdiction over the area of intended employment as is the case in the current regulation,

[94] Reich, Michael, Peter Hall and Ken Jacobs, ''Living Wages and Economic Performance: The San Francisco Airport Model,'' Institute of Industrial Relations, University of California, Berkeley, March 2003. Fairris, David, David Runsten, Carolina Briones, and Jessica Goodheart, ''Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses,'' LAANE, 2005.

[95] Akerlof, G.A. (1982), ''Labor Contracts as Partial Gift Exchange,'' The Quarterly Journal of Economics, 97(4), 543–569; Shapiro, C. and Stiglitz, J.E. (1984), ''Equilibrium Unemployment as a Worker Discipline Device,'' The American Economic Review, 74(3), 433–444.

with the added requirement that the SWA review the job order prior to posting it. The interim final rule further requires that the employer provide a copy of the *Application for Temporary Employment Certification* to the SWA; however, this is simply a copy for disclosure purposes and would require no additional information collection or review activities by the SWA. DOL will also continue to require SWAs to place job orders into clearance, as well as provide employers with referrals received in connection with the job opportunity. Additionally, the interim final rule requires SWAs to contact labor organizations where union representation is customary in the occupation and area of intended employment. DOL recognizes that SWAs may experience a slight increase in their workload in terms of review, referrals, and employer guidance. However, DOL is eliminating the employment verification responsibilities the SWA has under the current regulations. The elimination of workload created by the employment verification requirement will allow the SWAs to apply those resources to the additional recruitment requirements under this rule.

SWA activities under the H–2B program are currently funded by DOL through grants provided under the Wagner-Peyser Act. 29 U.S.C. 49 *et seq.,* and directly through appropriated funds for administration of DOL's foreign labor certification program.

D. Executive Order 13132—Federalism

We have reviewed this interim final rule in accordance with E.O. 13132 on federalism and have determined that it does not have federalism implications. The interim final rule does not have substantial direct effects on States, on the relationship between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, we have determined that this interim final rule will not have a sufficient federalism implication to warrant the preparation of a summary impact statement.

E. Executive Order 13175—Indian Tribal Governments

We reviewed this interim final rule under the terms of E.O. 13175 and determined it not to have tribal implications. The interim final does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. As a result, no tribal summary impact statement has been prepared.

F. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires us to assess the impact of this interim final rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. We have assessed this interim final rule and determined that it will not have a negative effect on families.

G. Executive Order 12630—Government Actions and Interference With Constitutionally Protected Property Rights

The interim final rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

H. Executive Order 12988—Civil Justice

The interim final rule has been drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The Departments have developed the interim final rule to minimize litigation and provide a clear legal standard for affected conduct, and has reviewed the interim final rule carefully to eliminate drafting errors and ambiguities.

I. Plain Language

We drafted this interim final rule in plain language.

J. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) information collection requirements, which must be implemented as a result of this regulation, a clearance package containing proposed changes to the already previously collection was submitted to OMB under the emergency provisions of the PRA, 5 CFR 1320.13, in order to have the information collection take effect on the same date as all other parts of the interim final rule. OMB approved the information collection for 6 months, during which time DOL will publish Notices in the **Federal Register** that invite public comment on the collection requirements, in anticipation of extending the ICR.

The Departments note that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a), 1320.6, and 1320.11(k)(1).

The forms used to comply with this interim final rule include those that have been required in the H–2B program over the last few years of program operation, except that Form ETA–9142, Appendix B has been modified to reflect the assurances and obligations of the H–2B employer as required under the compliance-based system of this interim final rule. Also, a new form was created for registering as an H–2B employer—the Form ETA–9155, *H–2B Registration.* DOL continues to include the *Seafood Industry Attestation,* but has made slight changes to it for clarity and accuracy. Changes to the program as reflected in the new regulations and which have PRA implications, have increased the hourly and cost burdens for employers. Those burdens and costs are outlined below. The Form ETA–9142B with Appendix B has a public reporting burden estimated to average 1 hour per response or application filed. Additionally, the Form ETA–9155 has a public reporting burden estimated to average 1 hour per response or application filed. For an additional explanation of how the Departments calculated the burden hours and related costs, the PRA package for this information collection may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting the DOL at: Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210 or by phone request to 202–693–3700 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Overview of Information Collection

Type of Review: Emergency.

Agency: Employment and Training Administration.

Title: H–2B Application for Temporary Employment Certification; H–2B Registration; and *Seafood Industry Attestation.*

OMB Number: 1205–0509.

Agency Number(s): Forms ETA–9142B (including Appendix B) and ETA–9155.

Annual Frequency: On occasion.

Affected Public: Individuals or Households, Private Sector—businesses or other for profits, Government, State, Local and Tribal Governments.

Total Respondents: 7,355.

Total Responses: 184,442.

Estimated Total Burden Hours: 47,992.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $351,800.

The information collection aspects of this rulemaking are taking effect immediately, but DOL will be following the normal approval process for the extension of this collection within the next 6 months.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

29 CFR Part 503

Administrative practice and procedure, Employment, Foreign Workers, Housing, Housing standards, Immigration, Labor, Nonimmigrant workers, Penalties, Transportation, Wages.

Department of Homeland Security

8 CFR Chapter I

Accordingly, for the reasons stated in the joint preamble, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 2. Section 214.1 is amended by revising paragraph (k) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(k) *Denial of petitions under section 214(c) of the Act based on a finding by the Department of Labor.* Upon debarment by the Department of Labor pursuant to 20 CFR part 655, USCIS may deny any petition filed by that petitioner for nonimmigrant status under section 101(a)(15)(H) (except for status under sections 101(a)(15)(H)(i)(b1)), (L), (O), and (P)(i) of the Act) for a period of at least 1 year but not more than 5 years. The length of the period shall be based on the severity of the violation or violations. The decision to deny petitions, the time period for the bar to petitions, and the reasons for the time period will be explained in a written notice to the petitioner.

■ 3. Section 214.2 is amended by revising paragraph (h)(9)(iii)(B) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(9) * * *

(iii) * * *

(B) *H–2B petition.* The approval of the petition to accord an alien a classification under section 101(a)(15)(H)(ii)(b) of the Act shall be valid for the period of the approved temporary labor certification.

* * * * *

Department of Labor

Accordingly, for the reasons stated in the joint preamble, 20 CFR part 655 is amended and 29 CFR part 503 is added as follows:

Title 20—EMPLOYEES' BENEFITS

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 4. The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(6)(iii).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); and sec. 323(c), Pub. L. 103–206, 107 Stat. 2428.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; and 8 CFR 214.2(h).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 5. Revise subpart A to read as follows:

Subpart A—Labor Certification Process for Temporary Non-Agricultural Employment in the United States (H–2B Workers)

Sec.

§ 655.1 Scope and purpose of this subpart.

Section 214(c)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. 1184(c)(1), requires the Secretary of Homeland Security to consult with appropriate agencies before authorizing the classification of aliens as H–2B workers. Department of Homeland Security (DHS) regulations at 8 CFR 214.2(h)(6)(iii)(D) designate the Secretary of Labor as an appropriate authority with whom DHS consults regarding the H–2B program, and specifies that the Secretary of Labor, in carrying out this consultative function, shall issue regulations regarding the issuance of temporary labor certifications. DHS regulations at 8 CFR 214.2(h)(6)(iv) further provide that an employer's petition to employ H–2B nonimmigrant workers for temporary non-agricultural employment in the United States (U.S.), except for Guam, must be accompanied by an approved temporary labor certification from the Secretary of Labor (Secretary).

(a) *Purpose.* The temporary labor certification reflects a determination by the Secretary that:

(1) There are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers, and that

(2) The employment of the H–2B worker(s) will not adversely affect the wages and working conditions of U.S. workers similarly employed.

(b) *Scope.* This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant foreign workers in the H–2B nonimmigrant classification, as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(b), section 101(a)(15)(H)(ii)(b) of the INA. It also establishes obligations with respect to the terms and conditions of the temporary labor certification with which H–2B employers must comply, as well as their obligations to H–2B workers and workers in corresponding employment. Additionally, this subpart sets forth integrity measures for ensuring employers' continued compliance with the terms and conditions of the temporary labor certification.

§ 655.2 Authority of the agencies, offices, and divisions in the Department of Labor.

(a) *Authority and role of the Office of Foreign Labor Certification (OFLC).* The Secretary has delegated authority to make determinations under this subpart, pursuant to 8 CFR 214.2(h)(6)(iii)(D) and (h)(6)(iv), to the Assistant Secretary for the Employment and Training Administration (ETA), who in turn has delegated that authority to OFLC. Determinations on an *Application for Temporary Employment Certification* in the H–2B program are made by the Administrator, OFLC who, in turn, may delegate this responsibility to designated staff members, *e.g.,* a Certifying Officer (CO).

(b) *Authority of the Wage and Hour Division (WHD).* Pursuant to its authority under section 214(c)(14)(B) of the INA, 8 U.S.C. 1184(c)(l4)(B), DHS has delegated to the Secretary certain investigatory and enforcement functions with respect to terms and conditions of employment in the H–2B program. The Secretary has, in turn, delegated that authority to WHD. The regulations governing WHD investigation and enforcement functions, including those related to the enforcement of temporary labor certifications, issued under this subpart, may be found in 29 CFR part 503.

(c) *Concurrent authority.* OFLC and WHD have concurrent authority to impose a debarment remedy under § 655.73 or under 29 CFR 503.24.

§ 655.3 Territory of Guam.

This subpart does not apply to temporary employment in the Territory of Guam, except that an employer who applies for a temporary labor certification for a job opportunity on Guam will need to obtain a prevailing wage from the U.S. Department of Labor (DOL) in accordance with § 655.10, subject to the transfer of authority to set the prevailing wage for a job opportunity on Guam to DOL in title 8 of the Code of Federal Regulations. DOL does not certify to DHS the temporary employment of H–2B nonimmigrant foreign workers, or enforce compliance with the provisions of the H–2B visa program, in the Territory of Guam.

§ 655.4 Transition procedures.

(a) The NPWC shall continue to process an *Application for Prevailing Wage Determination* submitted prior to April 29, 2015, in accordance with the prevailing wage methodology at 20 CFR part 655, subpart A, revised as of April 1, 2009, except for § 655.10(b)(2), see 20 CFR part 655, subpart A, revised as of April 1, 2014. Employers with a pending *Application for Prevailing Wage Determination* who seek a prevailing wage based on an alternate wage source must submit a new *Application for Prevailing Wage Determination.*

(b) The NPWC shall process an *Application for a Prevailing Wage Determination* submitted on or after April 29, 2015, in accordance with the wage methodology established in § 655.10 of the final prevailing wage rule.

(c) The NPC shall continue to process an *Application for Temporary Employment Certification* submitted prior to April 29, 2015, in accordance with 20 CFR part 655, subpart A, revised as of April 1, 2009.

(d) The NPC shall process an *Application for Temporary Employment Certification* submitted on or after April 29, 2015, and that has a start date of need prior to October 1, 2015, as follows:

(1) Employers will be permitted to file an *Application for Temporary Employment Certification* job order with the NPC using the emergency situations provision at § 655.17. The *Application for Temporary Employment Certification* must include a signed and dated copy of the new Appendix B associated with the ETA Form 9142B containing the requisite program

assurances and obligations under this rule. In the case of a job contractor filing as a joint employer with its employer-client, the NPC must receive a separate attachment containing the employer-client's business and contact information (*i.e.,* sections C and D of the ETA Form 9142B) as well as a separate signed and dated copy of the Appendix B for its employer-client, as required by § 655.19.

(2) The NPC will waive the regulatory filing timeframe under § 655.15 and process the *Application for Temporary Employment Certification* and job order in a manner consistent with the handling of applications under § 655.17 for emergency situations, including the recruitment of U.S. workers on an expedited basis, and make a determination as required by § 655.50. The recruitment of U.S. workers on an expedited basis will consist of placing a new job order with the SWA serving the area of intended employment that contains the job assurances and contents set forth in § 655.18 for a period of not less than 10 calendar days. In addition, employers who have not placed any newspaper advertisements under the rule published at 20 CFR part 655, subpart A, revised as of April 1, 2009. must place one newspaper advertisement, which may be published on any day of the week, meeting the advertising requirements of § 655.41, during the period of time the SWA is actively circulating the job order for intrastate clearance.

(3) If the Chicago NPC grants a temporary labor certification, the employer will receive an original certified ETA Form 9142B and a Final Determination letter. Upon receipt of the original certified ETA Form 9142B, the employer or its agent or attorney, if applicable, must complete the footer on the original Appendix B of the *Application for Temporary Employment Certification,* retain the original Appendix B, and submit a signed copy of Appendix B, together with the original certified ETA Form 9142B directly to USCIS. Under the document retention requirements in § 655.56, the employer must retain a copy of the temporary labor certification and the original signed Appendix B.

(4) An employer who did not submit an *Application for a Prevailing Wage Determination* prior to April 29, 2015, but who has a start date of need prior to October 1, 2015 may submit a completed *Application for a Prevailing Wage Determination* to the NPC with its emergency *Application for Temporary Employment Certification* requesting a prevailing wage determination for the job opportunity. Upon receipt, the NPC will transmit, on behalf of the employer, a copy of the *Application for a Prevailing Wage Determination* to the NPWC for processing and issuance of a prevailing wage determination using the wage methodology established in § 655.10.

(e) The NPC shall process an *Application for Temporary Employment Certification* submitted on or after April 29, 2015, and that has a start date of need after October 1, 2015, in accordance with all application filing requirements under this rule, and the employer must obtain a valid prevailing wage determination under the wage methodology established in § 655.10 prior to filing the job order with the SWA under § 655.16.

(f) Employers with a prevailing wage determination issued by the NPWC, or who have a pending or granted *Application for Temporary Employment Certification* on April 29, 2015, may seek a supplemental prevailing wage determination (SPWD) in order to obtain a prevailing wage based on an alternate wage source under this rule.

(1) The SPWD will apply during the validity period of the certification, except that such SPWD will be applicable only to those H–2B workers who are not yet employed in the certified position on the date of the issuance of the SPWD. The SPWD will not be applicable to H–2B workers who are already employed in the certified position at the time of the issuance of the SPWD, and it will not apply to U.S. workers recruited and hired under the original job order. For seafood employers whose workers' entry into the U.S. may be staggered under § 655.15(f), an SPWD issued under this provision will apply only to those H–2B workers who have not yet entered the U.S. and are therefore not yet employed in the certified position at the time of the issuance of the SPWD.

(2) In order to receive an SPWD under this provision, the employer must submit a new ETA Form 9141 to the NPWC that contains in Section E.a.5 Job Duties the original PWD tracking number (starting with P–400), the H–2B temporary employment certification application number (starting with H–400), and the words ''Request for a Supplemental Prevailing Wage Determination.'' Electronic submission through the iCERT Visa Portal System is preferred. Upon receipt of the request, the NPWC will issue to the employer, or if applicable, the employer's attorney or agent, an SPWD in an expedited manner and provide a copy to the Chicago NPC.

§ 655.5 Definition of terms.

For purposes of this subpart:

Act means the Immigration and Nationality Act or INA, as amended, 8 U.S.C. 1101 *et seq.*

Administrative Law Judge (ALJ) means a person within the Department's Office of Administrative Law Judges appointed under 5 U.S.C. 3105.

Administrator, Office of Foreign Labor Certification (OFLC) means the primary official of the Office of Foreign Labor Certification, ETA, or the Administrator's designee.

Administrator, Wage and Hour Division (WHD) means the primary official of the WHD, or the Administrator's designee.

Agent means:

(1) A legal entity or person who:

(i) Is authorized to act on behalf of an employer for temporary nonagricultural labor certification purposes;

(ii) Is not itself an employer, or a joint employer, as defined in this part with respect to a specific application; and

(iii) Is not an association or other organization of employers.

(2) No agent who is under suspension, debarment, expulsion, disbarment, or otherwise restricted from practice before any court, the Department of Labor, the Executive Office for Immigration Review under 8 CFR 1003.101, or DHS under 8 CFR 292.3 may represent an employer under this part.

Agricultural labor or services means those duties and occupations defined in subpart B of this part.

Applicant means a U.S. worker who is applying for a job opportunity for which an employer has filed an *Application for Temporary Employment Certification* (ETA Form 9142B and the appropriate appendices).

Application for Temporary Employment Certification means the Office of Management and Budget (OMB)-approved ETA Form 9142B and the appropriate appendices, a valid wage determination, as required by § 655.10, and a subsequently-filed U.S. worker recruitment report, submitted by an employer to secure a temporary labor certification determination from DOL.

Area of intended employment means the geographic area within normal commuting distance of the place (worksite address) of the job opportunity for which the certification is sought. There is no rigid measure of distance that constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (*e.g.,* average commuting times, barriers to reaching the worksite, or quality of the regional transportation network). If the place of intended employment is within a Metropolitan Statistical Area (MSA),

including a multistate MSA, any place within the MSA is deemed to be within normal commuting distance of the place of intended employment. The borders of MSAs are not controlling in the identification of the normal commuting area; a location outside of an MSA may be within normal commuting distance of a location that is inside (*e.g.,* near the border of) the MSA.

Area of substantial unemployment means a contiguous area with a population of at least 10,000 in which there is an average unemployment rate equal to or exceeding 6.5 percent for the 12 months preceding the determination of such areas made by the ETA.

Attorney means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, or commonwealth of the U.S., or the District of Columbia. No attorney who is under suspension, debarment, expulsion, disbarment, or otherwise restricted from practice before any court, the Department of Labor, the Executive Office for Immigration Review under 8 CFR 1003.101, or DHS under 8 CFR 292.3 may represent an employer under this subpart.

Board of Alien Labor Certification Appeals (BALCA or Board) means the permanent Board established by part 656 of this chapter, chaired by the Chief Administrative Law Judge (Chief ALJ), and consisting of ALJs assigned to the Department of Labor and designated by the Chief ALJ to be members of BALCA.

Certifying Officer (CO) means an OFLC official designated by the Administrator, OFLC to make determinations on applications under the H–2B program. The Administrator, OFLC is the National CO. Other COs may also be designated by the Administrator, OFLC to make the determinations required under this subpart.

Chief Administrative Law Judge (Chief ALJ) means the chief official of the Department's Office of Administrative Law Judges or the Chief Administrative Law Judge's designee.

Corresponding employment means:

(1) The employment of workers who are not H–2B workers by an employer that has a certified H–2B *Application for Temporary Employment Certification* when those workers are performing either substantially the same work included in the job order or substantially the same work performed by the H–2B workers, except that workers in the following two categories are not included in corresponding employment:

(i) Incumbent employees continuously employed by the H–2B employer to perform substantially the same work included in the job order or substantially the same work performed by the H–2B workers during the 52 weeks prior to the period of employment certified on the *Application for Temporary Employment Certification* and who have worked or been paid for at least 35 hours in at least 48 of the prior 52 workweeks, and who have worked or been paid for an average of at least 35 hours per week over the prior 52 weeks, as demonstrated on the employer's payroll records, provided that the terms and working conditions of their employment are not substantially reduced during the period of employment covered by the job order. In determining whether this standard was met, the employer may take credit for any hours that were reduced by the employee voluntarily choosing not to work due to personal reasons such as illness or vacation; or

(ii) Incumbent employees covered by a collective bargaining agreement or an individual employment contract that guarantees both an offer of at least 35 hours of work each workweek and continued employment with the H–2B employer at least through the period of employment covered by the job order, except that the employee may be dismissed for cause.

(2) To qualify as corresponding employment, the work must be performed during the period of the job order, including any approved extension thereof.

Date of need means the first date the employer requires services of the H–2B workers as listed on the *Application for Temporary Employment Certification.*

Department of Homeland Security (DHS) means the Federal Department having jurisdiction over certain immigration-related functions, acting through its component agencies, including USCIS.

Employee means a person who is engaged to perform work for an employer, as defined under the general common law. Some of the factors relevant to the determination of employee status include: The hiring party's right to control the manner and means by which the work is accomplished; the skill required to perform the work; the source of the instrumentalities and tools for accomplishing the work; the location of the work; the hiring party's discretion over when and how long to work; and whether the work is part of the regular business of the hiring party. Other applicable factors may be considered and no one factor is dispositive. The terms employee and worker are used interchangeably in this subpart.

Employer means a person (including any individual, partnership, association, corporation, cooperative, firm, joint stock company, trust, or other organization with legal rights and duties) that:

(1) Has a place of business (physical location) in the U.S. and a means by which it may be contacted for employment;

(2) Has an employer relationship (such as the ability to hire, pay, fire, supervise or otherwise control the work of employees) with respect to an H–2B worker or a worker in corresponding employment; and

(3) Possesses, for purposes of filing an *Application for Temporary Employment Certification,* a valid Federal Employer Identification Number (FEIN).

Employer-client means an employer that has entered into an agreement with a job contractor and that is not an affiliate, branch or subsidiary of the job contractor, under which the job contractor provides services or labor to the employer on a temporary basis and will not exercise substantial, direct day-to-day supervision and control in the performance of the services or labor to be performed other than hiring, paying and firing the workers.

Employment and Training Administration (ETA) means the agency within the Department of Labor that includes OFLC and has been delegated authority by the Secretary to fulfill the Secretary's mandate under the DHS regulations for the administration and adjudication of an *Application for Temporary Employment Certification* and related functions.

Federal holiday means a legal public holiday as defined at 5 U.S.C. 6103.

Full-time means 35 or more hours of work per week.

H–2B Petition means the DHS Form I–129 *Petition for a Nonimmigrant Worker,* with H Supplement or successor form or supplement, and accompanying documentation required by DHS for employers seeking to employ foreign persons as H–2B nonimmigrant workers

H–2B Registration means the OMB-approved ETA Form 9155, submitted by an employer to register its intent to hire H–2B workers and to file an *Application for Temporary Employment Certification.*

H–2B worker means any temporary foreign worker who is lawfully present in the U.S. and authorized by DHS to perform nonagricultural labor or services of a temporary or seasonal nature under 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b).

Job contractor means a person, association, firm, or a corporation that meets the definition of an employer and that contracts services or labor on a temporary basis to one or more employers, which is not an affiliate, branch or subsidiary of the job contractor and where the job contractor will not exercise substantial, direct day-to-day supervision and control in the performance of the services or labor to be performed other than hiring, paying and firing the workers.

Job offer means the offer made by an employer or potential employer of H–2B workers to both U.S. and H–2B workers describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits.

Job opportunity means one or more openings for full-time employment with the petitioning employer within a specified area(s) of intended employment for which the petitioning employer is seeking workers.

Job order means the document containing the material terms and conditions of employment relating to wages, hours, working conditions, worksite and other benefits, including obligations and assurances under 29 CFR part 503 and this subpart that is posted between and among the State Workforce Agencies (SWAs) on their job clearance systems.

Joint employment means that where two or more employers each have sufficient definitional indicia of being an employer to be considered the employer of a worker, those employers will be considered to jointly employ that worker. Each employer in a joint employment relationship to a worker is considered a joint employer of that worker.

Layoff means any involuntary separation of one or more U.S. employees without cause.

Metropolitan Statistical Area (MSA) means a geographic entity defined by OMB for use by Federal statistical agencies in collecting, tabulating, and publishing Federal statistics. A metro area contains a core urban area of 50,000 or more population, and a micro area contains an urban core of at least 10,000 (but fewer than 50,000) population. Each metro or micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core.

National Prevailing Wage Center (NPWC) means that office within OFLC from which employers, agents, or attorneys who wish to file an *Application for Temporary Employment Certification* receive a prevailing wage determination (PWD).

NPWC Director means the OFLC official to whom the Administrator, OFLC has delegated authority to carry out certain NPWC operations and functions.

National Processing Center (NPC) means the office within OFLC which is charged with the adjudication of an *Application for Temporary Employment Certification* or other applications. For purposes of this subpart, the NPC receiving a request for an *H–2B Registration* and an *Application for Temporary Employment Certification* is the Chicago NPC whose address is published in the **Federal Register**.

NPC Director means the OFLC official to whom the Administrator, OFLC has delegated authority for purposes of certain Chicago NPC operations and functions.

Non-agricultural labor and services means any labor or services not considered to be agricultural labor or services as defined in subpart B of this part. It does not include the provision of services as members of the medical profession by graduates of medical schools.

Occupational employment statistics (OES) survey means the program under the jurisdiction of the Bureau of Labor Statistics (BLS) that provides annual wage estimates for occupations at the State and MSA levels.

Offered wage means the wage offered by an employer in an H–2B job order. The offered wage must equal or exceed the highest of the prevailing wage or Federal, State or local minimum wage.

Office of Foreign Labor Certification (OFLC) means the organizational component of the ETA that provides national leadership and policy guidance and develops regulations to carry out the Secretary's responsibilities, including determinations related to an employer's request for *H–2B Regis*tration, *Application for Prevailing Wage Determination,* or *Application for Temporary Employment Certification.*

Prevailing wage determination (PWD) means the prevailing wage for the position, as described in § 655.10, that is the subject of the *Application for Temporary Employment Certification.* The PWD is made on ETA Form 9141, *Application for Prevailing Wage Determination.*

Professional athlete means an individual who is employed as an athlete by:

(1) A team that is a member of an association of six or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(2) Any minor league team that is affiliated with such an association.

Seafood is defined as fresh or saltwater finfish, crustaceans, other forms of aquatic animal life, including, but not limited to, alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals, and all mollusks.

Secretary means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

Secretary of Homeland Security means the chief official of the U.S. Department of Homeland Security (DHS) or the Secretary of Homeland Security's designee.

Secretary of State means the chief official of the U.S. Department of State or the Secretary of State's designee.

State Workforce Agency (SWA) means a State government agency that receives funds under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) to administer the State's public labor exchange activities.

Strike means a concerted stoppage of work by employees as a result of a labor dispute, or any concerted slowdown or other concerted interruption of operation (including stoppage by reason of the expiration of a collective bargaining agreement).

Successor in interest means:

(1) Where an employer has violated 29 CFR part 503, or this subpart, and has ceased doing business or cannot be located for purposes of enforcement, a successor in interest to that employer may be held liable for the duties and obligations of the violating employer in certain circumstances. The following factors, as used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Readjustment Assistance Act, may be considered in determining whether an employer is a successor in interest; no one factor is dispositive, but all of the circumstances will be considered as a whole:

(i) Substantial continuity of the same business operations;

(ii) Use of the same facilities;

(iii) Continuity of the work force;

(iv) Similarity of jobs and working conditions;

(v) Similarity of supervisory personnel;

(vi) Whether the former management or owner retains a direct or indirect interest in the new enterprise;

(vii) Similarity in machinery, equipment, and production methods;

(viii) Similarity of products and services; and

(ix) The ability of the predecessor to provide relief.

(2) For purposes of debarment only, the primary consideration will be the personal involvement of the firm's ownership, management, supervisors, and others associated with the firm in the violation(s) at issue.

United States (U.S.) means the continental United States, Alaska, Hawaii, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands (CNMI).

U.S. Citizenship and Immigration Services (USCIS) means the Federal agency within DHS that makes the determination under the INA whether to grant petitions filed by employers seeking H–2B workers to perform temporary non-agricultural work in the U.S.

United States worker (U.S. worker) means a worker who is:

(1) A citizen or national of the U.S.;

(2) An alien who is lawfully admitted for permanent residence in the U.S., is admitted as a refugee under 8 U.S.C. 1157, section 207 of the INA, is granted asylum under 8 U.S.C. 1158, section 208 of the INA, or is an alien otherwise authorized under the immigration laws to be employed in the U.S.; or

(3) An individual who is not an unauthorized alien (as defined in 8 U.S.C. 1324a(h)(3), section 274a(h)(3) of the INA) with respect to the employment in which the worker is engaging.

Wage and Hour Division (WHD) means the agency within the Department of Labor with investigatory and law enforcement authority, as delegated from DHS, to carry out the provisions under 8 U.S.C. 1184(c), section 214(c) of the INA.

Wages mean all forms of cash remuneration to a worker by an employer in payment for personal services.

§ 655.6 Temporary need.

(a) An employer seeking certification under this subpart must establish that its need for non-agricultural services or labor is temporary, regardless of whether the underlying job is permanent or temporary.

(b) The employer's need is considered temporary if justified to the CO as one of the following: A one-time occurrence; a seasonal need; a peakload need; or an intermittent need, as defined by DHS regulations. Except where the employer's need is based on a one-time occurrence, the CO will deny a request for an *H–2B Registration* or an *Application for Temporary Employment Certification* where the employer has a need lasting more than 9 months.

(c) A job contractor will only be permitted to seek certification if it can demonstrate through documentation its own temporary need, not that of its employer-client(s). A job contractor will only be permitted to file applications based on a seasonal need or a one-time occurrence.

(d) Nothing in this paragraph (d) is intended to limit the authority of the Secretary of Homeland Security, in the course of adjudicating an H–2B petition, to make the final determination as to whether a prospective H–2B employer's need is temporary in nature.

§ 655.7 Persons and entities authorized to file.

(a) *Persons authorized to file.* In addition to the employer applicant, a request for an *H–2B Registration* or an *Application for Temporary Employment Certification* may be filed by an attorney or agent, as defined in § 655.5.

(b) *Employer's signature required.* Regardless of whether the employer is represented by an attorney or agent, the employer is required to sign the *H–2B Registration* and *Application for Temporary Employment Certification* and all documentation submitted to the Department of Labor.

§ 655.8 Requirements for agents.

An agent filing an *Application for Temporary Employment Certification* on behalf of an employer must provide:

(a) A copy of the agent agreement or other document demonstrating the agent's authority to represent the employer; and

(b) A copy of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Farm Labor Contractor Certificate of Registration, if the agent is required under MSPA, at 29 U.S.C. 1801 *et seq.,* to have such a certificate, identifying the specific farm labor contracting activities the agent is authorized to perform.

§ 655.9 Disclosure of foreign worker recruitment.

(a) The employer, and its attorney or agent, as applicable, must provide a copy of all agreements with any agent or recruiter whom it engages or plans to engage in the recruitment of H–2B workers under this *Application for Temporary Employment Certification.* These agreements must contain the contractual prohibition against charging fees as set forth in § 655.20(p).

(b) The employer, and its attorney or agent, as applicable, must also provide the identity and location of all persons and entities hired by or working for the recruiter or agent referenced in paragraph (a) of this section, and any of the agents or employees of those persons and entities, to recruit prospective foreign workers for the H–2B job opportunities offered by the employer.

(c) The Department of Labor will maintain a publicly available list of agents and recruiters who are party to the agreements referenced in paragraph (a) of this section, as well as the persons and entities referenced in paragraph (b) of this section and the locations in which they are operating.

Prefiling Procedures

§ 655.10 Determination of prevailing wage for temporary labor certification purposes.

(a) *Offered wage.* The employer must advertise the position to all potential workers at a wage at least equal to the prevailing wage obtained from the NPWC, or the Federal, State or local minimum wage, whichever is highest. The employer must offer and pay this wage (or higher) to both its H–2B workers and its workers in corresponding employment. The issuance of a PWD under this section does not permit an employer to pay a wage lower than the highest wage required by any applicable Federal, State or local law.

(b) [Reserved]

(c) *Request for PWD.* (1) An employer must request and receive a PWD from the NPWC before filing the job order with the SWA.

(2) The PWD must be valid on the date the job order is posted.

(d) *Multiple worksites.* If the job opportunity involves multiple worksites within an area of intended employment and different prevailing wage rates exist for the opportunity within the area of intended employment, the prevailing wage is the highest applicable wage among all the worksites.

(e) *NPWC action.* The NPWC will provide the PWD, indicate the source, and return the Application for Prevailing Wage Determination (ETA Form 9141) with its endorsement to the employer.

(f) [Reserved]

(g) *Review of employer-provided surveys.* (1) If the NPWC finds an employer-provided survey not to be acceptable, the NPWC shall inform the employer in writing of the reasons the survey was not accepted.

(2) The employer, after receiving notification that the survey it provided for consideration is not acceptable, may request review under § 655.13.

(h) *Validity period.* The NPWC must specify the validity period of the

prevailing wage, which in no event may be more than 365 days and no less than 90 days from the date that the determination is issued.

(i) *Professional athletes.* In computing the prevailing wage for a professional athlete when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations is considered the prevailing wage.

(j) *Retention of documentation.* The employer must retain the PWD for 3 years from the date of issuance or the date of a final determination on the *Application for Temporary Employment Certification,* whichever is later, and submit it to a CO if requested by a Notice of Deficiency, described in § 655.31, or audit, as described in § 655.70, or to a WHD representative during a WHD investigation.

(k) *Guam.* The requirements of this section apply to any request filed for an H–2B job opportunity on Guam, subject to the transfer of authority to set the prevailing wage for a job opportunity on Guam to DOL in Title 8 of the Code of Federal Regulations.

§ 655.11 Registration of H–2B employers.

All employers, including job contractors, that desire to hire H–2B workers must establish their need for services or labor is temporary by filing an *H–2B Registration* with the Chicago NPC.

(a) *Registration filing.* An employer must file an *H–2B Registration.* The *H–2B Registration* must be accompanied by documentation evidencing:

(1) The number of positions that will be sought in the first year of registration;

(2) The time period of need for the workers requested;

(3) That the nature of the employer's need for the services or labor to be performed is non-agricultural and temporary, and is justified as either a one-time occurrence, a seasonal need, a peakload need, or an intermittent need, as defined by DHS regulations and § 655.6 (or in the case of job contractors, a seasonal need or one-time occurrence); and

(4) For job contractors, the job contractor's own seasonal need or one-time occurrence, such as through the provision of payroll records.

(b) *Original signature.* The *H–2B Registration* must bear the original signature of the employer (and that of the employer's attorney or agent if applicable). If and when the *H–2B Registration* is permitted to be filed electronically, the employer will satisfy this requirement by signing the *H–2B Registration* as directed by the CO.

(c) *Timeliness of registration filing.* A completed request for an *H–2B Registration* must be received by no less than 120 calendar days and no more than 150 calendar days before the employer's date of need, except where the employer submits the *H–2B Registration* in support of an emergency filing under § 655.17.

(d) *Temporary need.* (1) The employer must establish that its need for non-agricultural services or labor is temporary, regardless of whether the underlying job is permanent or temporary, consistent with DHS regulations. A job contractor must also demonstrate through documentation its own seasonal need or one-time occurrence.

(2) The employer's need will be assessed in accordance with the definitions provided by the Secretary of Homeland Security and as further defined in § 655.6.

(e) *NPC review.* The CO will review the *H–2B Registration* and its accompanying documentation for completeness and make a determination based on the following factors:

(1) The job classification and duties qualify as non-agricultural;

(2) The employer's need for the services or labor to be performed is temporary in nature, and for job contractors, demonstration of the job contractor's own seasonal need or one-time occurrence;

(3) The number of worker positions and period of need are justified; and

(4) The request represents a bona fide job opportunity.

(f) *Mailing and postmark requirements.* Any notice or request pertaining to an *H–2B Registration* sent by the CO to an employer requiring a response will be mailed to the address provided on the *H–2B Registration* using methods to assure next day delivery, including electronic mail. The employer's response to the notice or request must be mailed using methods to assure next day delivery, including electronic mail, and be sent by the due date specified by the CO or by the next business day if the due date falls on a Saturday, Sunday or Federal holiday.

(g) *Request for information (RFI).* If the CO determines the *H–2B Registration* cannot be approved, the CO will issue an RFI. The RFI will be issued within 7 business days of the CO's receipt of the *H–2B Registration.* The RFI will:

(1) State the reason(s) why the *H–2B Registration* cannot be approved and what supplemental information or documentation is needed to correct the deficiencies;

(2) Specify a date, no later than 7 business days from the date the RFI is issued, by which the supplemental information or documentation must be sent by the employer;

(3) State that, upon receipt of a response to the RFI, the CO will review the *H–2B Registration* as well as any supplemental information and documentation and issue a Notice of Decision on the *H–2B Registration.* The CO may, at his or her discretion, issue one or more additional RFIs before issuing a Notice of Decision on the *H–2B Registration;* and

(4) State that failure to comply with an RFI, including not responding in a timely manner or not providing all required documentation within the specified timeframe, will result in a denial of the *H–2B Registration.*

(h) *Notice of Decision.* The CO will notify the employer in writing of the final decision on the *H–2B Registration.*

(1) Approved *H–2B Registration.* If the *H–2B Registration* is approved, the CO will send a Notice of Decision to the employer, and a copy to the employer's attorney or agent, if applicable. The Notice of Decision will notify the employer that it is eligible to seek H–2B workers in the occupational classification for the anticipated number of positions and period of need stated on the approved *H–2B Registration.* The CO may approve the *H–2B Registration* for a period of up to 3 consecutive years.

(2) Denied *H–2B Registration.* If the *H–2B Registration* is denied, the CO will send a Notice of Decision to the employer, and a copy to the employer's attorney or agent, if applicable. The Notice of Decision will:

(i) State the reason(s) why the *H–2B Registration* is denied;

(ii) Offer the employer an opportunity to request administrative review under § 655.61 within 10 business days from the date the Notice of Decision is issued and state that if the employer does not request administrative review within that period the denial is final.

(i) *Retention of documents.* All employers filing an *H–2B Registration* are required to retain any documents and records not otherwise submitted proving compliance with this subpart. Such records and documents must be retained for a period of 3 years from the date of certification of the last *Application for Temporary Employment Certification* supported by the *H–2B Registration,* if approved, or 3 years from the date the decision is issued if the *H–2B Registration* is denied or 3 years from the day the Department of Labor receives written notification from the employer withdrawing its pending *H–2B Registration.*

(j) *Transition period.* In order to allow OFLC to make the necessary changes to its program operations to accommodate the new registration process, OFLC will announce in the **Federal Register** a separate transition period for the registration process, and until that time, will continue to adjudicate temporary need during the processing of applications.

§ 655.12 Use of registration of H–2B employers.

(a) Upon approval of the *H–2B Registration,* the employer is authorized for the specified period of up to 3 consecutive years from the date the *H–2B Registration* is approved to file an *Application for Temporary Employment Certification,* unless:

(1) The number of workers to be employed has increased by more than 20 percent (or 50 percent for employers requesting fewer than 10 workers) from the initial year;

(2) The dates of need for the job opportunity have changed by more than a total of 30 calendar days from the initial year for the entire period of need;

(3) The nature of the job classification and/or duties has materially changed; or

(4) The temporary nature of the employer's need for services or labor to be performed has materially changed.

(b) If any of the changes in paragraphs (a)(1) through (4) of this section apply, the employer must file a new *H–2B Registration* in accordance with § 655.11.

(c) The *H–2B Registration* may not be transferred from one employer to another unless the employer to which it is transferred is a successor in interest to the employer to which it was issued.

§ 655.13 Review of PWDs.

(a) *Request for review of PWDs.* Any employer desiring review of a PWD must make a written request for such review to the NPWC Director within 7 business days from the date the PWD is issued. The request for review must clearly identify the PWD for which review is sought; set forth the particular grounds for the request; and include any materials submitted to the NPWC for purposes of securing the PWD.

(b) *NPWC review.* Upon the receipt of the written request for review, the NPWC Director will review the employer's request and accompanying documentation, including any supplementary material submitted by the employer, and after review shall issue a Final Determination letter; that letter may:

(1) Affirm the PWD issued by the NPWC; or

(2) Modify the PWD.

(c) *Request for review by BALCA.* Any employer desiring review of the NPWC Director's decision on a PWD must make a written request for review of the determination by BALCA within 10 business days from the date the Final Determination letter is issued.

(1) The request for BALCA review must be in writing and addressed to the NPWC Director who made the final determinations. Upon receipt of a request for BALCA review, the NPWC will prepare an appeal file and submit it to BALCA.

(2) The request for review, statements, briefs, and other submissions of the parties must contain only legal arguments and may refer to only the evidence that was within the record upon which the decision on the PWD was based.

(3) BALCA will handle appeals in accordance with § 655.61.

§ 655.14 [Reserved]

Application for Temporary Employment Certification Filing Procedures

§ 655.15 Application filing requirements.

All registered employers that desire to hire H–2B workers must file an *Application for Temporary Employment Certification* with the NPC designated by the Administrator, OFLC. Except for employers that qualify for emergency procedures at § 655.17, employers that fail to register under the procedures in § 655.11 and/or that fail to submit a PWD obtained under § 655.10 will not be eligible to file an *Application for Temporary Employment Certification* and their applications will be returned without review.

(a) *What to file.* A registered employer seeking H–2B workers must file a completed *Application for Temporary Employment Certification* (ETA Form 9142B and the appropriate appendices and valid PWD), a copy of the job order being submitted concurrently to the SWA serving the area of intended employment, as set forth in § 655.16, and copies of all contracts and agreements with any agent and/or recruiter, executed in connection with the job opportunities and all information required, as specified in §§ 655.8 and 655.9.

(b) *Timeliness.* A completed *Application for Temporary Employment Certification* must be filed no more than 90 calendar days and no less than 75 calendar days before the employer's date of need.

(c) *Location and method of filing.* The employer must submit the *Application for Temporary Employment Certification* and all required supporting documentation to the NPC either electronically or by mail.

(d) *Original signature.* The *Application for Temporary Employment Certification* must bear the original signature of the employer (and that of the employer's authorized attorney or agent if the employer is so represented). If the *Application for Temporary Employment Certification* is filed electronically, the employer must satisfy this requirement by signing the *Application for Temporary Employment Certification* as directed by the CO.

(e) *Requests for multiple positions.* Certification of more than one position may be requested on the *Application for Temporary Employment Certification* as long as all H–2B workers will perform the same services or labor under the same terms and conditions, in the same occupation, in the same area of intended employment, and during the same period of employment.

(f) *Separate applications.* Except as otherwise permitted by this paragraph (f), only one *Application for Temporary Employment Certification* may be filed for worksite(s) within one area of intended employment for each job opportunity with an employer for each period of employment. Except where otherwise permitted under § 655.4, an association or other organization of employers is not permitted to file master applications on behalf of its employer-members under the H–2B program.

(1) Subject to paragraph (f)(2) of this section, if a petition for H–2B nonimmigrants filed by an employer in the seafood industry is granted, the employer may bring the nonimmigrants described in the petition into the United States at any time during the 120-day period beginning on the start date for which the employer is seeking the services of the nonimmigrants without filing another petition.

(2) An employer in the seafood industry may not bring H–2B nonimmigrants into the United States after the date that is 90 days after the start date for which the employer is seeking the services of the nonimmigrants unless the employer conducts new recruitment, that begins at least 45 days after, and ends before the 90th day after, the certified start date of need as follows:

(i) Completes a new assessment of the local labor market by—

(A) Listing the job orders in local newspapers on 2 separate Sundays; and

(B) Placing new job orders for the job opportunity with the State Workforce Agency serving the area of intended employment and posting the job opportunity at the place of employment for at least 10 days; and

(C) Offering the job to an equally or better qualified United States worker who—

(*1*) Applies for the job; and

(*2*) Will be available at the time and place of need.

(3) In order to comply with this provision, employers in the seafood industry must—

(*1*) Sign and date an attestation form stating the employer's compliance with this subparagraph. The attestation form is available at *http://www.foreignlaborcert.doleta.gov/form.cfm;*

(*2*) Provide each H–2B nonimmigrant worker seeking admission to the United States a copy of the signed and dated attestation, with instructions that the worker must present the documentation upon request to the Department of State's consular officers when they apply for a visa and/or the Department of Homeland Security's U.S Customs and Border Protection officers when seeking admission to the United States. Without this attestation, an H–2B nonimmigrant may be denied a visa or admission to the United States if seeking to enter at any time other than the start date stated in the petition. (The attestation is not necessary when filing an amended petition based on a worker who is being substituted in accordance with DHS regulations.) The attestation presented by an H–2B nonimmigrant worker must be the official attestation downloaded from OFLC's Web site and may not be altered or revised in any manner; and

(*3*) Retain the additional recruitment documentation, together with their prefiling recruitment documentation, for a period of 3 years from the date of certification, consistent with the document retention requirements under § 655.56. Seafood industry employers who conduct the required additional recruitment should not submit proof of the additional recruitment to the Office of Foreign Labor Certification.

(g) *One-time occurrence.* Where a one-time occurrence lasts longer than 1 year, the CO will instruct the employer on any additional recruitment requirements with respect to the continuing validity of the labor market test or offered wage obligation.

(h) *Information dissemination.* Information received in the course of processing a request for an *H–2B Registration,* an *Application for Temporary Employment Certification* or program integrity measures such as audits may be forwarded from OFLC to WHD, or any other Federal agency as appropriate, for investigative and/or enforcement purposes.

§ 655.16 Filing of the job order at the SWA.

(a) *Submission of the job order.* (1) The employer must submit the job order to the SWA serving the area of intended employment at the same time it submits the *Application for Temporary Employment Certification* and a copy of the job order to the NPC in accordance with § 655.15. If the job opportunity is located in more than one State within the same area of intended employment, the employer may submit the job order to any one of the SWAs having jurisdiction over the anticipated worksites, but must identify the receiving SWA on the copy of the job order submitted to the NPC with its *Application for Temporary Employment Certification.* The employer must inform the SWA that the job order is being placed in connection with a concurrently submitted *Application for Temporary Employment Certification* for H–2B workers.

(2) In addition to complying with State-specific requirements governing job orders, the job order submitted to the SWA must satisfy the requirements set forth in § 655.18.

(b) *SWA review of the job order.* The SWA must review the job order and ensure that it complies with criteria set forth in § 655.18. If the SWA determines that the job order does not comply with the applicable criteria, the SWA must inform the CO at the NPC of the noted deficiencies within 6 business days of receipt of the job order.

(c) *Intrastate and interstate clearance.* Upon receipt of the Notice of Acceptance, as described in § 655.33, the SWA must promptly place the job order in intrastate clearance, and in interstate clearance by providing a copy of the job order to other states as directed by the CO.

(d) *Duration of job order posting and SWA referral of U.S. workers.* Upon receipt of the Notice of Acceptance, any SWA in receipt of the employer's job order must keep the job order on its active file until the end of the recruitment period, as set forth in § 655.40(c), and must refer to the employer in a manner consistent with § 655.47 all qualified U.S. workers who apply for the job opportunity or on whose behalf a job application is made.

(e) *Amendments to a job order.* The employer may amend the job order at any time before the CO makes a final determination, in accordance with procedures set forth in § 655.35.

§ 655.17 Emergency situations.

(a) *Waiver of time period.* The CO may waive the time period(s) for filing an *H–2B Registration* and/or an *Application for Temporary Employment Certification* for employers that have good and substantial cause, provided that the CO has sufficient time to thoroughly test the domestic labor market on an expedited basis and to make a final determination as required by § 655.50.

(b) *Employer requirements.* The employer requesting a waiver of the required time period(s) must submit to the NPC a request for a waiver of the time period requirement, a completed *Application for Temporary Employment Certification* and the proposed job order identifying the SWA serving the area of intended employment, and must otherwise meet the requirements of § 655.15. If the employer did not previously apply for an *H–2B Registration,* the employer must also submit a completed *H–2B Registration* with all supporting documentation, as required by § 655.11. If the employer did not previously apply for a PWD, the employer must also submit a completed PWD request. The employer's waiver request must include detailed information describing the good and substantial cause that has necessitated the waiver request. Good and substantial cause may include, but is not limited to, the substantial loss of U.S. workers due to Acts of God, or a similar unforeseeable man-made catastrophic event (such as an oil spill or controlled flooding) that is wholly outside of the employer's control, unforeseeable changes in market conditions, or pandemic health issues. A denial of a previously submitted *H–2B Registration* in accordance with the procedures set forth in § 655.11 does not constitute good and substantial cause necessitating a waiver under this section.

(c) *Processing of emergency applications.* The CO will process the emergency *H–2B Registration* and/or *Application for Temporary Employment Certification* and job order in a manner consistent with the provisions of this subpart and make a determination on the *Application for Temporary Employment Certification* in accordance with § 655.50. If the CO grants the waiver request, the CO will forward a Notice of Acceptance and the approved job order to the SWA serving the area of intended employment identified by the employer in the job order. If the CO determines that the certification cannot be granted because, under paragraph (a) of this section, the request for emergency filing is not justified and/or there is not sufficient time to make a determination of temporary need or ensure compliance with the criteria for certification contained in § 655.51, the CO will send a Final Determination

letter to the employer in accordance with § 655.53.

§ 655.18 Job order assurances and contents.

(a) *General.* Each job order placed in connection with an *Application for Temporary Employment Certification* must at a minimum include the information contained in paragraph (b) of this section. In addition, by submitting the *Application for Temporary Employment Certification,* an employer agrees to comply with the following assurances with respect to each job order:

(1) *Prohibition against preferential treatment.* The employer's job order must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2B workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H–2B workers. This does not relieve the employer from providing to H–2B workers at least the minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

(2) *Bona fide job requirements.* Each job qualification and requirement must be listed in the job order and must be bona fide and consistent with the normal and accepted qualifications and requirements imposed by non-H–2B employers in the same occupation and area of intended employment.

(b) *Contents.* In addition to complying with the assurances in paragraph (a) of this section, the employer's job order must meet the following requirements:

(1) State the employer's name and contact information;

(2) Indicate that the job opportunity is a temporary, full-time position, including the total number of job openings the employer intends to fill;

(3) Describe the job opportunity for which certification is sought with sufficient information to apprise U.S. workers of the services or labor to be performed, including the duties, the minimum education and experience requirements, the work hours and days, and the anticipated start and end dates of the job opportunity;

(4) Indicate the geographic area of intended employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;

(5) Specify the wage that the employer is offering, intends to offer, or will provide to H–2B workers, or, in the event that there are multiple wage offers, the range of wage offers, and ensure that the wage offer equals or exceeds the highest of the prevailing wage or the Federal, State, or local minimum wage;

(6) If applicable, specify that overtime will be available to the worker and the wage offer(s) for working any overtime hours;

(7) If applicable, state that on-the-job training will be provided to the worker;

(8) State that the employer will use a single workweek as its standard for computing wages due;

(9) Specify the frequency with which the worker will be paid, which must be at least every 2 weeks or according to the prevailing practice in the area of intended employment, whichever is more frequent;

(10) If the employer provides the worker with the option of board, lodging, or other facilities, including fringe benefits, or intends to assist workers to secure such lodging, disclose the provision and cost of the board, lodging, or other facilities, including fringe benefits or assistance to be provided;

(11) State that the employer will make all deductions from the worker's paycheck required by law. Specify any deductions the employer intends to make from the worker's paycheck which are not required by law, including, if applicable, any deductions for the reasonable cost of board, lodging, or other facilities;

(12) Detail how the worker will be provided with or reimbursed for transportation and subsistence from the place from which the worker has come to work for the employer, whether in the U.S. or abroad, to the place of employment, if the worker completes 50 percent of the period of employment covered by the job order, consistent with § 655.20(j)(1)(i);

(13) State that the employer will provide or pay for the worker's cost of return transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer, if the worker completes the certified period of employment or is dismissed from employment for any reason by the employer before the end of the period, consistent with § 655.20(j)(1)(ii);

(14) If applicable, state that the employer will provide daily transportation to and from the worksite;

(15) State that the employer will reimburse the H–2B worker in the first workweek for all visa, visa processing, border crossing, and other related fees, including those mandated by the government, incurred by the H–2B worker (but need not include passport expenses or other charges primarily for the benefit of the worker);

(16) State that the employer will provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned, in accordance with § 655.20(k);

(17) State the applicability of the three-fourths guarantee, offering the worker employment for a total number of work hours equal to at least three-fourths of the workdays of each 12-week period, if the period of employment covered by the job order is 120 or more days, or each 6-week period, if the period of employment covered by the job order is less than 120 days, in accordance with § 655.20(f); and

(18) Instruct applicants to inquire about the job opportunity or send applications, indications of availability, and/or resumes directly to the nearest office of the SWA in the State in which the advertisement appeared and include the SWA contact information.

§ 655.19 Job contractor filing requirements.

(a) Provided that a job contractor and any employer-client are joint employers, a job contractor may submit an *Application for Temporary Employment Certification* on behalf of itself and that employer-client.

(b) A job contractor must have separate contracts with each different employer-client. Each contract or agreement may support only one *Application for Temporary Employment Certification* for each employer-client job opportunity within a single area of intended employment.

(c) Either the job contractor or its employer-client may submit an ETA Form 9141, *Application for Prevailing Wage Determination,* describing the job opportunity to the NPWC. However, each of the joint employers is separately responsible for ensuring that the wage offer listed on the *Application for Temporary Employment Certification,* ETA Form 9142B, and related recruitment at least equals the prevailing wage rate determined by the NPWC and that all other wage obligations are met.

(d)(1) A job contractor that is filing as a joint employer with its employer-client must submit to the NPC a completed *Application for Temporary Employment Certification,* ETA Form 9142, that clearly identifies the joint employers (the job contractor and its employer-client) and the employment relationship (including the actual worksite), in accordance with the instructions provided by the

Department of Labor. The *Application for Temporary Employment Certification* must bear the original signature of the job contractor and the employer-client and be accompanied by the contract or agreement establishing the employers' relationship related to the workers sought.

(2) By signing the *Application for Temporary Employment Certification,* each employer independently attests to the conditions of employment required of an employer participating in the H–2B program and assumes full responsibility for the accuracy of the representations made in the application and for all of the responsibilities of an employer in the H–2B program.

(e)(1) Either the job contractor or its employer-client may place the required job order and conduct recruitment as described in § 655.16 and §§ 655.42 through 655.46. Also, either one of the joint employers may assume responsibility for interviewing applicants. However, both of the joint employers must sign the recruitment report that is submitted to the NPC with the *Application for Temporary Employment Certification,* ETA Form 9142B.

(2) The job order and all recruitment conducted by joint employers must satisfy the content requirements identified in §§ 655.18 and 655.41. Additionally, in order to fully apprise applicants of the job opportunity and avoid potential confusion inherent in a job opportunity involving two employers, joint employer recruitment must clearly identify both employers (the job contractor and its employer-client) by name and must clearly identify the worksite location(s) where workers will perform labor or services.

(3)(i) Provided that all of the employer-clients' job opportunities are in the same occupation and area of intended employment and have the same requirements and terms and conditions of employment, including dates of employment, a job contractor may combine more than one of its joint employer employer-clients' job opportunities in a single advertisement. Each advertisement must fully apprise potential workers of the job opportunity available with each employer-client and otherwise satisfy the advertising content requirements required for all H–2B-related advertisements, as identified in § 655.41. Such a shared advertisement must clearly identify the job contractor by name, the joint employment relationship, and the number of workers sought for each job opportunity, identified by employer-client name and location (*e.g.* 5 openings with Employer-Client 1 (worksite location), 3 openings with Employer-Client 2 (worksite location)).

(ii) In addition, the advertisement must contain the following statement: ''Applicants may apply for any or all of the jobs listed. When applying, please identify the job(s) (by company and work location) you are applying to for the entire period of employment specified.'' If an applicant fails to identify one or more specific work location(s), that applicant is presumed to have applied to all work locations listed in the advertisement.

(f) If an application for joint employers is approved, the NPC will issue one certification and send it to the job contractor. In order to ensure notice to both employers, a courtesy copy of the certification cover letter will be sent to the employer-client. (g) When submitting a certified *Application for Temporary Employment Certification* to USCIS, the job contractor should submit the complete ETA Form 9142B containing the original signatures of both the job contractor and employer-client.

Assurances and Obligations

§ 655.20 Assurances and obligations of H–2B employers.

An employer employing H–2B workers and/or workers in corresponding employment under an *Application for Temporary Employment Certification* has agreed as part of the *Application for Temporary Employment Certification* that it will abide by the following conditions with respect to its H–2B workers and any workers in corresponding employment:

(a) *Rate of pay.* (1) The offered wage in the job order equals or exceeds the highest of the prevailing wage or Federal minimum wage, State minimum wage, or local minimum wage. The employer must pay at least the offered wage, free and clear, during the entire period of the *Application for Temporary Employment Certification* granted by OFLC.

(2) The offered wage is not based on commissions, bonuses, or other incentives, including paying on a piece-rate basis, unless the employer guarantees a wage earned every workweek that equals or exceeds the offered wage.

(3) If the employer requires one or more minimum productivity standards of workers as a condition of job retention, the standards must be specified in the job order and the employer must demonstrate that they are normal and usual for non-H–2B employers for the same occupation in the area of intended employment.

(4) An employer that pays on a piece-rate basis must demonstrate that the piece rate is no less than the normal rate paid by non-H–2B employers to workers performing the same activity in the area of intended employment. The average hourly piece rate earnings must result in an amount at least equal to the offered wage. If the worker is paid on a piece rate basis and at the end of the workweek the piece rate does not result in average hourly piece rate earnings during the workweek at least equal to the amount the worker would have earned had the worker been paid at the offered hourly wage, then the employer must supplement the worker's pay at that time so that the worker's earnings are at least as much as the worker would have earned during the workweek if the worker had instead been paid at the offered hourly wage for each hour worked.

(b) *Wages free and clear.* The payment requirements for wages in this section will be satisfied by the timely payment of such wages to the worker either in cash or negotiable instrument payable at par. The payment must be made finally and unconditionally and ''free and clear.'' The principles applied in determining whether deductions are reasonable and payments are received free and clear and the permissibility of deductions for payments to third persons are explained in more detail in 29 CFR part 531.

(c) *Deductions.* The employer must make all deductions from the worker's paycheck required by law. The job order must specify all deductions not required by law which the employer will make from the worker's pay; any such deductions not disclosed in the job order are prohibited. The wage payment requirements of paragraph (b) of this section are not met where unauthorized deductions, rebates, or refunds reduce the wage payment made to the worker below the minimum amounts required by the offered wage or where the worker fails to receive such amounts free and clear because the worker ''kicks back'' directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wages delivered to the worker. Authorized deductions are limited to: Those required by law, such as taxes payable by workers that are required to be withheld by the employer and amounts due workers which the employer is required by court order to pay to another; deductions for the reasonable cost or fair value of board, lodging, and facilities furnished; and deductions of amounts which are authorized to be paid to third persons for the worker's account and benefit through his or her

voluntary assignment or order or which are authorized by a collective bargaining agreement with bona fide representatives of workers which covers the employer. Deductions for amounts paid to third persons for the worker's account and benefit which are not so authorized or are contrary to law or from which the employer, agent or recruiter including any agents or employees of these entities, or any affiliated person derives any payment, rebate, commission, profit, or benefit directly or indirectly, may not be made if they reduce the actual wage paid to the worker below the offered wage indicated on the *Application for Temporary Employment Certification.*

(d) *Job opportunity is full-time.* The job opportunity is a full-time temporary position, consistent with § 655.5, and the employer must use a single workweek as its standard for computing wages due. An employee's workweek must be a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day.

(e) *Job qualifications and requirements.* Each job qualification and requirement must be listed in the job order and must be bona fide and consistent with the normal and accepted qualifications and requirements imposed by non-H–2B employers in the same occupation and area of intended employment. The employer's job qualifications and requirements imposed on U.S. workers must not be less favorable than the qualifications and requirements that the employer is imposing or will impose on H–2B workers. A qualification means a characteristic that is necessary to the individual's ability to perform the job in question. A requirement means a term or condition of employment which a worker is required to accept in order to obtain the job opportunity. The CO may require the employer to submit documentation to substantiate the appropriateness of any job qualification and/or requirement specified in the job order.

(f) *Three-fourths guarantee.* (1) The employer must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays in each 12-week period (each 6-week period if the period of employment covered by the job order is less than 120 days) beginning with the first workday after the arrival of the worker at the place of employment or the advertised first date of need, whichever is later, and ending on the expiration date specified in the job order or in its extensions, if any. See the exception in paragraph (y) of this section.

(2) For purposes of this paragraph (f) a workday means the number of hours in a workday as stated in the job order. The employer must offer a total number of hours of work to ensure the provision of sufficient work to reach the three-fourths guarantee in each 12-week period (each 6-week period if the period of employment covered by the job order is less than 120 days) during the work period specified in the job order, or during any modified job order period to which the worker and employer have mutually agreed and that has been approved by the CO.

(3) In the event the worker begins working later than the specified beginning date the guarantee period begins with the first workday after the arrival of the worker at the place of employment, and continues until the last day during which the job order and all extensions thereof are in effect.

(4) The 12-week periods (6-week periods if the period of employment covered by the job order is less than 120 days) to which the guarantee applies are based upon the workweek used by the employer for pay purposes. The first 12-week period (or 6-week period, as appropriate) also includes any partial workweek, if the first workday after the worker's arrival at the place of employment is not the beginning of the employer's workweek, with the guaranteed number of hours increased on a pro rata basis (thus, the first period may include up to 12 weeks and 6 days (or 6 weeks and 6 days, as appropriate)). The final 12-week period (or 6-week period, as appropriate) includes any time remaining after the last full 12-week period (or 6-week period) ends, and thus may be as short as 1 day, with the guaranteed number of hours decreased on a pro rata basis.

(5) Therefore, if, for example, a job order is for a 32-week period (a period greater than 120 days), during which the normal workdays and work hours for the workweek are specified as 5 days a week, 7 hours per day, the worker would have to be guaranteed employment for at least 315 hours in the first 12-week period (12 weeks × 35 hours/week = 420 hours × 75 percent = 315), at least 315 hours in the second 12-week period, and at least 210 hours (8 weeks × 35 hours/week = 280 hours × 75 percent = 210) in the final partial period. If the job order is for a 16-week period (less than 120 days), during which the normal workdays and work hours for the workweek are specified as 5 days a week, 7 hours per day, the worker would have to be guaranteed employment for at least 157.5 hours (6 weeks × 35 hours/week = 210 hours × 75 percent = 157.5) in the first 6-week period, at least 157.5 hours in the second 6-week period, and at least 105 hours (4 weeks × 35 hours/week = 140 hours × 75 percent = 105) in the final partial period.

(6) If the worker is paid on a piece rate basis, the employer must use the worker's average hourly piece rate earnings or the offered wage, whichever is higher, to calculate the amount due under the guarantee.

(7) A worker may be offered more than the specified hours of work on a single workday. For purposes of meeting the guarantee, however, the worker will not be required to work for more than the number of hours specified in the job order for a workday. The employer, however, may count all hours actually worked in calculating whether the guarantee has been met. If during any 12-week period (6-week period if the period of employment covered by the job order is less than 120 days) during the period of the job order the employer affords the U.S. or H–2B worker less employment than that required under paragraph (f)(1) of this section, the employer must pay such worker the amount the worker would have earned had the worker, in fact, worked for the guaranteed number of days. An employer has not met the work guarantee if the employer has merely offered work on three-fourths of the workdays in an 12-week period (or 6-week period, as appropriate) if each workday did not consist of a full number of hours of work time as specified in the job order.

(8) Any hours the worker fails to work, up to a maximum of the number of hours specified in the job order for a workday, when the worker has been offered an opportunity to work in accordance with paragraph (f)(1) of this section, and all hours of work actually performed (including voluntary work over 8 hours in a workday), may be counted by the employer in calculating whether each 12-week period (or 6-week period, as appropriate) of guaranteed employment has been met. An employer seeking to calculate whether the guaranteed number of hours has been met must maintain the payroll records in accordance with this part.

(g) *Impossibility of fulfillment.* If, before the expiration date specified in the job order, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God, or similar unforeseeable man-made catastrophic event (such as an oil spill or controlled flooding) that is wholly outside the employer's control that

makes the fulfillment of the job order impossible, the employer may terminate the job order with the approval of the CO. In the event of such termination of a job order, the employer must fulfill a three-fourths guarantee, as described in paragraph (f) of this section, for the time that has elapsed from the start date listed in the job order or the first workday after the arrival of the worker at the place of employment, whichever is later, to the time of its termination. The employer must make efforts to transfer the H–2B worker or worker in corresponding employment to other comparable employment acceptable to the worker and consistent with the INA, as applicable. If a transfer is not effected, the employer must return the worker, at the employer's expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the worker's next certified H–2B employer, whichever the worker prefers.

(h) *Frequency of pay.* The employer must state in the job order the frequency with which the worker will be paid, which must be at least every 2 weeks or according to the prevailing practice in the area of intended employment, whichever is more frequent. Employers must pay wages when due.

(i) *Earnings statements.* (1) The employer must keep accurate and adequate records with respect to the workers' earnings, including but not limited to: Records showing the nature, amount and location(s) of the work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee in paragraph (f) of this section); the hours actually worked each day by the worker; if the number of hours worked by the worker is less than the number of hours offered, the reason(s) the worker did not work; the time the worker began and ended each workday; the rate of pay (both piece rate and hourly, if applicable); the worker's earnings per pay period; the worker's home address; and the amount of and reasons for any and all deductions taken from or additions made to the worker's wages.

(2) The employer must furnish to the worker on or before each payday in one or more written statements the following information:

(i) The worker's total earnings for each workweek in the pay period;

(ii) The worker's hourly rate and/or piece rate of pay;

(iii) For each workweek in the pay period the hours of employment offered to the worker (showing offers in accordance with the three-fourths guarantee as determined in paragraph (f) of this section, separate from any hours offered over and above the guarantee);

(iv) For each workweek in the pay period the hours actually worked by the worker;

(v) An itemization of all deductions made from or additions made to the worker's wages;

(vi) If piece rates are used, the units produced daily;

(vii) The beginning and ending dates of the pay period; and

(viii) The employer's name, address and FEIN.

(j) *Transportation and visa fees.* (1)(i) *Transportation to the place of employment.* The employer must provide or reimburse the worker for transportation and subsistence from the place from which the worker has come to work for the employer, whether in the U.S. or abroad, to the place of employment if the worker completes 50 percent of the period of employment covered by the job order (not counting any extensions). The employer may arrange and pay for the transportation and subsistence directly, advance at a minimum the most economical and reasonable common carrier cost of the transportation and subsistence to the worker before the worker's departure, or pay the worker for the reasonable costs incurred by the worker. When it is the prevailing practice of non-H–2B employers in the occupation in the area to do so or when the employer extends such benefits to similarly situated H–2B workers, the employer must advance the required transportation and subsistence costs (or otherwise provide them) to workers in corresponding employment who are traveling to the employer's worksite. The amount of the transportation payment must be no less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. The amount of the daily subsistence must be at least the amount permitted in § 655.173. Where the employer will reimburse the reasonable costs incurred by the worker, it must keep accurate and adequate records of: The costs of transportation and subsistence incurred by the worker; the amount reimbursed; and the date(s) of reimbursement. Note that the FLSA applies independently of the H–2B requirements and imposes obligations on employers regarding payment of wages.

(ii) *Transportation from the place of employment.* If the worker completes the period of employment covered by the job order (not counting any extensions), or if the worker is dismissed from employment for any reason by the employer before the end of the period, and the worker has no immediate subsequent H–2B employment, the employer must provide or pay at the time of departure for the worker's cost of return transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer. If the worker has contracted with a subsequent employer that has not agreed in the job order to provide or pay for the worker's transportation from the employer's worksite to such subsequent employer's worksite, the employer must provide or pay for that transportation and subsistence. If the worker has contracted with a subsequent employer that has agreed in the job order to provide or pay for the worker's transportation from the employer's worksite to such subsequent employer's worksite, the subsequent employer must provide or pay for such expenses.

(iii) *Employer-provided transportation.* All employer-provided transportation must comply with all applicable Federal, State, and local laws and regulations and must provide, at a minimum, the same vehicle safety standards, driver licensure requirements, and vehicle insurance as required under 49 CFR parts 390, 393, and 396.

(iv) *Disclosure.* All transportation and subsistence costs that the employer will pay must be disclosed in the job order.

(2) The employer must pay or reimburse the worker in the first workweek for all visa, visa processing, border crossing, and other related fees (including those mandated by the government) incurred by the H–2B worker, but not for passport expenses or other charges primarily for the benefit of the worker.

(k) *Employer-provided items.* The employer must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned.

(l) *Disclosure of job order.* The employer must provide to an H–2B worker outside of the U.S. no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the job order including any subsequent approved modifications. For an H–2B worker changing employment from an H–2B employer to a subsequent H–2B employer, the copy must be provided no later than the time an offer of employment is made by the subsequent H–2B employer. The disclosure of all

documents required by this paragraph (l) must be provided in a language understood by the worker, as necessary or reasonable.

(m) *Notice of worker rights.* The employer must post and maintain in a conspicuous location at the place of employment a poster provided by the Department of Labor that sets out the rights and protections for H–2B workers and workers in corresponding employment. The employer must post the poster in English. To the extent necessary, the employer must request and post additional posters, as made available by the Department of Labor, in any language common to a significant portion of the workers if they are not fluent in English.

(n) *No unfair treatment.* The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, any person who has:

(1) Filed a complaint under or related to 8 U.S.C. 1184(c), section 214(c) of the INA, 29 CFR part 503, or this subpart, or any other regulation promulgated thereunder;

(2) Instituted or caused to be instituted any proceeding under or related to 8 U.S.C. 1184(c), section 214(c) of the INA, 29 CFR part 503, or this subpart or any other regulation promulgated thereunder;

(3) Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1184(c), section 214(c) of the INA, 29 CFR part 503, or this subpart or any other regulation promulgated thereunder;

(4) Consulted with a workers' center, community organization, labor union, legal assistance program, or an attorney on matters related to 8 U.S.C. 1184(c), section 214(c) of the INA, 29 CFR part 503, or this subpart or any other regulation promulgated thereunder; or

(5) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by 8 U.S.C. 1184(c), section 214(c) of the INA, 29 CFR part 503, or this subpart or any other regulation promulgated thereunder.

(o) *Comply with the prohibitions against employees paying fees.* The employer and its attorney, agents, or employees have not sought or received payment of any kind from the worker for any activity related to obtaining H–2B labor certification or employment, including payment of the employer's attorney or agent fees, application and *H–2B Petition* fees, recruitment costs, or any fees attributed to obtaining the approved *Application for Temporary Employment Certification.* For purposes of this paragraph (o), payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in-kind payments, and free labor. All wages must be paid free and clear. This provision does not prohibit employers or their agents from receiving reimbursement for costs that are the responsibility and primarily for the benefit of the worker, such as government-required passport fees.

(p) *Contracts with third parties to comply with prohibitions.* The employer must contractually prohibit in writing any agent or recruiter (or any agent or employee of such agent or recruiter) whom the employer engages, either directly or indirectly, in recruitment of H–2B workers to seek or receive payments or other compensation from prospective workers. The contract must include the following statement: ''Under this agreement, [name of agent, recruiter] and any agent of or employee of [name of agent or recruiter] are prohibited from seeking or receiving payments from any prospective employee of [employer name] at any time, including before or after the worker obtains employment. Payments include but are not limited to, any direct or indirect fees paid by such employees for recruitment, job placement, processing, maintenance, attorneys' fees, agent fees, application fees, or petition fees.''

(q) *Prohibition against preferential treatment of foreign workers.* The employer's job offer must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2B workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H–2B workers. This does not relieve the employer from providing to H–2B workers at least the minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

(r) *Non-discriminatory hiring practices.* The job opportunity is, and through the period set forth in paragraph (t) of this section must continue to be, open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, disability, or citizenship. Rejections of any U.S. workers who applied or apply for the job must only be for lawful, job-related reasons, and those not rejected on this basis have been or will be hired. In addition, the employer has and will continue to retain records of all hired workers and rejected applicants as required by § 655.56.

(s) *Recruitment requirements.* The employer must conduct all required recruitment activities, including any additional employer-conducted recruitment activities as directed by the CO, and as specified in §§ 655.40 through 655.46.

(t) *Continuing requirement to hire U.S. workers.* The employer has and will continue to cooperate with the SWA by accepting referrals of all qualified U.S. workers who apply (or on whose behalf a job application is made) for the job opportunity, and must provide employment to any qualified U.S. worker who applies to the employer for the job opportunity, until 21 days before the date of need.

(u) *No strike or lockout.* There is no strike or lockout at any of the employer's worksites within the area of intended employment for which the employer is requesting H–2B certification at the time the *Application for Temporary Employment Certification* is filed.

(v) *No recent or future layoffs.* The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the *Application for Temporary Employment Certification* in the area of intended employment within the period beginning 120 calendar days before the date of need through the end of the period of certification. A layoff for lawful, job-related reasons such as lack of work or the end of a season is permissible if all H–2B workers are laid off before any U.S. worker in corresponding employment.

(w) *Contact with former U.S. employees.* The employer will contact (by mail or other effective means) its former U.S. workers, including those who have been laid off within 120 calendar days before the date of need (except those who were dismissed for cause or who abandoned the worksite), employed by the employer in the occupation at the place of employment during the previous year, disclose the terms of the job order, and solicit their return to the job.

(x) *Area of intended employment and job opportunity.* The employer must not place any H–2B workers employed under the approved *Application for Temporary Employment Certification* outside the area of intended employment or in a job opportunity not listed on the approved *Application for Temporary Employment Certification* unless the employer has obtained a new approved *Application for Temporary Employment Certification.*

(y) *Abandonment/termination of employment.* Upon the separation from employment of worker(s) employed under the *Application for Temporary Employment Certification* or workers in corresponding employment, if such separation occurs before the end date of the employment specified in the *Application for Temporary Employment Certification,* the employer must notify OFLC in writing of the separation from employment not later than 2 work days after such separation is discovered by the employer. In addition, the employer must notify DHS in writing (or any other method specified by the Department of Labor or DHS in the **Federal Register** or the Code of Federal Regulations) of such separation of an H–2B worker. An abandonment or abscondment is deemed to begin after a worker fails to report for work at the regularly scheduled time for 5 consecutive working days without the consent of the employer. If the separation is due to the voluntary abandonment of employment by the H–2B worker or worker in corresponding employment, and the employer provides appropriate notification specified under this paragraph (y), the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker under this section, and that worker is not entitled to the three-fourths guarantee described in paragraph (f) of this section. The employer's obligation to guarantee three-fourths of the work described in paragraph (f) ends with the last full 12-week period (or 6-week period, as appropriate) preceding the worker's voluntary abandonment or termination for cause.

(z) *Compliance with applicable laws.* During the period of employment specified on the *Application for Temporary Employment Certification,* the employer must comply with all applicable Federal, State and local employment-related laws and regulations, including health and safety laws. This includes compliance with 18 U.S.C. 1592(a), with respect to prohibitions against employers, the employer's agents or their attorneys knowingly holding, destroying or confiscating workers' passports, visas, or other immigration documents.

(aa) *Disclosure of foreign worker recruitment.* The employer, and its attorney or agent, as applicable, must comply with § 655.9 by providing a copy of all agreements with any agent or recruiter whom it engages or plans to engage in the recruitment of H–2B workers, and the identity and location of the persons or entities hired by or working for the agent or recruiter and any of the agents or employees of those persons and entities, to recruit foreign workers. Pursuant to § 655.15(a), the agreements and information must be filed with the *Application for Temporary Employment Certification.*

(bb) *Cooperation with investigators.* The employer must cooperate with any employee of the Secretary who is exercising or attempting to exercise the Department's authority pursuant to 8 U.S.C. 1184(c)(14)(B), section 214(c)(14)(B) of the INA.

§§ 655.21–655.29 [Reserved]

Processing of an Application for Temporary Employment Certification

§ 655.30 Processing of an application and job order.

(a) *NPC review.* The CO will review the *Application for Temporary Employment Certification* and job order for compliance with all applicable program requirements.

(b) *Mailing and postmark requirements.* Any notice or request sent by the CO to an employer requiring a response will be mailed to the address provided in the *Application for Temporary Employment Certification* using methods to assure next day delivery, including electronic mail. The employer's response to such a notice or request must be mailed using methods to assure next day delivery, including electronic mail, and be sent by the due date or the next business day if the due date falls on a Saturday, Sunday or Federal holiday.

(c) *Information dissemination.* OFLC may forward information received in the course of processing an *Application for Temporary Employment Certification* and program integrity measures to WHD, or any other Federal agency, as appropriate, for investigation and/or enforcement purposes.

§ 655.31 Notice of deficiency.

(a) *Notification timeline.* If the CO determines the *Application for Temporary Employment Certification* and/or job order is incomplete, contains errors or inaccuracies, or does not meet the requirements set forth in this subpart, the CO will notify the employer within 7 business days from the CO's receipt of the *Application for Temporary Employment Certification.* If applicable, the Notice of Deficiency will include job order deficiencies identified by the SWA under § 655.16. The CO will send a copy of the Notice of Deficiency to the SWA serving the area of intended employment identified by the employer on its job order, and if applicable, to the employer's attorney or agent.

(b) *Notice content.* The Notice of Deficiency will:

(1) State the reason(s) why the *Application for Temporary Employment Certification* or job order fails to meet the criteria for acceptance and state the modification needed for the CO to issue a Notice of Acceptance;

(2) Offer the employer an opportunity to submit a modified *Application for Temporary Employment Certification* or job order within 10 business days from the date of the Notice of Deficiency. The Notice will state the modification needed for the CO to issue a Notice of Acceptance;

(3) Offer the employer an opportunity to request administrative review of the Notice of Deficiency before an ALJ under provisions set forth in § 655.61. The Notice will inform the employer that it must submit a written request for review to the Chief ALJ of DOL within 10 business days from the date the Notice of Deficiency is issued by facsimile or other means normally assuring next day delivery, and that the employer must simultaneously serve a copy on the CO. The Notice will also state that the employer may submit any legal arguments that the employer believes will rebut the basis of the CO's action; and

(4) State that if the employer does not comply with the requirements of this section by either submitting a modified application within 10 business days or requesting administrative review before an ALJ under § 655.61, the CO will deny the *Application for Temporary Employment Certification.* The Notice will inform the employer that the denial of the *Application for Temporary Employment Certification* is final, and cannot be appealed. The Department of Labor will not further consider that *Application for Temporary Employment Certification.*

§ 655.32 Submission of a modified application or job order.

(a) *Review of a modified Application for Temporary Employment Certification or job order.* Upon receipt of a response to a Notice of Deficiency, including any modifications, the CO will review the response. The CO may issue one or more additional Notices of Deficiency before issuing a decision. The employer's failure to comply with a Notice of Deficiency, including not responding in a timely manner or not providing all required documentation, will result in a denial of the *Application for Temporary Employment Certification.*

(b) *Acceptance of a modified Application for Temporary Employment Certification or job order.* If the CO

accepts the modification(s) to the *Application for Temporary Employment Certification* and/or job order, the CO will issue a Notice of Acceptance to the employer. The CO will send a copy of the Notice of Acceptance to the SWA instructing it to make any necessary modifications to the not yet posted job order and, if applicable, to the employer's attorney or agent, and follow the procedure set forth in § 655.33.

(c) *Denial of a modified Application for Temporary Employment Certification or job order.* If the CO finds the response to Notice of Deficiency unacceptable, the CO will deny the *Application for Temporary Employment Certification* in accordance with the labor certification determination provisions in § 655.51.

(d) *Appeal from denial of a modified Application for Temporary Employment Certification or job order.* The procedures for appealing a denial of a modified *Application for Temporary Employment Certification* and/or job order are the same as for appealing the denial of a non-modified *Application for Temporary Employment Certification* outlined in § 655.61.

(e) *Post acceptance modifications.* Irrespective of the decision to accept the *Application for Temporary Employment Certification,* the CO may require modifications to the job order at any time before the final determination to grant or deny the *Application for Temporary Employment Certification* if the CO determines that the offer of employment does not contain all the minimum benefits, wages, and working condition provisions as set forth in § 655.18. The employer must make such modification, or certification will be denied under § 655.53. The employer must provide all workers recruited in connection with the job opportunity in the *Application for Temporary Employment Certification* with a copy of the modified job order no later than the date work commences, as approved by the CO.

§ 655.33 Notice of acceptance.

(a) *Notification timeline.* If the CO determines the *Application for Temporary Employment Certification* and job order are complete and meet the requirements of this subpart, the CO will notify the employer in writing within 7 business days from the date the CO received the *Application for Temporary Employment Certification* and job order or modification thereof. A copy of the Notice of Acceptance will be sent to the SWA serving the area of intended employment identified by the employer on its job order and, if applicable, to the employer's attorney or agent.

(b) *Notice content.* The notice will:

(1) Direct the employer to engage in recruitment of U.S. workers as provided in §§ 655.40 through 655.46, including any additional recruitment ordered by the CO under § 655.46;

(2) State that such employer-conducted recruitment is in addition to the job order being circulated by the SWA(s) and that the employer must conduct recruitment within 14 calendar days from the date the Notice of Acceptance is issued, consistent with § 655.40;

(3) Direct the SWA to place the job order into intra- and interstate clearance as set forth in § 655.16 and to commence such clearance by:

(i) Sending a copy of the job order to other States listed as anticipated worksites in the *Application for Temporary Employment Certification* and job order, if applicable; and

(ii) Sending a copy of the job order to the SWAs for all States designated by the CO for interstate clearance;

(4) Instruct the SWA to keep the approved job order on its active file until the end of the recruitment period as defined in § 655.40(c), and to transmit the same instruction to other SWAs to which it circulates the job order in the course of interstate clearance;

(5) Where the occupation or industry is traditionally or customarily unionized, direct the SWA to circulate a copy of the job order to the following labor organizations:

(i) The central office of the State Federation of Labor in the State(s) in which work will be performed; and

(ii) The office(s) of local union(s) representing employees in the same or substantially equivalent job classification in the area(s) in which work will be performed;

(6) Advise the employer, as appropriate, that it must contact the appropriate designated community-based organization(s) with notice of the job opportunity; and

(7) Require the employer to submit a report of its recruitment efforts as specified in § 655.48.

§ 655.34 Electronic job registry.

(a) *Location of and placement in the electronic job registry.* Upon acceptance of the *Application for Temporary Employment Certification* under § 655.33, the CO will place for public examination a copy of the job order posted by the SWA on the Department's electronic job registry, including any amendments or required modifications approved by the CO.

(b) *Length of posting on electronic job registry.* The Department of Labor will keep the job order posted on the electronic job registry until the end of the recruitment period, as set forth in § 655.40(c).

(c) *Conclusion of active posting.* Once the recruitment period has concluded the job order will be placed in inactive status on the electronic job registry.

§ 655.35 Amendments to an application or job order.

(a) *Increases in number of workers.* The employer may request to increase the number of workers noted in the *H–2B Registration* by no more than 20 percent (50 percent for employers requesting fewer than 10 workers). All requests for increasing the number of workers must be made in writing and will not be effective until approved by the CO. In considering whether to approve the request, the CO will determine whether the proposed amendment(s) are sufficiently justified and must take into account the effect of the changes on the underlying labor market test for the job opportunity. Upon acceptance of an amendment, the CO will submit to the SWA any necessary changes to the job order and update the electronic job registry. The employer must promptly provide copies of any approved amendments to all U.S. workers hired under the original job order.

(b) *Minor changes to the period of employment.* The employer may request minor changes to the total period of employment listed on its *Application for Temporary Employment Certification* and job order, for a period of up to 14 days, but the period of employment may not exceed a total of 9 months, except in the event of a one-time occurrence. All requests for minor changes to the total period of employment must be made in writing and will not be effective until approved by the CO. In considering whether to approve the request, the CO will determine whether the proposed amendment(s) are sufficiently justified and must take into account the effect of the changes on the underlying labor market test for the job opportunity. Upon acceptance of an amendment, the CO will submit to the SWA any necessary changes to the job order and update the electronic job registry. The employer must promptly provide copies of any approved amendments to all U.S. workers hired under the original job order

(c) *Other amendments to the Application for Temporary Employment Certification and job order.* The employer may request other

amendments to the *Application for Temporary Employment Certification* and job order. All such requests must be made in writing and will not be effective until approved by the CO. In considering whether to approve the request, the CO will determine whether the proposed amendment(s) are sufficiently justified and must take into account the effect of the changes on the underlying labor market test for the job opportunity. Upon acceptance of an amendment, the CO will submit to the SWA any necessary changes to the job order and update the electronic job registry.

(d) *Amendments after certification are not permitted.* The employer must promptly provide copies of any approved amendments to all U.S. workers hired under the original job order.

§§ 655.36–655.39 [Reserved]

Post-Acceptance Requirements

§ 655.40 Employer-conducted recruitment.

(a) *Employer obligations.* Employers must conduct recruitment of U.S. workers to ensure that there are not qualified U.S. workers who will be available for the positions listed in the *Application for Temporary Employment Certification.* U.S. Applicants can be rejected only for lawful job-related reasons.

(b) *Employer-conducted recruitment period.* Unless otherwise instructed by the CO, the employer must conduct the recruitment described in §§ 655.42 through 655.46 within 14 calendar days from the date the Notice of Acceptance is issued. All employer-conducted recruitment must be completed before the employer submits the recruitment report as required in § 655.48.

(c) *U.S. workers.* Employers must continue to accept referrals and applications of all U.S. applicants interested in the position until 21 days before the date of need.

(d) *Interviewing U.S. workers.* Employers that wish to require interviews must conduct those interviews by phone or provide a procedure for the interviews to be conducted in the location where the worker is being recruited so that the worker incurs little or no cost. Employers cannot provide potential H–2B workers with more favorable treatment with respect to the requirement for, and conduct of, interviews.

(e) *Qualified and available U.S. workers.* The employer must consider all U.S. applicants for the job opportunity. The employer must accept and hire any applicants who are qualified and who will be available.

(f) *Recruitment report.* The employer must prepare a recruitment report meeting the requirements of § 655.48.

§ 655.41 Advertising requirements.

(a) All recruitment conducted under §§ 655.42 through 655.46 must contain terms and conditions of employment that are not less favorable than those offered to the H–2B workers and, at a minimum, must comply with the assurances applicable to job orders as set forth in § 655.18(a).

(b) All advertising must contain the following information:

(1) The employer's name and contact information;

(2) The geographic area of intended employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;

(3) A description of the job opportunity for which certification is sought with sufficient information to apprise U.S. workers of the services or labor to be performed, including the duties, the minimum education and experience requirements, the work hours and days, and the anticipated start and end dates of the job opportunity;

(4) A statement that the job opportunity is a temporary, full-time position including the total number of job openings the employer intends to fill;

(5) If applicable, a statement that overtime will be available to the worker and the wage offer(s) for working any overtime hours;

(6) If applicable, a statement indicating that on-the-job training will be provided to the worker;

(7) The wage that the employer is offering, intends to offer or will provide to the H–2B workers or, in the event that there are multiple wage offers, the range of applicable wage offers, each of which must equal or exceed the highest of the prevailing wage or the Federal, State, or local minimum wage;

(8) If applicable, any board, lodging, or other facilities the employer will offer to workers or intends to assist workers in securing;

(9) All deductions not required by law that the employer will make from the worker's paycheck, including, if applicable, reasonable deduction for board, lodging, and other facilities offered to the workers;

(10) A statement that transportation and subsistence from the place where the worker has come to work for the employer to the place of employment and return transportation and subsistence will be provided, as required by § 655.20(j)(1);

(11) If applicable, a statement that work tools, supplies, and equipment will be provided to the worker without charge;

(12) If applicable, a statement that daily transportation to and from the worksite will be provided by the employer;

(13) A statement summarizing the three-fourths guarantee as required by § 655.20(f); and

(14) A statement directing applicants to apply for the job opportunity at the nearest office of the SWA in the State in which the advertisement appeared, the SWA contact information, and, if applicable, the job order number.

§ 655.42 Newspaper advertisements.

(a) The employer must place an advertisement (which must be in a language other than English, where the CO determines appropriate) on 2 separate days, which may be consecutive, one of which must be a Sunday (except as provided in paragraph (b) of this section), in a newspaper of general circulation serving the area of intended employment and appropriate to the occupation and the workers likely to apply for the job opportunity.

(b) If the job opportunity is located in a rural area that does not have a newspaper with a Sunday edition, the CO may direct the employer, in place of a Sunday edition, to advertise in the regularly published daily edition with the widest circulation in the area of intended employment.

(c) The newspaper advertisements must satisfy the requirements in § 655.41.

(d) The employer must maintain copies of newspaper pages (with date of publication and full copy of the advertisement), or tear sheets of the pages of the publication in which the advertisements appeared, or other proof of publication furnished by the newspaper containing the text of the printed advertisements and the dates of publication, consistent with the document retention requirements in § 655.56. If the advertisement was required to be placed in a language other than English, the employer must maintain a translation and retain it in accordance with § 655.56.

§ 655.43 Contact with former U.S. employees.

The employer must contact (by mail or other effective means) its former U.S. workers, including those who have been laid off within 120 calendar days before

the date of need, employed by the employer in the occupation at the place of employment during the previous year (except those who were dismissed for cause or who abandoned the worksite), disclose the terms of the job order, and solicit their return to the job. The employer must maintain documentation sufficient to prove such contact in accordance with § 655.56.

§ 655.44 [Reserved]

§ 655.45 Contact with bargaining representative, posting and other contact requirements.

(a) If there is a bargaining representative for any of the employer's employees in the occupation and area of intended employment, the employer must provide written notice of the job opportunity, by providing a copy of the *Application for Temporary Employment Certification* and the job order, and maintain documentation that it was sent to the bargaining representative(s). An employer governed by this paragraph (a) must include information in its recruitment report that confirms that the bargaining representative(s) was contacted and notified of the position openings and whether the organization referred qualified U.S. worker(s), including the number of referrals, or was non-responsive to the employer's requests.

(b) If there is no bargaining representative, the employer must post the availability of the job opportunity in at least 2 conspicuous locations at the place(s) of anticipated employment or in some other manner that provides reasonable notification to all employees in the job classification and area in which the work will be performed by the H–2B workers. Electronic posting, such as displaying the notice prominently on any internal or external Web site that is maintained by the employer and customarily used for notices to employees about terms and conditions of employment, is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section. The notice must meet the requirements under § 655.41 and be posted for at least 15 consecutive business days. The employer must maintain a copy of the posted notice and identify where and when it was posted in accordance with § 655.56.

(c) If appropriate to the occupation and area of intended employment, as indicated by the CO in the Notice of Acceptance, the employer must provide written notice of the job opportunity to a community-based organization, and maintain documentation that it was sent to any designated community-based organization. An employer governed by this paragraph (c) must include information in its recruitment report that confirms that the community-based organization was contacted and notified of the position openings and whether the organization referred qualified U.S. worker(s), including the number of referrals, or was non-responsive to the employer's requests.

§ 655.46 Additional employer-conducted recruitment.

(a) *Requirement to conduct additional recruitment.* The employer may be instructed by the CO to conduct additional reasonable recruitment. Such recruitment may be required at the discretion of the CO where the CO has determined that there is a likelihood that U.S. workers who are qualified and will be available for the work, including but not limited to where the job opportunity is located in an Area of Substantial Unemployment.

(b) *Nature of the additional employer-conducted recruitment.* The CO will describe the precise number and nature of the additional recruitment efforts. Additional recruitment may include, but is not limited to, posting on the employer's Web site or another Web site, contact with additional community-based organizations, additional contact with State One-Stop Career Centers, and other print advertising, such as using a professional, trade or ethnic publication where such a publication is appropriate for the occupation and the workers likely to apply for the job opportunity. When assessing the appropriateness of a particular recruitment method, the CO will consider the cost of the additional recruitment and the likelihood that the additional recruitment method(s) will identify qualified and available U.S. workers.

(c) *Proof of the additional employer-conducted recruitment.* The CO will specify the documentation or other supporting evidence that must be maintained by the employer as proof that the additional recruitment requirements were met. Documentation must be maintained as required in § 655.56.

§ 655.47 Referrals of U.S. workers.

SWAs may only refer for employment individuals who have been apprised of all the material terms and conditions of employment and who are qualified and will be available for employment.

§ 655.48 Recruitment report.

(a) *Requirements of the recruitment report.* The employer must prepare, sign, and date a recruitment report. Where recruitment was conducted by a job contractor or its employer-client, both joint employers must sign the recruitment report in accordance with § 655.19(e). The recruitment report must be submitted by a date specified by the CO in the Notice of Acceptance and contain the following information:

(1) The name of each recruitment activity or source (*e.g.,* job order and the name of the newspaper);

(2) The name and contact information of each U.S. worker who applied or was referred to the job opportunity up to the date of the preparation of the recruitment report, and the disposition of each worker's application. The employer must clearly indicate whether the job opportunity was offered to the U.S. worker and whether the U.S. worker accepted or declined;

(3) Confirmation that former U.S. employees were contacted, if applicable, and by what means;

(4) Confirmation that the bargaining representative was contacted, if applicable, and by what means, or that the employer posted the availability of the job opportunity to all employees in the job classification and area in which the work will be performed by the H–2B workers;

(5) Confirmation that the community-based organization designated by the CO was contacted, if applicable;

(6) If applicable, confirmation that additional recruitment was conducted as directed by the CO; and

(7) If applicable, for each U.S. worker who applied for the position but was not hired, the lawful job-related reason(s) for not hiring the U.S. worker.

(b) *Duty to update recruitment report.* The employer must continue to update the recruitment report throughout the recruitment period. In a joint employment situation, either the job contractor or the employer-client may update the recruitment report. The updated report must be signed, dated and need not be submitted to the Department of Labor, but must be made available in the event of a post-certification audit or upon request by DOL.

§ 655.49 [Reserved]

Labor Certification Determinations

§ 655.50 Determinations.

(a) *Certifying Officers (COs).* The Administrator, OFLC is the Department's National CO. The Administrator, OFLC and the CO(s), by virtue of delegation from the Administrator, OFLC, have the authority to certify or deny *Applications for Temporary Employment Certification* under the H–2B nonimmigrant

classification. If the Administrator, OFLC directs that certain types of temporary labor certification applications or a specific *Application for Temporary Employment Certification* under the H–2B nonimmigrant classification be handled by the OFLC's National Office, the Director of the NPC will refer such applications to the Administrator, OFLC.

(b) *Determination.* Except as otherwise provided in this paragraph (b), the CO will make a determination either to certify or deny the *Application for Temporary Employment Certification.* The CO will certify the application only if the employer has met all the requirements of this subpart, including the criteria for certification in § 655.51, thus demonstrating that there is an insufficient number of U.S. workers who are qualified and who will be available for the job opportunity for which certification is sought and that the employment of the H–2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

§ 655.51 Criteria for certification.

(a) The criteria for certification include whether the employer has a valid *H–2B Registration* to participate in the H–2B program and has complied with all of the requirements necessary to grant the labor certification.

(b) In making a determination whether there are insufficient U.S. workers to fill the employer's job opportunity, the CO will count as available any U.S. worker referred by the SWA or any U.S. worker who applied (or on whose behalf an application is made) directly to the employer, but who was rejected by the employer for other than a lawful job-related reason.

(c) A certification will not be granted to an employer that has failed to comply with one or more sanctions or remedies imposed by final agency actions under the H–2B program.

§ 655.52 Approved certification.

If a temporary labor certification is granted, the CO will send the approved *Application for Temporary Employment Certification* and a Final Determination letter to the employer by means normally assuring next day delivery, including electronic mail, and a copy, if applicable, to the employer's attorney or agent. If the *Application for Temporary Employment Certification* is electronically filed, the employer must sign the certified *Application for Temporary Employment Certification* as directed by the CO. The employer must retain a signed copy of the *Application for Temporary Employment Certification* and the original signed Appendix B of the Application, as required by § 655.56.

§ 655.53 Denied certification.

If a temporary labor certification is denied, the CO will send the Final Determination letter to the employer by means normally assuring next day delivery, including electronic mail, and a copy, if applicable, to the employer's attorney or agent. The Final Determination letter will:

(a) State the reason(s) certification is denied, citing the relevant regulatory standards;

(b) Offer the employer an opportunity to request administrative review of the denial under § 655.61; and

(c) State that if the employer does not request administrative review in accordance with § 655.61, the denial is final and the Department of Labor will not accept any appeal on that *Application for Temporary Employment Certification.*

§ 655.54 Partial certification.

The CO may issue a partial certification, reducing either the period of need or the number of H–2B workers or both for certification, based upon information the CO receives during the course of processing the *Application for Temporary Employment Certification.* The number of workers certified will be reduced by one for each U.S. worker who is qualified and who will be available at the time and place needed to perform the services or labor and who has not been rejected for lawful job-related reasons. If a partial labor certification is issued, the CO will amend the *Application for Temporary Employment Certification* and then return it to the employer with a Final Determination letter, with a copy to the employer's attorney or agent, if applicable. The Final Determination letter will:

(a) State the reason(s) why either the period of need and/or the number of H–2B workers requested has been reduced, citing the relevant regulatory standards;

(b) If applicable, address the availability of U.S. workers in the occupation;

(c) Offer the employer an opportunity to request administrative review of the partial certification under § 655.61; and

(d) State that if the employer does not request administrative review in accordance with § 655.61, the partial certification is final and the Department of Labor will not accept any appeal on that *Application for Temporary Employment Certification.*

§ 655.55 Validity of temporary labor certification.

(a) *Validity period.* A temporary labor certification is valid only for the period as approved on the *Application for Temporary Employment Certification.* The certification expires on the last day of authorized employment.

(b) *Scope of validity.* A temporary labor certification is valid only for the number of H–2B positions, the area of intended employment, the job classification and specific services or labor to be performed, and the employer specified on the approved *Application for Temporary Employment Certification,* including any approved modifications. The temporary labor certification may not be transferred from one employer to another unless the employer to which it is transferred is a successor in interest to the employer to which it was issued.

§ 655.56 Document retention requirements of H–2B employers.

(a) *Entities required to retain documents.* All employers filing an *Application for Temporary Employment Certification* requesting H–2B workers are required to retain the documents and records proving compliance with 29 CFR part 503 and this subpart, including but not limited to those specified in paragraph (c) of this section.

(b) *Period of required retention.* The employer must retain records and documents for 3 years from the date of certification of the *Application for Temporary Employment Certification,* or from the date of adjudication if the *Application for Temporary Employment Certification* is denied, or 3 years from the day the Department of Labor receives the letter of withdrawal provided in accordance with § 655.62. For the purposes of this section, records and documents required to be retained in connection with an *H–2B Registration* must be retained in connection with all of the *Applications for Temporary Employment Certification* that are supported by it.

(c) *Documents and records to be retained by all employer applicants.* All employers filing an *H–2B Registration* and an *Application for Temporary Employment Certification* must retain the following documents and records and must provide the documents and records to the Department of Labor and other Federal agencies in the event of an audit or investigation:

(1) Documents and records not previously submitted during the registration process that substantiate temporary need;

(2) Proof of recruitment efforts, as applicable, including:

(i) Job order placement as specified in § 655.16;

(ii) Advertising as specified in §§ 655.41 and 655.42;

(iii) Contact with former U.S. workers as specified in § 655.43;

(iv) Contact with bargaining representative(s), or a copy of the posting of the job opportunity, if applicable, as specified in § 655.45(a) or (b); and

(v) Additional employer-conducted recruitment efforts as specified in § 655.46;

(3) Substantiation of the information submitted in the recruitment report prepared in accordance with § 655.48, such as evidence of nonapplicability of contact with former workers as specified in § 655.43;

(4) The final recruitment report and any supporting resumes and contact information as specified in § 655.48;

(5) Records of each worker's earnings, hours offered and worked, location(s) of work performed, and other information as specified in § 655.20(i);

(6) If appropriate, records of reimbursement of transportation and subsistence costs incurred by the workers, as specified in § 655.20(j).

(7) Evidence of contact with U.S. workers who applied for the job opportunity in the *Application for Temporary Employment Certification,* including documents demonstrating that any rejections of U.S. workers were for lawful, job-related reasons, as specified in § 655.20(r);

(8) Evidence of contact with any former U.S. worker in the occupation at the place of employment in the *Application for Temporary Employment Certification,* including documents demonstrating that the U.S. worker had been offered the job opportunity in the *Application for Temporary Employment Certification,* as specified in § 655.20(w), and that the U.S. worker either refused the job opportunity or was rejected only for lawful, job-related reasons, as specified in § 655.20(r);

(9) The written contracts with agents or recruiters as specified in §§ 655.8 and 655.9, and the list of the identities and locations of persons hired by or working for the agent or recruiter and these entities' agents or employees, as specified in § 655.9;

(10) Written notice provided to and informing OFLC that an H–2B worker or worker in corresponding employment has separated from employment before the end date of employment specified in the *Application for Temporary Employment Certification,* as specified in § 655.20(y);

(11) The *H–2B Registration,* job order and a copy of the *Application for Temporary Employment Certification* and the original signed Appendix B of the Application. If the *Application for Temporary Employment Certification* and *H–2B Registration* is electronically filed, a printed copy of each adjudicated *Application for Temporary Employment Certification,* including any modifications, amendments or extensions must be signed by the employer as directed by the CO and retained;

(12) The *H–2B Petition,* including all accompanying documents; and

(13) Any collective bargaining agreement(s), individual employment contract(s), or payroll records from the previous year necessary to substantiate any claim that certain incumbent workers are not included in corresponding employment, as specified in § 655.5.

(d) *Availability of documents for enforcement purposes.* An employer must make available to the Administrator, WHD within 72 hours following a request by the WHD the documents and records required under 29 CFR part 503 and this section so that the Administrator, WHD may copy, transcribe, or inspect them.

§ 655.57 Request for determination based on nonavailability of U.S. workers.

(a) *Standards for requests.* If a temporary labor certification has been partially granted or denied, based on the CO's determination that qualified U.S. workers are available, and, on or after 21 calendar days before the date of need, some or all of those qualified U.S. workers are, in fact no longer available, the employer may request a new temporary labor certification determination from the CO. Prior to making a new determination the CO will promptly ascertain (which may be through the SWA or other sources of information on U.S. worker availability) whether specific qualified replacement U.S. workers are available or can be reasonably expected to be present at the employer's establishment within 72 hours from the date the employer's request was received. The CO will expeditiously, but in no case later than 72 hours after the time a complete request (including the signed statement included in paragraph (b) of this section) is received, make a determination on the request. An employer may appeal a denial of such a determination in accordance with procedures contained in § 655.61.

(b) *Unavailability of U.S. workers.* The employer's request for a new determination must be made directly to the CO by electronic mail or other appropriate means and must be accompanied by a signed statement confirming the employer's assertion. In addition, unless the employer has provided to the CO notification of abandonment or termination of employment as required by § 655.20(y), the employer's signed statement must include the name and contact information of each U.S. worker who became unavailable and must supply the reason why the worker has become unavailable.

(c) *Notification of determination.* If the CO determines that U.S. workers have become unavailable and cannot identify sufficient available U.S. workers who are qualified or who are likely to become available, the CO will grant the employer's request for a new determination. However, this does not preclude an employer from submitting subsequent requests for new determinations, if warranted, based on subsequent facts concerning purported nonavailability of U.S. workers or referred workers not being qualified because of lawful job-related reasons.

§§ 655.58–655.59 [Reserved]

Post Certification Activities

§ 655.60 Extensions.

An employer may apply for extensions of the period of employment in the following circumstances. A request for extension must be related to weather conditions or other factors beyond the control of the employer (which may include unforeseeable changes in market conditions), and must be supported in writing, with documentation showing why the extension is needed and that the need could not have been reasonably foreseen by the employer. The CO will notify the employer of the decision in writing. Except in extraordinary circumstances, the CO will not grant an extension where the total work period under that *Application for Temporary Employment Certification* and the authorized extension would exceed 9 months for employers whose temporary need is seasonal, peakload, or intermittent, or 3 years for employers that have a one-time occurrence of temporary need. The employer may appeal a denial of a request for an extension by following the procedures in § 655.61. The H–2B employer's assurances and obligations under the temporary labor certification will continue to apply during the extended period of employment. The employer must immediately provide to its workers a copy of any approved extension.

§ 655.61 Administrative review.

(a) *Request for review.* Where authorized in this subpart, employers may request an administrative review before the BALCA of a determination by the CO. In such cases, the request for review:

(1) Must be sent to the BALCA, with a copy simultaneously sent to the CO who issued the determination, within 10 business days from the date of determination;

(2) Must clearly identify the particular determination for which review is sought;

(3) Must set forth the particular grounds for the request;

(4) Must include a copy of the CO's determination; and

(5) May contain only legal argument and such evidence as was actually submitted to the CO before the date the CO's determination was issued.

(b) *Appeal file.* Upon the receipt of a request for review, the CO will, within 7 business days, assemble and submit the Appeal File using means to ensure same day or next day delivery, to the BALCA, the employer, and the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor.

(c) *Briefing schedule.* Within 7 business days of receipt of the Appeal File, the counsel for the CO may submit, using means to ensure same day or next day delivery, a brief in support of the CO's decision.

(d) *Assignment.* The Chief ALJ may designate a single member or a three member panel of the BALCA to consider a particular case.

(e) *Review.* The BALCA must review the CO's determination only on the basis of the Appeal File, the request for review, and any legal briefs submitted and must:

(1) Affirm the CO's determination; or

(2) Reverse or modify the CO's determination; or

(3) Remand to the CO for further action.

(f) *Decision.* The BALCA should notify the employer, the CO, and counsel for the CO of its decision within 7 business days of the submission of the CO's brief or 10 business days after receipt of the Appeal File, whichever is later, using means to ensure same day or next day delivery.

§ 655.62 Withdrawal of an Application for Temporary Employment Certification.

Employers may withdraw an *Application for Temporary Employment Certification* after it has been accepted and before it is adjudicated. The employer must request such withdrawal in writing.

§ 655.63 Public disclosure.

The Department of Labor will maintain an electronic file accessible to the public with information on all employers applying for temporary nonagricultural labor certifications. The database will include such information as the number of workers requested, the date filed, the date decided, and the final disposition.

§ 655.64–655.69 [Reserved]

Integrity Measures

§ 655.70 Audits.

The CO may conduct audits of adjudicated temporary employment certification applications.

(a) *Discretion.* The CO has the sole discretion to choose the applications selected for audit.

(b) *Audit letter.* Where an application is selected for audit, the CO will send an audit letter to the employer and a copy, if appropriate, to the employer's attorney or agent. The audit letter will:

(1) Specify the documentation that must be submitted by the employer;

(2) Specify a date, no more than 30 calendar days from the date the audit letter is issued, by which the required documentation must be sent to the CO; and

(3) Advise that failure to fully comply with the audit process may result:

(i) In the requirement that the employer undergo the assisted recruitment procedures in § 655.71 in future filings of H–2B temporary employment certification applications for a period of up to 2 years, or

(ii) In a revocation of the certification and/or debarment from the H–2B program and any other foreign labor certification program administered by the Department Labor.

(c) *Supplemental information request.* During the course of the audit examination, the CO may request supplemental information and/or documentation from the employer in order to complete the audit. If circumstances warrant, the CO can issue one or more requests for supplemental information.

(d) *Potential referrals.* In addition to measures in this subpart, the CO may decide to provide the audit findings and underlying documentation to DHS, WHD, or other appropriate enforcement agencies. The CO may refer any findings that an employer discouraged a qualified U.S. worker from applying, or failed to hire, discharged, or otherwise discriminated against a qualified U.S. worker to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.

§ 655.71 CO-ordered assisted recruitment.

(a) *Requirement of assisted recruitment.* If, as a result of audit or otherwise, the CO determines that a violation has occurred that does not warrant debarment, the CO may require the employer to engage in assisted recruitment for a defined period of time for any future *Application for Temporary Employment Certification.*

(b) *Notification of assisted recruitment.* The CO will notify the employer (and its attorney or agent, if applicable) in writing of the assisted recruitment that will be required of the employer for a period of up to 2 years from the date the notice is issued. The notification will state the reasons for the imposition of the additional requirements, state that the employer's agreement to accept the conditions will constitute their inclusion as bona fide conditions and terms of an application for temporary employment certification, and offer the employer an opportunity to request an administrative review. If administrative review is requested, the procedures in § 655.61 apply.

(c) *Assisted recruitment.* The assisted recruitment process will be in addition to any recruitment required of the employer by §§ 655.41 through 655.46 and may consist of, but is not limited to, one or more of the following:

(1) Requiring the employer to submit a draft advertisement to the CO for review and approval at the time of filing the *Application for Temporary Employment Certification;*

(2) Designating the sources where the employer must recruit for U.S. workers, including newspapers and other publications, and directing the employer to place the advertisement(s) in such sources;

(3) Extending the length of the placement of the advertisement and/or job order;

(4) Requiring the employer to notify the CO and the SWA in writing when the advertisement(s) are placed;

(5) Requiring an employer to perform any additional assisted recruitment directed by the CO;

(6) Requiring the employer to provide proof of the publication of all advertisements as directed by the CO, in addition to providing a copy of the job order;

(7) Requiring the employer to provide proof of all SWA referrals made in response to the job order;

(8) Requiring the employer to submit any proof of contact with all referrals and past U.S. workers; and/or

(9) Requiring the employer to provide any additional documentation verifying it conducted the assisted recruitment as directed by the CO.

(d) *Failure to comply.* If an employer materially fails to comply with requirements ordered by the CO under this section, the certification will be denied and the employer and/or its attorney or agent may be debarred under § 655.73.

§ 655.72 Revocation.

(a) *Basis for DOL revocation.* The Administrator, OFLC may revoke a temporary labor certification approved under this subpart, if the Administrator, OFLC finds:

(1) The issuance of the temporary labor certification was not justified due to fraud or willful misrepresentation of a material fact in the application process, as defined in § 655.73(d);

(2) The employer substantially failed to comply with any of the terms or conditions of the approved temporary labor certification. A substantial failure is a willful failure to comply that constitutes a significant deviation from the terms and conditions of the approved certification and is further defined in § 655.73(d) and (e);

(3) The employer failed to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, audit (under § 655.73), or law enforcement function under 29 CFR part 503 or this subpart; or

(4) The employer failed to comply with one or more sanctions or remedies imposed by WHD, or with one or more decisions or orders of the Secretary with the respect to the H–2B program.

(b) *DOL procedures for revocation*—(1) *Notice of Revocation.* If the Administrator, OFLC makes a determination to revoke an employer's temporary labor certification, the Administrator, OFLC will send to the employer (and its attorney or agent, if applicable) a Notice of Revocation. The notice will contain a detailed statement of the grounds for the revocation and inform the employer of its right to submit rebuttal evidence or to appeal. If the employer does not file rebuttal evidence or an appeal within 10 business days from the date the Notice of Revocation is issued, the notice is the final agency action and will take effect immediately at the end of the 10-day period.

(2) *Rebuttal.* If the employer timely submits rebuttal evidence, the Administrator, OFLC will inform the employer of the final determination on the revocation within 10 business days of receiving the rebuttal evidence. If the Administrator, OFLC determines that the certification should be revoked, the Administrator, OFLC will inform the employer of its right to appeal according to the procedures of § 655.61. If the employer does not appeal the final determination, it will become the final agency action.

(3) *Appeal.* An employer may appeal a Notice of Revocation, or a final determination of the Administrator, OFLC after the review of rebuttal evidence, according to the appeal procedures of § 655.61. The ALJ's decision is the final agency action.

(4) *Stay.* The timely filing of rebuttal evidence or an administrative appeal will stay the revocation pending the outcome of those proceedings.

(5) *Decision.* If the temporary labor certification is revoked, the Administrator, OFLC will send a copy of the final agency action to DHS and the Department of State.

(c) *Employer's obligations in the event of revocation.* If an employer's temporary labor certification is revoked, the employer is responsible for:

(1) Reimbursement of actual inbound transportation and other expenses;

(2) The workers' outbound transportation expenses;

(3) Payment to the workers of the amount due under the three-fourths guarantee; and

(4) Any other wages, benefits, and working conditions due or owing to the workers under this subpart.

§ 655.73 Debarment.

(a) *Debarment of an employer.* The Administrator, OFLC may not issue future labor certifications under this subpart to an employer or any successor in interest to that employer, subject to the time limits set forth in paragraph (c) of this section, if the Administrator, OFLC finds that the employer committed the following violations:

(1) Willful misrepresentation of a material fact in its *H–2B Registration, Application for Prevailing Wage Determination, Application for Temporary Employment Certification,* or *H–2B Petition;*

(2) Substantial failure to meet any of the terms and conditions of its *H–2B Registration, Application for Prevailing Wage Determination, Application for Temporary Employment Certification,* or *H–2B Petition.* A substantial failure is a willful failure to comply that constitutes a significant deviation from the terms and conditions of such documents; or

(3) Willful misrepresentation of a material fact to the DOS during the visa application process.

(b) *Debarment of an agent or attorney.* If the Administrator, OFLC finds, under this section, that an attorney or agent committed a violation as described in paragraphs (a)(1) through (3) of this section or participated in an employer's violation, the Administrator, OFLC may not issue future labor certifications to an employer represented by such agent or attorney, subject to the time limits set forth in paragraph (c) of this section.

(c) *Period of debarment.* Debarment under this subpart may not be for less than 1 year or more than 5 years from the date of the final agency decision.

(d) *Determining whether a violation is willful.* A willful misrepresentation of a material fact or a willful failure to meet the required terms and conditions occurs when the employer, attorney, or agent knows a statement is false or that the conduct is in violation, or shows reckless disregard for the truthfulness of its representation or for whether its conduct satisfies the required conditions.

(e) *Determining whether a violation is significant.* In determining whether a violation is a significant deviation from the terms and conditions of the *H–2B Registration, Application for Prevailing Wage Determination, Application for Temporary Employment Certification,* or *H–2B Petition,* the factors that the Administrator, OFLC may consider include, but are not limited to, the following:

(1) Previous history of violation(s) under the H–2B program;

(2) The number of H–2B workers, workers in corresponding employment, or improperly rejected U.S. applicants who were and/or are affected by the violation(s);

(3) The gravity of the violation(s);

(4) The extent to which the violator achieved a financial gain due to the violation(s), or the potential financial loss or potential injury to the worker(s); and

(5) Whether U.S. workers have been harmed by the violation.

(f) *Violations.* Where the standards set forth in paragraphs (d) and (e) in this section are met, debarrable violations would include but would not be limited to one or more acts of commission or omission which involve:

(1) Failure to pay or provide the required wages, benefits or working conditions to the employer's H–2B workers and/or workers in corresponding employment;

(2) Failure, except for lawful, job-related reasons, to offer employment to qualified U.S. workers who applied for the job opportunity for which certification was sought;

(3) Failure to comply with the employer's obligations to recruit U.S. workers;

(4) Improper layoff or displacement of U.S. workers or workers in corresponding employment;

(5) Failure to comply with one or more sanctions or remedies imposed by the Administrator, WHD for violation(s) of obligations under the job order or other H–2B obligations, or with one or more decisions or orders of the Secretary or a court under this subpart or 29 CFR part 503;

(6) Failure to comply with the Notice of Deficiency process under this subpart;

(7) Failure to comply with the assisted recruitment process under this subpart;

(8) Impeding an investigation of an employer under 29 CFR part 503 or an audit under this subpart;

(9) Employing an H–2B worker outside the area of intended employment, in an activity/activities not listed in the job order, or outside the validity period of employment of the job order, including any approved extension thereof;

(10) A violation of the requirements of § 655.20(o) or (p);

(11) A violation of any of the provisions listed in § 655.20(r);

(12) Any other act showing such flagrant disregard for the law that future compliance with program requirements cannot reasonably be expected;

(13) Fraud involving the *H–2B Registration, Application for Prevailing Wage Determination, Application for Temporary Employment Certification,* or the *H–2B Petition;* or

(14) A material misrepresentation of fact during the registration or application process.

(g) *Debarment procedure*—(1) *Notice of Debarment.* If the Administrator, OFLC makes a determination to debar an employer, attorney, or agent, the Administrator, OFLC will send the party a Notice of Debarment. The Notice will state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment and inform the party subject to the notice of its right to submit rebuttal evidence or to request a debarment hearing. If the party does not file rebuttal evidence or request a hearing within 30 calendar days of the date of the Notice of Debarment, the notice is the final agency action and the debarment will take effect at the end of the 30-day period. The timely filing of an rebuttal evidence or a request for a hearing stays the debarment pending the outcome of the appeal as provided in paragraphs (g)(2) through (6) of this section.

(2) *Rebuttal.* The party who received the Notice of Debarment may choose to submit evidence to rebut the grounds stated in the notice within 30 calendar days of the date the notice is issued. If rebuttal evidence is timely filed, the Administrator, OFLC will issue a final determination on the debarment within 30 calendar days of receiving the rebuttal evidence. If the Administrator, OFLC determines that the party should be debarred, the Administrator, OFLC will inform the party of its right to request a debarment hearing according to the procedures in this section. The party must request a hearing within 30 calendar days after the date of the Administrator, OFLC's final determination, or the Administrator OFLC's determination will be the final agency order and the debarment will take effect at the end of the 30-day period.

(3) *Hearing.* The recipient of a Notice of Debarment seeking to challenge the debarment must request a debarment hearing within 30 calendar days of the date of a Notice of Debarment or the date of a final determination of the Administrator, OFLC after review of rebuttal evidence submitted under paragraph (g)(2) of this section. To obtain a debarment hearing, the recipient must, within 30 days of the date of the Notice or the final determination, file a written request with the Chief ALJ, United States Department of Labor, 800 K Street NW., Suite 400–N, Washington, DC 20001–8002, and simultaneously serve a copy on the Administrator, OFLC. The debarment will take effect 30 calendar days from the date the Notice of Debarment or final determination is issued, unless a request for review is timely filed. Within 10 business days of receipt of the request for a hearing, the Administrator, OFLC will send a certified copy of the ETA case file to the Chief ALJ by means normally assuring next day delivery. The Chief ALJ will immediately assign an ALJ to conduct the hearing. The procedures in 29 CFR part 18 apply to such hearings, except that the request for a hearing will not be considered to be a complaint to which an answer is required.

(4) *Decision.* After the hearing, the ALJ must affirm, reverse, or modify the Administrator, OFLC's determination. The ALJ will prepare the decision within 60 calendar days after completion of the hearing and closing of the record. The ALJ's decision will be provided to the parties to the debarment hearing by means normally assuring next day delivery. The ALJ's decision is the final agency action, unless either party, within 30 calendar days of the ALJ's decision, seeks review of the decision with the Administrative Review Board (ARB).

(5) *Review by the ARB.* (i) Any party wishing review of the decision of an ALJ must, within 30 calendar days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition must be served on all parties and on the ALJ. The ARB will decide whether to accept the petition within 30 calendar days of receipt. If the ARB declines to accept the petition, or if the ARB does not issue a notice accepting a petition within 30 calendar days after the receipt of a timely filing of the petition, the decision of the ALJ is the final agency action. If a petition for review is accepted, the decision of the ALJ will be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding.

(ii) Upon receipt of the ARB's notice to accept the petition, the Office of Administrative Law Judges will promptly forward a copy of the complete hearing record to the ARB.

(iii) Where the ARB has determined to review the decision and order, the ARB will notify each party of the issue(s) raised, the form in which submissions must be made (*e.g.,* briefs or oral argument), and the time within which the presentation must be submitted.

(6) *ARB Decision.* The ARB's final decision must be issued within 90 calendar days from the notice granting the petition and served upon all parties and the ALJ.

(h) *Concurrent debarment jurisdiction.* OFLC and the WHD have concurrent jurisdiction to debar under this section or under 29 CFR 503.24. When considering debarment, OFLC and the WHD will coordinate their activities. A specific violation for which debarment is imposed will be cited in a single debarment proceeding. Copies of final debarment decisions will be forwarded to DHS and DOS promptly.

(i) *Debarment from other foreign labor programs.* Upon debarment under this subpart or 29 CFR 503.24, the debarred party will be disqualified from filing any labor certification applications or labor condition applications with the Department of Labor by, or on behalf of, the debarred party for the same period of time set forth in the final debarment decision.

§§ 655.74–655.76 [Reserved]

§§ 655.80–655.99 [Reserved]

Title 29—Labor

■ 6. Revise part 503 to read as follows:

PART 503—ENFORCEMENT OF OBLIGATIONS FOR TEMPORARY NONIMMIGRANT NON–AGRICULTURAL WORKERS DESCRIBED IN THE IMMIGRATION AND NATIONALITY ACT

Subpart A—General Provisions

Subpart B—Enforcement

Subpart C—Administrative Proceedings

Procedures Related to Hearing

Rules of Practice

Procedures Before Administrative Law Judge

Post-Hearing Procedures

Review of Administrative Law Judge's Decision

Record

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 U.S.C. 1184(c); 8 CFR 214.2(h).

Subpart A—General Provisions

§ 503.0 Introduction.

The regulations in this part cover the enforcement of all statutory and regulatory obligations, including requirements under 8 U.S.C. 1184(c), section 214(c) of the INA and 20 CFR part 655, subpart A, applicable to the employment of H–2B workers in nonimmigrant status under the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(H)(ii)(b), section 101(a)(15)(H)(ii)(b) of the INA, and workers in corresponding employment, including obligations to offer employment to eligible United States (U.S.) workers and to not lay off or displace U.S. workers in a manner prohibited by the regulations in this part or 20 CFR part 655, subpart A.

§ 503.1 Scope and purpose.

(a) *Consultation standard.* Section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), requires the Secretary of Homeland Security to consult with appropriate agencies before authorizing the classification of aliens as H–2B workers. Department of Homeland Security (DHS) regulations at 8 CFR 214.2(h)(6)(iii)(D) recognize the Secretary of Labor as the appropriate authority with whom DHS consults regarding the H–2B program, and recognize the Secretary of Labor's authority in carrying out the Secretary of Labor's consultative function to issue regulations regarding the issuance of temporary labor certifications. DHS regulations at 8 CFR 214.2(h)(6)(iv) provide that an employer's petition to employ nonimmigrant workers on H–2B visas for temporary non-agricultural employment in the United States (U.S.), except for Guam, must be accompanied by an approved temporary labor certification from the Secretary of Labor. The temporary labor certification reflects a determination by the Secretary that:

(1) There are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers; and

(2) The employment of the foreign worker will not adversely affect the wages and working conditions of U.S. workers similarly employed.

(b) *Role of the Employment and Training Administration (ETA).* The issuance and denial of labor certifications for purposes of satisfying the consultation requirement in 8 U.S.C. 1184(c), INA section 214(c), has been delegated by the Secretary to ETA, an agency within the U.S. Department of Labor (DOL), which in turn has delegated that authority to the Office of Foreign Labor Certification (OFLC). In general, matters concerning the obligations of an H–2B employer related to the temporary labor certification process are administered by OFLC, including obligations and assurances made by employers, overseeing employer recruitment, and assuring program integrity. The regulations pertaining to the issuance, denial, and revocation of labor certification for temporary foreign workers by the OFLC are found in 20 CFR part 655, subpart A.

(c) *Role of the Wage and Hour Division (WHD).* Effective January 18, 2009, DHS has delegated to the Secretary under 8 U.S.C. 1184(c)(14)(B), section 214(c)(14)(B) of the INA, certain investigatory and law enforcement functions to carry out the provisions under 8 U.S.C. 1184(c), INA section 214(c). The Secretary has delegated these functions to the WHD. In general, matters concerning the rights of H–2B workers and workers in corresponding employment under this part and the employer's obligations are enforced by the WHD, including whether employment was offered to U.S. workers as required under 20 CFR part 655, subpart A, or whether U.S. workers were laid off or displaced in violation of program requirements. The WHD has the responsibility to carry out investigations, inspections, and law enforcement functions and in appropriate instances to impose penalties, to debar from future certifications, to recommend revocation of existing certifications, and to seek remedies for violations, including recovery of unpaid wages and reinstatement of improperly laid off or displaced U.S. workers.

(d) *Effect of regulations.* The enforcement functions carried out by the WHD under 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, subpart A, and the regulations in this part apply to the employment of any H–2B worker and any worker in corresponding employment as the result of an *Application for Temporary Employment Certification* filed with the Department of Labor on or after April 29, 2015.

§ 503.2 Territory of Guam.

This part does not apply to temporary employment in the Territory of Guam. The Department of Labor does not certify to DHS the temporary employment of nonimmigrant foreign

workers or enforce compliance with the provisions of the H–2B visa program in the Territory of Guam.

§ 503.3 Coordination among Governmental agencies.

(a) Complaints received by ETA or any State Workforce Agency (SWA) regarding noncompliance with H–2B statutory or regulatory labor standards will be immediately forwarded to the appropriate WHD office for suitable action under the regulations in this part.

(b) Information received in the course of processing registrations and applications, program integrity measures, or enforcement actions may be shared between OFLC and WHD or, where applicable to employer enforcement under the H–2B program, may be forwarded to other agencies as appropriate, including the Department of State (DOS) and DHS.

(c) A specific violation for which debarment is sought will be cited in a single debarment proceeding. OFLC and the WHD will coordinate their activities to achieve this result. Copies of final debarment decisions will be forwarded to DHS promptly.

§ 503.4 Definition of terms.

For purposes of this part:

Act means the Immigration and Nationality Act or INA, as amended, 8 U.S.C. 1101 *et seq.*

Administrative Law Judge (ALJ) means a person within the Department's Office of Administrative Law Judges appointed under 5 U.S.C. 3105.

Administrator, Office of Foreign Labor Certification (OFLC) means the primary official of the Office of Foreign Labor Certification, ETA, or the Administrator's designee.

Administrator, Wage and Hour Division (WHD) means the primary official of the WHD, or the Administrator's designee.

Agent means:

(1) A legal entity or person who:

(i) Is authorized to act on behalf of an employer for temporary nonagricultural labor certification purposes;

(ii) Is not itself an employer, or a joint employer, as defined in this part with respect to a specific application; and

(iii) Is not an association or other organization of employers.

(2) No agent who is under suspension, debarment, expulsion, disbarment, or otherwise restricted from practice before any court, the Department of Labor, the Executive Office for Immigration Review under 8 CFR 1003.101, or DHS under 8 CFR 292.3 may represent an employer under this part.

Agricultural labor or services means those duties and occupations defined in 20 CFR part 655, subpart B.

Applicant means a U.S. worker who is applying for a job opportunity for which an employer has filed an *Application for Temporary Employment Certification* (ETA Form 9142B and the appropriate appendices).

Application for Temporary Employment Certification means the Office of Management and Budget (OMB)-approved ETA Form 9142B and the appropriate appendices, a valid wage determination, as required by 20 CFR 655.10, and a subsequently-filed U.S. worker recruitment report, submitted by an employer to secure a temporary labor certification determination from DOL.

Area of intended employment means the geographic area within normal commuting distance of the place (worksite address) of the job opportunity for which the certification is sought. There is no rigid measure of distance that constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (*e.g.,* average commuting times, barriers to reaching the worksite, or quality of the regional transportation network). If the place of intended employment is within a Metropolitan Statistical Area (MSA), including a multistate MSA, any place within the MSA is deemed to be within normal commuting distance of the place of intended employment. The borders of MSAs are not controlling in the identification of the normal commuting area; a location outside of an MSA may be within normal commuting distance of a location that is inside (*e.g.,* near the border of) the MSA.

Attorney means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, or commonwealth of the U.S., or the District of Columbia. No attorney who is under suspension, debarment, expulsion, disbarment, or otherwise restricted from practice before any court, the Department of Labor, the Executive Office for Immigration Review under 8 CFR 1003.101, or DHS under 8 CFR 292.3 may represent an employer under this part.

Certifying Officer (CO) means an OFLC official designated by the Administrator, OFLC to make determinations on applications under the H–2B program. The Administrator, OFLC is the National CO. Other COs may also be designated by the Administrator, OFLC to make the determinations required under 20 CFR part 655, subpart A.

Chief Administrative Law Judge (Chief ALJ) means the chief official of the Department's Office of Administrative Law Judges or the Chief Administrative Law Judge's designee.

Corresponding employment means:

(1) The employment of workers who are not H–2B workers by an employer that has a certified H–2B *Application for Temporary Employment Certification* when those workers are performing either substantially the same work included in the job order or substantially the same work performed by the H–2B workers, except that workers in the following two categories are not included in corresponding employment:

(i) Incumbent employees continuously employed by the H–2B employer to perform substantially the same work included in the job order or substantially the same work performed by the H–2B workers during the 52 weeks prior to the period of employment certified on the *Application for Temporary Employment Certification* and who have worked or been paid for at least 35 hours in at least 48 of the prior 52 workweeks, and who have worked or been paid for an average of at least 35 hours per week over the prior 52 weeks, as demonstrated on the employer's payroll records, provided that the terms and working conditions of their employment are not substantially reduced during the period of employment covered by the job order. In determining whether this standard was met, the employer may take credit for any hours that were reduced by the employee voluntarily choosing not to work due to personal reasons such as illness or vacation; or

(ii) Incumbent employees covered by a collective bargaining agreement or an individual employment contract that guarantees both an offer of at least 35 hours of work each workweek and continued employment with the H–2B employer at least through the period of employment covered by the job order, except that the employee may be dismissed for cause.

(2) To qualify as corresponding employment, the work must be performed during the period of the job order, including any approved extension thereof.

Date of need means the first date the employer requires services of the H–2B workers as listed on the *Application for Temporary Employment Certification.*

Department of Homeland Security (DHS) means the Federal Department having jurisdiction over certain immigration-related functions, acting through its component agencies, including U.S. Citizenship and Immigration Services (USCIS).

Employee means a person who is engaged to perform work for an

employer, as defined under the general common law. Some of the factors relevant to the determination of employee status include: The hiring party's right to control the manner and means by which the work is accomplished; the skill required to perform the work; the source of the instrumentalities and tools for accomplishing the work; the location of the work; the hiring party's discretion over when and how long to work; and whether the work is part of the regular business of the hiring party. Other applicable factors may be considered and no one factor is dispositive. The terms employee and worker are used interchangeably in this part.

Employer means a person (including any individual, partnership, association, corporation, cooperative, firm, joint stock company, trust, or other organization with legal rights and duties) that:

(1) Has a place of business (physical location) in the U.S. and a means by which it may be contacted for employment;

(2) Has an employer relationship (such as the ability to hire, pay, fire, supervise or otherwise control the work of employees) with respect to an H–2B worker or a worker in corresponding employment; and

(3) Possesses, for purposes of filing an *Application for Temporary Employment Certification,* a valid Federal Employer Identification Number (FEIN).

Employment and Training Administration (ETA) means the agency within the Department of Labor that includes OFLC and has been delegated authority by the Secretary to fulfill the Secretary's mandate under the DHS regulations for the administration and adjudication of an *Application for Temporary Employment Certification* and related functions.

Federal holiday means a legal public holiday as defined at 5 U.S.C. 6103.

Full-time means 35 or more hours of work per week.

H–2B Petition means the DHS Form I–129 *Petition for a Nonimmigrant Worker,* with H Supplement, or successor form or supplement, and accompanying documentation required by DHS for employers seeking to employ foreign persons as H–2B nonimmigrant workers.

H–2B Registration means the OMB-approved ETA Form 9155, submitted by an employer to register its intent to hire H–2B workers and to file an *Application for Temporary Employment Certification.*

H–2B worker means any temporary foreign worker who is lawfully present in the U.S. and authorized by DHS to perform nonagricultural labor or services of a temporary or seasonal nature under 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b).

Job contractor means a person, association, firm, or a corporation that meets the definition of an employer and that contracts services or labor on a temporary basis to one or more employers, which is not an affiliate, branch or subsidiary of the job contractor and where the job contractor will not exercise substantial, direct day-to-day supervision and control in the performance of the services or labor to be performed other than hiring, paying and firing the workers.

Job offer means the offer made by an employer or potential employer of H–2B workers to both U.S. and H–2B workers describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits.

Job opportunity means one or more openings for full-time employment with the petitioning employer within a specified area(s) of intended employment for which the petitioning employer is seeking workers.

Job order means the document containing the material terms and conditions of employment relating to wages, hours, working conditions, worksite and other benefits, including obligations and assurances under 29 CFR part 655, subpart A and this subpart that is posted between and among the SWAs on their job clearance systems.

Joint employment means that where two or more employers each have sufficient definitional indicia of being an employer to be considered the employer of a worker, those employers will be considered to jointly employ that worker. Each employer in a joint employment relationship to a worker is considered a joint employer of that worker.

Layoff means any involuntary separation of one or more U.S. employees without cause.

Metropolitan Statistical Area (MSA) means a geographic entity defined by OMB for use by Federal statistical agencies in collecting, tabulating, and publishing Federal statistics. A metro area contains a core urban area of 50,000 or more population, and a micro area contains an urban core of at least 10,000 (but fewer than 50,000) population. Each metro or micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core.

National Processing Center (NPC) means the office within OFLC which is charged with the adjudication of an *Application for Temporary Employment Certification* or other applications.

Non-agricultural labor and services means any labor or services not considered to be agricultural labor or services as defined in 20 CFR part 655, subpart B. It does not include the provision of services as members of the medical profession by graduates of medical schools.

Offered wage means the wage offered by an employer in an H–2B job order. The offered wage must equal or exceed the highest of the prevailing wage or Federal, State or local minimum wage.

Office of Foreign Labor Certification (OFLC) means the organizational component of the ETA that provides national leadership and policy guidance and develops regulations to carry out the Secretary's responsibilities, including determinations related to an employer's request for *H–2B Registration, Application for Prevailing Wage Determination,* or *Application for Temporary Employment Certification.*

Prevailing wage determination (PWD) means the prevailing wage for the position, as described in 20 CFR 655.10, that is the subject of the *Application for Temporary Employment Certification.*

Secretary means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

Secretary of Homeland Security means the chief official of the U.S. Department of Homeland Security (DHS) or the Secretary of Homeland Security's designee.

State Workforce Agency (SWA) means a State government agency that receives funds under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) to administer the State's public labor exchange activities.

Strike means a concerted stoppage of work by employees as a result of a labor dispute, or any concerted slowdown or other concerted interruption of operation (including stoppage by reason of the expiration of a collective bargaining agreement).

Successor in interest means:

(1) Where an employer has violated 20 CFR part 655, subpart A, or this part, and has ceased doing business or cannot be located for purposes of enforcement, a successor in interest to that employer may be held liable for the duties and obligations of the violating employer in certain circumstances. The following factors, as used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Readjustment Assistance Act,

may be considered in determining whether an employer is a successor in interest; no one factor is dispositive, but all of the circumstances will be considered as a whole:

(i) Substantial continuity of the same business operations;

(ii) Use of the same facilities;

(iii) Continuity of the work force;

(iv) Similarity of jobs and working conditions;

(v) Similarity of supervisory personnel;

(vi) Whether the former management or owner retains a direct or indirect interest in the new enterprise;

(vii) Similarity in machinery, equipment, and production methods;

(viii) Similarity of products and services; and

(ix) The ability of the predecessor to provide relief.

(2) For purposes of debarment only, the primary consideration will be the personal involvement of the firm's ownership, management, supervisors, and others associated with the firm in the violation(s) at issue.

United States (U.S.) means the continental United States, Alaska, Hawaii, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands (CNMI).

U.S. Citizenship and Immigration Services (USCIS) means the Federal agency within DHS that makes the determination under the INA whether to grant petitions filed by employers seeking H–2B workers to perform temporary non-agricultural work in the U.S.

United States worker (U.S. worker) means a worker who is:

(1) A citizen or national of the U.S.;

(2) An alien who is lawfully admitted for permanent residence in the U.S., is admitted as a refugee under 8 U.S.C. 1157, section 207 of the INA, is granted asylum under 8 U.S.C. 1158, section 208 of the INA, or is an alien otherwise authorized under the immigration laws to be employed in the U.S.; or

(3) An individual who is not an unauthorized alien (as defined in 8 U.S.C. 1324a(h)(3), section 274a(h)(3) of the INA) with respect to the employment in which the worker is engaging.

Wage and Hour Division (WHD) means the agency within the Department of Labor with investigatory and law enforcement authority, as delegated from DHS, to carry out the provisions under 8 U.S.C. 1184(c), section 214(c) of the INA.

Wages mean all forms of cash remuneration to a worker by an employer in payment for personal services.

§ 503.5 Temporary need.

(a) An employer seeking certification under 20 CFR part 655, subpart A, must establish that its need for non-agricultural services or labor is temporary, regardless of whether the underlying job is permanent or temporary.

(b) The employer's need is considered temporary if justified to the CO as one of the following: A one-time occurrence; a seasonal need; a peakload need; or an intermittent need, as defined by DHS regulations.

§ 503.6 Waiver of rights prohibited.

A person may not seek to have an H–2B worker, a worker in corresponding employment, or any other person, including but not limited to a U.S. worker improperly rejected for employment or improperly laid off or displaced, waive or modify any rights conferred under 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, subpart A, or the regulations in this part. Any agreement by an employee purporting to waive or modify any rights given to said person under these provisions will be void as contrary to public policy except as follows:

(a) Waivers or modifications of rights or obligations hereunder in favor of the Secretary will be valid for purposes of enforcement; and

(b) Agreements in settlement of private litigation are permitted.

§ 503.7 Investigation authority of Secretary.

(a) *Authority of the Administrator, WHD.* The Secretary of Homeland Security has delegated to the Secretary, under 8 U.S.C. 1184(c)(14)(B), INA section 214(c)(14)(B), authority to perform investigative and enforcement functions. Within the Department of Labor, the Administrator, WHD will perform all such functions.

(b) *Conduct of investigations.* The Secretary, through the WHD, may investigate to determine compliance with obligations under 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, subpart A, or the regulations in this part, either under a complaint or otherwise, as may be appropriate. In connection with such an investigation, WHD may enter and inspect any premises, land, property, worksite, vehicles, structure, facility, place and records (and make transcriptions, photographs, scans, videos, photocopies, or use any other means to record the content of the records or preserve images of places or objects), question any person, or gather any information, in whatever form, as may be appropriate.

(c) *Confidential investigation.* The WHD will conduct investigations in a manner that protects the confidentiality of any complainant or other person who provides information to the Secretary in good faith.

(d) *Report of violations.* Any person may report a violation of the obligations imposed by 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, subpart A, or the regulations in this part to the Secretary by advising any local office of the SWA, ETA, WHD or any other authorized representative of the Secretary. The office or person receiving such a report will refer it to the appropriate office of WHD for the geographic area in which the reported violation is alleged to have occurred.

§ 503.8 Accuracy of information, statements, data.

Information, statements, and data submitted in compliance with 8 U.S.C. 1184(c), INA section 214(c), or the regulations in this part are subject to 18 U.S.C. 1001, which provides, with regard to statements or entries generally, that whoever, in any matter within the jurisdiction of any department or agency of the U.S., knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, will be fined not more than $250,000 or imprisoned not more than 5 years, or both.

Subpart B—Enforcement

§ 503.15 Enforcement.

The investigation, inspection, and law enforcement functions that carry out the provisions of 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, subpart A, or the regulations in this part pertain to the employment of any H–2B worker, any worker in corresponding employment, or any U.S. worker improperly rejected for employment or improperly laid off or displaced.

§ 503.16 Assurances and obligations of H–2B employers.

An employer employing H–2B workers and/or workers in corresponding employment under an *Application for Temporary Employment Certification* has agreed as part of the *Application for Temporary Employment Certification* that it will abide by the following conditions with respect to its H–2B workers and any workers in corresponding employment:

(a) *Rate of pay.* (1) The offered wage in the job order equals or exceeds the highest of the prevailing wage or Federal minimum wage, State minimum wage, or local minimum wage. The employer must pay at least the offered wage, free and clear, during the entire period of the *Application for Temporary Employment Certification* granted by OFLC.

(2) The offered wage is not based on commissions, bonuses, or other incentives, including paying on a piece-rate basis, unless the employer guarantees a wage earned every workweek that equals or exceeds the offered wage.

(3) If the employer requires one or more minimum productivity standards of workers as a condition of job retention, the standards must be specified in the job order and the employer must demonstrate that they are normal and usual for non-H–2B employers for the same occupation in the area of intended employment.

(4) An employer that pays on a piece-rate basis must demonstrate that the piece rate is no less than the normal rate paid by non-H–2B employers to workers performing the same activity in the area of intended employment. The average hourly piece rate earnings must result in an amount at least equal to the offered wage. If the worker is paid on a piece rate basis and at the end of the workweek the piece rate does not result in average hourly piece rate earnings during the workweek at least equal to the amount the worker would have earned had the worker been paid at the offered hourly wage, then the employer must supplement the worker's pay at that time so that the worker's earnings are at least as much as the worker would have earned during the workweek if the worker had instead been paid at the offered hourly wage for each hour worked.

(b) *Wages free and clear.* The payment requirements for wages in this section will be satisfied by the timely payment of such wages to the worker either in cash or negotiable instrument payable at par. The payment must be made finally and unconditionally and ''free and clear.'' The principles applied in determining whether deductions are reasonable and payments are received free and clear and the permissibility of deductions for payments to third persons are explained in more detail in 29 CFR part 531.

(c) *Deductions.* The employer must make all deductions from the worker's paycheck required by law. The job order must specify all deductions not required by law which the employer will make from the worker's pay; any such deductions not disclosed in the job order are prohibited. The wage payment requirements of paragraph (b) of this section are not met where unauthorized deductions, rebates, or refunds reduce the wage payment made to the worker below the minimum amounts required by the offered wage or where the worker fails to receive such amounts free and clear because the worker ''kicks back'' directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wages delivered to the worker. Authorized deductions are limited to: those required by law, such as taxes payable by workers that are required to be withheld by the employer and amounts due workers which the employer is required by court order to pay to another; deductions for the reasonable cost or fair value of board, lodging, and facilities furnished; and deductions of amounts which are authorized to be paid to third persons for the worker's account and benefit through his or her voluntary assignment or order or which are authorized by a collective bargaining agreement with bona fide representatives of workers which covers the employer. Deductions for amounts paid to third persons for the worker's account and benefit which are not so authorized or are contrary to law or from which the employer, agent or recruiter, including any agents or employees of these entities, or any affiliated person derives any payment, rebate, commission, profit, or benefit directly or indirectly, may not be made if they reduce the actual wage paid to the worker below the offered wage indicated on the *Application for Temporary Employment Certification.*

(d) *Job opportunity is full-time.* The job opportunity is a full-time temporary position, consistent with § 503.4, and the employer must use a single workweek as its standard for computing wages due. An employee's workweek must be a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day.

(e) *Job qualifications and requirements.* Each job qualification and requirement must be listed in the job order and must be bona fide and consistent with the normal and accepted qualifications and requirements imposed by non-H–2B employers in the same occupation and area of intended employment. The employer's job qualifications and requirements imposed on U.S. workers must not be less favorable than the qualifications and requirements that the employer is imposing or will impose on H–2B workers. A qualification means a characteristic that is necessary to the individual's ability to perform the job in question. A requirement means a term or condition of employment which a worker is required to accept in order to obtain the job opportunity. The CO may require the employer to submit documentation to substantiate the appropriateness of any job qualification and/or requirement specified in the job order.

(f) *Three-fourths guarantee.* (1) The employer must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays in each 12-week period (each 6-week period if the period of employment covered by the job order is less than 120 days) beginning with the first workday after the arrival of the worker at the place of employment or the advertised first date of need, whichever is later, and ending on the expiration date specified in the job order or in its extensions, if any. See the exception in paragraph (y) of this section.

(2) For purposes of this paragraph (f) a workday means the number of hours in a workday as stated in the job order. The employer must offer a total number of hours of work to ensure the provision of sufficient work to reach the three-fourths guarantee in each 12-week period (each 6-week period if the period of employment covered by the job order is less than 120 days) during the work period specified in the job order, or during any modified job order period to which the worker and employer have mutually agreed and that has been approved by the CO.

(3) In the event the worker begins working later than the specified beginning date the guarantee period begins with the first workday after the arrival of the worker at the place of employment, and continues until the last day during which the job order and all extensions thereof are in effect.

(4) The 12-week periods (6-week periods if the period of employment covered by the job order is less than 120 days) to which the guarantee applies are based upon the workweek used by the employer for pay purposes. The first 12-week period (or 6-week period, as appropriate) also includes any partial workweek, if the first workday after the worker's arrival at the place of employment is not the beginning of the employer's workweek, with the guaranteed number of hours increased on a pro rata basis (thus, the first period may include up to 12 weeks and 6 days (or 6 weeks and 6 days, as appropriate)). The final 12-week period (or 6-week period, as appropriate) includes any

time remaining after the last full 12-week period (or 6-week period) ends, and thus may be as short as 1 day, with the guaranteed number of hours decreased on a pro rata basis.

(5) Therefore, if, for example, a job order is for a 32-week period (a period greater than 120 days), during which the normal workdays and work hours for the workweek are specified as 5 days a week, 7 hours per day, the worker would have to be guaranteed employment for at least 315 hours in the first 12-week period (12 weeks × 35 hours/week = 420 hours × 75 percent = 315), at least 315 hours in the second 12-week period, and at least 210 hours (8 weeks x 35 hours/week = 280 hours x 75 percent = 210) in the final partial period. If the job order is for a 16-week period (less than 120 days), during which the normal workdays and work hours for the workweek are specified as 5 days a week, 7 hours per day, the worker would have to be guaranteed employment for at least 157.5 hours (6 weeks × 35 hours/week = 210 hours × 75 percent = 157.5) in the first 6-week period, at least 157.5 hours in the second 6-week period, and at least 105 hours (4 weeks × 35 hours/week = 140 hours × 75 percent = 105) in the final partial period.

(6) If the worker is paid on a piece rate basis, the employer must use the worker's average hourly piece rate earnings or the offered wage, whichever is higher, to calculate the amount due under the guarantee.

(7) A worker may be offered more than the specified hours of work on a single workday. For purposes of meeting the guarantee, however, the worker will not be required to work for more than the number of hours specified in the job order for a workday. The employer, however, may count all hours actually worked in calculating whether the guarantee has been met. If during any 12-week period (6-week period if the period of employment covered by the job order is less than 120 days) during the period of the job order the employer affords the U.S. or H–2B worker less employment than that required under paragraph (f)(1) of this section, the employer must pay such worker the amount the worker would have earned had the worker, in fact, worked for the guaranteed number of days. An employer has not met the work guarantee if the employer has merely offered work on three-fourths of the workdays in an 12-week period (or 6-week period, as appropriate) if each workday did not consist of a full number of hours of work time as specified in the job order.

(8) Any hours the worker fails to work, up to a maximum of the number of hours specified in the job order for a workday, when the worker has been offered an opportunity to work in accordance with paragraph (f)(1) of this section, and all hours of work actually performed (including voluntary work over 8 hours in a workday), may be counted by the employer in calculating whether each 12-week period (or 6-week period, as appropriate) of guaranteed employment has been met. An employer seeking to calculate whether the guaranteed number of hours has been met must maintain the payroll records in accordance with this part.

(g) *Impossibility of fulfillment.* If, before the expiration date specified in the job order, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God, or similar unforeseeable man-made catastrophic event (such as an oil spill or controlled flooding) that is wholly outside the employer's control that makes the fulfillment of the job order impossible, the employer may terminate the job order with the approval of the CO. In the event of such termination of a job order, the employer must fulfill a three-fourths guarantee, as described in paragraph (f) of this section, for the time that has elapsed from the start date listed in the job order or the first workday after the arrival of the worker at the place of employment, whichever is later, to the time of its termination. The employer must make efforts to transfer the H–2B worker or worker in corresponding employment to other comparable employment acceptable to the worker and consistent with the INA, as applicable. If a transfer is not effected, the employer must return the worker, at the employer's expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the worker's next certified H–2B employer, whichever the worker prefers.

(h) *Frequency of pay.* The employer must state in the job order the frequency with which the worker will be paid, which must be at least every 2 weeks or according to the prevailing practice in the area of intended employment, whichever is more frequent. Employers must pay wages when due.

(i) *Earnings statements.* (1) The employer must keep accurate and adequate records with respect to the workers' earnings, including but not limited to: records showing the nature, amount and location(s) of the work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee in paragraph (f) of this section); the hours actually worked each day by the worker; if the number of hours worked by the worker is less than the number of hours offered, the reason(s) the worker did not work; the time the worker began and ended each workday; the rate of pay (both piece rate and hourly, if applicable); the worker's earnings per pay period; the worker's home address; and the amount of and reasons for any and all deductions taken from or additions made to the worker's wages.

(2) The employer must furnish to the worker on or before each payday in one or more written statements the following information:

(i) The worker's total earnings for each workweek in the pay period;

(ii) The worker's hourly rate and/or piece rate of pay;

(iii) For each workweek in the pay period the hours of employment offered to the worker (showing offers in accordance with the three-fourths guarantee as determined in paragraph (f) of this section, separate from any hours offered over and above the guarantee);

(iv) For each workweek in the pay period the hours actually worked by the worker;

(v) An itemization of all deductions made from or additions made to the worker's wages;

(vi) If piece rates are used, the units produced daily;

(vii) The beginning and ending dates of the pay period; and

(viii) The employer's name, address and FEIN.

(j) *Transportation and visa fees*—(1)(i) *Transportation to the place of employment.* The employer must provide or reimburse the worker for transportation and subsistence from the place from which the worker has come to work for the employer, whether in the U.S. or abroad, to the place of employment if the worker completes 50 percent of the period of employment covered by the job order (not counting any extensions). The employer may arrange and pay for the transportation and subsistence directly, advance at a minimum the most economical and reasonable common carrier cost of the transportation and subsistence to the worker before the worker's departure, or pay the worker for the reasonable costs incurred by the worker. When it is the prevailing practice of non-H–2B employers in the occupation in the area to do so or when the employer extends such benefits to similarly situated H–2B workers, the employer must advance the required transportation and subsistence

costs (or otherwise provide them) to workers in corresponding employment who are traveling to the employer's worksite. The amount of the transportation payment must be no less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. The amount of the daily subsistence must be at least the amount permitted in 20 CFR 655.173. Where the employer will reimburse the reasonable costs incurred by the worker, it must keep accurate and adequate records of: the costs of transportation and subsistence incurred by the worker; the amount reimbursed; and the date(s) of reimbursement. Note that the Fair Labor Standards Act (FLSA) applies independently of the H–2B requirements and imposes obligations on employers regarding payment of wages.

(ii) *Transportation from the place of employment.* If the worker completes the period of employment covered by the job order (not counting any extensions), or if the worker is dismissed from employment for any reason by the employer before the end of the period, and the worker has no immediate subsequent H–2B employment, the employer must provide or pay at the time of departure for the worker's cost of return transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer. If the worker has contracted with a subsequent employer that has not agreed in the job order to provide or pay for the worker's transportation from the employer's worksite to such subsequent employer's worksite, the employer must provide or pay for that transportation and subsistence. If the worker has contracted with a subsequent employer that has agreed in the job order to provide or pay for the worker's transportation from the employer's worksite to such subsequent employer's worksite, the subsequent employer must provide or pay for such expenses.

(iii) *Employer-provided transportation.* All employer-provided transportation must comply with all applicable Federal, State, and local laws and regulations and must provide, at a minimum, the same vehicle safety standards, driver licensure requirements, and vehicle insurance as required under 49 CFR parts 390, 393, and 396.

(iv) *Disclosure.* All transportation and subsistence costs that the employer will pay must be disclosed in the job order.

(2) The employer must pay or reimburse the worker in the first workweek for all visa, visa processing, border crossing, and other related fees (including those mandated by the government) incurred by the H–2B worker, but not for passport expenses or other charges primarily for the benefit of the worker.

(k) *Employer-provided items.* The employer must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned.

(l) *Disclosure of job order.* The employer must provide to an H–2B worker outside of the U.S. no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the job order including any subsequent approved modifications. For an H–2B worker changing employment from an H–2B employer to a subsequent H–2B employer, the copy must be provided no later than the time an offer of employment is made by the subsequent H–2B employer. The disclosure of all documents required by this paragraph (l) must be provided in a language understood by the worker, as necessary or reasonable.

(m) *Notice of worker rights.* The employer must post and maintain in a conspicuous location at the place of employment a poster provided by the Department of Labor that sets out the rights and protections for H–2B workers and workers in corresponding employment. The employer must post the poster in English. To the extent necessary, the employer must request and post additional posters, as made available by the Department of Labor, in any language common to a significant portion of the workers if they are not fluent in English.

(n) *No unfair treatment.* The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, any person who has:

(1) Filed a complaint under or related to 8 U.S.C. 1184(c), section 214(c) of the INA, 20 CFR part 655, subpart A, or this part or any other regulation promulgated thereunder;

(2) Instituted or caused to be instituted any proceeding under or related to 8 U.S.C. 1184(c), section 214(c) of the INA, 20 CFR part 655, subpart A, or this part or any other regulation promulgated thereunder;

(3) Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1184(c), section 214(c) of the INA, 20 CFR part 655, subpart A, or this part or any other regulation promulgated thereunder;

(4) Consulted with a workers' center, community organization, labor union, legal assistance program, or an attorney on matters related to 8 U.S.C. 1184(c), section 214(c) of the INA, 20 CFR part 655, subpart A, or this part or any other regulation promulgated thereunder; or

(5) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by 8 U.S.C. 1184(c), section 214(c) of the INA, 20 CFR part 655, subpart A, or this part or any other regulation promulgated thereunder.

(o) *Comply with the prohibitions against employees paying fees.* The employer and its attorney, agents, or employees have not sought or received payment of any kind from the worker for any activity related to obtaining H–2B labor certification or employment, including payment of the employer's attorney or agent fees, application and *H–2B Petition* fees, recruitment costs, or any fees attributed to obtaining the approved *Application for Temporary Employment Certification.* For purposes of this paragraph (o), payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in-kind payments, and free labor. All wages must be paid free and clear. This provision does not prohibit employers or their agents from receiving reimbursement for costs that are the responsibility and primarily for the benefit of the worker, such as government-required passport fees.

(p) *Contracts with third parties to comply with prohibitions.* The employer must contractually prohibit in writing any agent or recruiter (or any agent or employee of such agent or recruiter) whom the employer engages, either directly or indirectly, in recruitment of H–2B workers to seek or receive payments or other compensation from prospective workers. The contract must include the following statement: ''Under this agreement, [name of agent, recruiter] and any agent of or employee of [name of agent or recruiter] are prohibited from seeking or receiving payments from any prospective employee of [employer name] at any time, including before or after the worker obtains employment. Payments include but are not limited to, any direct or indirect fees paid by such employees for recruitment, job placement, processing, maintenance, attorneys'

fees, agent fees, application fees, or petition fees.''

(q) *Prohibition against preferential treatment of foreign workers.* The employer's job offer must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2B workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H–2B workers. This does not relieve the employer from providing to H–2B workers at least the minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

(r) *Non-discriminatory hiring practices.* The job opportunity is, and through the period set forth in paragraph (t) of this section must continue to be, open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, disability, or citizenship. Rejections of any U.S. workers who applied or apply for the job must only be for lawful, job-related reasons, and those not rejected on this basis have been or will be hired. In addition, the employer has and will continue to retain records of all hired workers and rejected applicants as required by § 503.17.

(s) *Recruitment requirements.* The employer must conduct all required recruitment activities, including any additional employer-conducted recruitment activities as directed by the CO, and as specified in 20 CFR 655.40 through 655.46.

(t) *Continuing requirement to hire U.S. workers.* The employer has and will continue to cooperate with the SWA by accepting referrals of all qualified U.S. workers who apply (or on whose behalf a job application is made) for the job opportunity, and must provide employment to any qualified U.S. worker who applies to the employer for the job opportunity, until 21 days before the date of need.

(u) *No strike or lockout.* There is no strike or lockout at any of the employer's worksites within the area of intended employment for which the employer is requesting H–2B certification at the time the *Application for Temporary Employment Certification* is filed.

(v) *No recent or future layoffs.* The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the *Application for Temporary Employment Certification* in the area of intended employment within the period beginning 120 calendar days before the date of need through the end of the period of certification. A layoff for lawful, job-related reasons such as lack of work or the end of a season is permissible if all H–2B workers are laid off before any U.S. worker in corresponding employment.

(w) *Contact with former U.S. employees.* The employer will contact (by mail or other effective means) its former U.S. workers, including those who have been laid off within 120 calendar days before the date of need (except those who were dismissed for cause or who abandoned the worksite), employed by the employer in the occupation at the place of employment during the previous year, disclose the terms of the job order, and solicit their return to the job.

(x) *Area of intended employment and job opportunity.* The employer must not place any H–2B workers employed under the approved *Application for Temporary Employment Certification* outside the area of intended employment or in a job opportunity not listed on the approved *Application for Temporary Employment Certification* unless the employer has obtained a new approved *Application for Temporary Employment Certification.*

(y) *Abandonment/termination of employment.* Upon the separation from employment of worker(s) employed under the *Application for Temporary Employment Certification* or workers in corresponding employment, if such separation occurs before the end date of the employment specified in the *Application for Temporary Employment Certification,* the employer must notify OFLC in writing of the separation from employment not later than 2 work days after such separation is discovered by the employer. In addition, the employer must notify DHS in writing (or any other method specified by the Department of Labor or DHS in the **Federal Register** or the Code of Federal Regulations) of such separation of an H–2B worker. An abandonment or abscondment is deemed to begin after a worker fails to report for work at the regularly scheduled time for 5 consecutive working days without the consent of the employer. If the separation is due to the voluntary abandonment of employment by the H–2B worker or worker in corresponding employment, and the employer provides appropriate notification specified under this paragraph (y), the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker under this section, and that worker is not entitled to the three-fourths guarantee described in paragraph (f) of this section. The employer's obligation to guarantee three-fourths of the work described in paragraph (f) ends with the last full 12-week period (or 6-week period, as appropriate) preceding the worker's voluntary abandonment or termination for cause.

(z) *Compliance with applicable laws.* During the period of employment specified on the *Application for Temporary Employment Certification,* the employer must comply with all applicable Federal, State and local employment-related laws and regulations, including health and safety laws. This includes compliance with 18 U.S.C. 1592(a), with respect to prohibitions against employers, the employer's agents or their attorneys knowingly holding, destroying or confiscating workers' passports, visas, or other immigration documents.

(aa) *Disclosure of foreign worker recruitment.* The employer, and its attorney or agent, as applicable, must comply with 20 CFR 655.9 by providing a copy of all agreements with any agent or recruiter whom it engages or plans to engage in the recruitment of H–2B workers, and the identity and location of the persons or entities hired by or working for the agent or recruiter, and any of the agents or employees of those persons and entities, to recruit foreign workers. Pursuant to 20 CFR 655.15(a), the agreements and information must be filed with the *Application for Temporary Employment Certification.*

(bb) *Cooperation with investigators.* The employer must cooperate with any employee of the Secretary who is exercising or attempting to exercise the Department's authority pursuant to 8 U.S.C. 1184(c)(14)(B), section 214(c)(14)(B) of the INA.

§ 503.17 Document retention requirements of H–2B employers.

(a) *Entities required to retain documents.* All employers filing an *Application for Temporary Employment Certification* requesting H–2B workers are required to retain the documents and records proving compliance with 20 CFR part 655, subpart A and this part, including but not limited to those specified in paragraph (c) of this section.

(b) *Period of required retention.* The employer must retain records and documents for 3 years from the date of certification of the *Application for Temporary Employment Certification* or from the date of adjudication if the *Application for Temporary Employment Certification* is denied or 3 years from the day the Department of Labor receives the letter of withdrawal provided in accordance with 20 CFR 655.62.

(c) *Documents and records to be retained by all employer applicants.* All employers filing an *H–2B Registration* and an *Application for Temporary Employment Certification* must retain the following documents and records and must provide the documents and records in the event of an audit or investigation:

(1) Documents and records not previously submitted during the registration process that substantiate temporary need;

(2) Proof of recruitment efforts, as applicable, including:

(i) Job order placement as specified in 20 CFR 655.16;

(ii) Advertising as specified in 20 CFR 655.41 and 655.42;

(iii) Contact with former U.S. workers as specified in 20 CFR 655.43;

(iv) Contact with bargaining representative(s), copy of the posting of the job opportunity, and contact with community-based organizations, if applicable, as specified in 20 CFR 655.45(a), (b) and (c); and

(v) Additional employer-conducted recruitment efforts as specified in 20 CFR 655.46;

(3) Substantiation of the information submitted in the recruitment report prepared in accordance with 20 CFR 655.48, such as evidence of nonapplicability of contact with former workers as specified in 20 CFR 655.43;

(4) The final recruitment report and any supporting resumes and contact information as specified in 20 CFR 655.48;

(5) Records of each worker's earnings, hours offered and worked, and other information as specified in § 503.16(i);

(6) If appropriate, records of reimbursement of transportation and subsistence costs incurred by the workers, as specified in § 503.16(j).

(7) Evidence of contact with U.S. workers who applied for the job opportunity in the *Application for Temporary Employment Certification,* including documents demonstrating that any rejections of U.S. workers were for lawful, job-related reasons, as specified in § 503.16(r);

(8) Evidence of contact with any former U.S. worker in the occupation and the area of intended employment in the *Application for Temporary Employment Certification,* including documents demonstrating that the U.S. worker had been offered the job opportunity in the *Application for Temporary Employment Certification,* as specified in § 503.16(w), and that the U.S. worker either refused the job opportunity or was rejected only for lawful, job-related reasons, as specified in § 503.16(r);

(9) The written contracts with agents or recruiters, as specified in 20 CFR 655.8 and 655.9, and the list of the identities and locations of persons hired by or working for the agent or recruiter and these entities' agents or employees, as specified in 20 CFR 655.9;

(10) Written notice provided to and informing OFLC that an H–2B worker or worker in corresponding employment has separated from employment before the end date of employment specified in the *Application for Temporary Employment Certification,* as specified in § 503.16(y);

(11) The *H–2B Registration,* job order, and a copy of the *Application for Temporary Employment Certification* and the original signed Appendix B of the Application.

(12) The approved *H–2B Petition,* including all accompanying documents; and

(13) Any collective bargaining agreement(s), individual employment contract(s), or payroll records from the previous year necessary to substantiate any claim that certain incumbent workers are not included in corresponding employment, as specified in § 503.4.

(d) *Availability of documents for enforcement purposes.* An employer must make available to the Administrator, WHD within 72 hours following a request by the WHD the documents and records required under 20 CFR part 655, subpart A and this section so that the Administrator, WHD may copy, transcribe, or inspect them.

§ 503.18 Validity of temporary labor certification.

(a) *Validity period.* A temporary labor certification is valid only for the period of time between the beginning and ending dates of employment, as approved on the *Application for Temporary Employment Certification.* The certification expires on the last day of authorized employment.

(b) *Scope of validity.* A temporary labor certification is valid only for the number of H–2B positions, the area of intended employment, the job classification and specific services or labor to be performed, and the employer specified on the approved *Application for Temporary Employment Certification.* The temporary labor certification may not be transferred from one employer to another unless the employer to which it is transferred is a successor in interest to the employer to which it was issued.

§ 503.19 Violations.

(a) *Types of violations.* Pursuant to the statutory provisions governing enforcement of the H–2B program, 8 U.S.C. 1184(c)(14), a violation exists under this part where the Administrator, WHD determines that there has been a:

(1) Willful misrepresentation of a material fact on the *H–2B Registration, Application for Prevailing Wage Determination, Application for Temporary Employment Certification,* or *H–2B Petition;*

(2) Substantial failure to meet any of the terms and conditions of the *H–2B Registration, Application for Prevailing Wage Determination, Application for Temporary Employment Certification,* or *H–2B Petition.* A substantial failure is a willful failure to comply that constitutes a significant deviation from the terms and conditions of such documents; or

(3) Willful misrepresentation of a material fact to the Department of State during the H–2B nonimmigrant visa application process.

(b) *Determining whether a violation is willful.* A willful misrepresentation of a material fact or a willful failure to meet the required terms and conditions occurs when the employer, attorney, or agent knows its statement is false or that its conduct is in violation, or shows reckless disregard for the truthfulness of its representation or for whether its conduct satisfies the required conditions.

(c) *Determining whether a violation is significant.* In determining whether a violation is a significant deviation from the terms and conditions of the *H–2B Registration, Application for Prevailing Wage Determination, Application for Temporary Employment Certification,* or *H–2B Petition,* the factors that the Administrator, WHD may consider include, but are not limited to, the following:

(1) Previous history of violation(s) under the H–2B program;

(2) The number of H–2B workers, workers in corresponding employment, or U.S. workers who were and/or are affected by the violation(s);

(3) The gravity of the violation(s);

(4) The extent to which the violator achieved a financial gain due to the violation(s), or the potential financial loss or potential injury to the worker(s); and

(5) Whether U.S. workers have been harmed by the violation.

(d) *Employer acceptance of obligations.* The provisions of this part become applicable upon the date that the employer's *Application for Temporary Employment Certification* is accepted. The employer's submission of the approved *H–2B Registration, Application for Prevailing Wage*

Determination, the employer's survey attestation (Form ETA–9165), Appendix B of the *Application for Temporary Employment Certification,* and *H–2B Petition* constitute the employer's representation that the statements on the forms are accurate and that it knows and accepts the obligations of the program.

§ 503.20 Sanctions and remedies—general.

Whenever the Administrator, WHD determines that there has been a violation(s), as described in § 503.19, such action will be taken and such proceedings instituted as deemed appropriate, including (but not limited to) the following:

(a) Institute administrative proceedings, including for: the recovery of unpaid wages (including recovery of prohibited recruitment fees paid or impermissible deductions from pay, and recovery of wages due for improperly placing workers in areas of employment or in occupations other than those identified on the *Application for Temporary Employment Certification* and for which a prevailing wage was not obtained); the enforcement of provisions of the job order, 8 U.S.C. 1184(c), 20 CFR part 655, subpart A, or the regulations in this part; the assessment of a civil money penalty; make whole relief for any person who has been discriminated against; reinstatement and make whole relief for any U.S. worker who has been improperly rejected for employment, laid off or displaced; or debarment for no less than 1 or no more than 5 years.

(b) The remedies referenced in paragraph (a) of this section will be sought either directly from the employer, or from its successor in interest, or from the employer's agent or attorney, as appropriate.

§ 503.21 Concurrent actions within the Department of Labor.

OFLC has primary responsibility to make all determinations regarding the issuance, denial, or revocation of a labor certification as described in § 503.1(b) and in 20 CFR part 655, subpart A. The WHD has primary responsibility to make all determinations regarding the enforcement functions as described in § 503.1(c). The taking of any one of the actions referred to above will not be a bar to the concurrent taking of any other action authorized by 8 U.S.C. 1184(c), 20 CFR part 655, subpart A, or the regulations in this part. OFLC and the WHD have concurrent jurisdiction to impose a debarment remedy under 20 CFR 655.73 or under § 503.24.

§ 503.22 Representation of the Secretary.

The Solicitor of Labor, through authorized representatives, will represent the Administrator, WHD and the Secretary in all administrative hearings under 8 U.S.C. 1184(c)(14) and the regulations in this part.

§ 503.23 Civil money penalty assessment.

(a) A civil money penalty may be assessed by the Administrator, WHD for each violation that meets the standards described in § 503.19. Each such violation involving the failure to pay an individual worker properly or to honor the terms or conditions of a worker's employment required by the *H–2B Registration, Application for Prevailing Wage Determination, Application for Temporary Employment Certification,* or *H–2B Petition,* constitutes a separate violation. Civil money penalty amounts for such violations are determined as set forth in paragraphs (b) to (e) of this section.

(b) Upon determining that an employer has violated any provisions of § 503.16 related to wages, impermissible deductions or prohibited fees and expenses, the Administrator, WHD may assess civil money penalties that are equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker(s), not to exceed $10,000 per violation.

(c) Upon determining that an employer has terminated by layoff or otherwise or has refused to employ any worker in violation of § 503.16(r), (t), or (v), within the periods described in those sections, the Administrator, WHD may assess civil money penalties that are equal to the wages that would have been earned but for the layoff or failure to hire, not to exceed $10,000 per violation. No civil money penalty will be assessed, however, if the employee refused the job opportunity, or was terminated for lawful, job-related reasons.

(d) The Administrator, WHD may assess civil money penalties in an amount not to exceed $10,000 per violation for any other violation that meets the standards described in § 503.19.

(e) In determining the amount of the civil money penalty to be assessed under paragraph (d) of this section, the Administrator, WHD will consider the type of violation committed and other relevant factors. In determining the level of penalties to be assessed, the highest penalties will be reserved for willful failures to meet any of the conditions of the *Application for Temporary Employment Certification* and *H–2B Petition* that involve harm to U.S. workers. Other factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation(s) of 8 U.S.C. 1184(c), 20 CFR part 655, subpart A, or the regulations in this part;

(2) The number of H–2B workers, workers in corresponding employment, or improperly rejected U.S. applicants who were and/or are affected by the violation(s);

(3) The gravity of the violation(s);

(4) Efforts made in good faith to comply with 8 U.S.C. 1184(c), 20 CFR part 655, subpart A, and the regulations in this part;

(5) Explanation from the person charged with the violation(s);

(6) Commitment to future compliance, taking into account the public health, interest or safety; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

§ 503.24 Debarment.

(a) *Debarment of an employer.* The Administrator, OFLC may not issue future labor certifications under 20 CFR part 655, subpart A to an employer or any successor in interest to that employer, subject to the time limits set forth in paragraph (c) of this section, if the Administrator, WHD finds that the employer committed a violation that meets the standards of § 503.19. Where these standards are met, debarrable violations would include but not be limited to one or more acts of commission or omission which involve:

(1) Failure to pay or provide the required wages, benefits, or working conditions to the employer's H–2B workers and/or workers in corresponding employment;

(2) Failure, except for lawful, job-related reasons, to offer employment to qualified U.S. workers who applied for the job opportunity for which certification was sought;

(3) Failure to comply with the employer's obligations to recruit U.S. workers;

(4) Improper layoff or displacement of U.S. workers or workers in corresponding employment;

(5) Failure to comply with one or more sanctions or remedies imposed by the Administrator, WHD for violation(s) of obligations under the job order or other H–2B obligations, or with one or more decisions or orders of the Secretary or a court under 20 CFR part 655, subpart A or this part;

(6) Impeding an investigation of an employer under this part;

(7) Employing an H–2B worker outside the area of intended

employment, in an activity/activities not listed in the job order, or outside the validity period of employment of the job order, including any approved extension thereof;

(8) A violation of the requirements of § 503.16(o) or (p);

(9) A violation of any of the provisions listed in § 503.16(r);

(10) Any other act showing such flagrant disregard for the law that future compliance with program requirements cannot reasonably be expected;

(11) Fraud involving the *H–2B Registration, Application for Prevailing Wage Determination, Application for Temporary Employment Certification,* or *H–2B Petition;* or

(12) A material misrepresentation of fact during the registration or application process.

(b) *Debarment of an agent or attorney.* If the Administrator, WHD finds, under this section, that an agent or attorney committed a violation as described in paragraph (a) of this section or participated in an employer's violation, the Administrator, OFLC may not issue future labor certifications to an employer represented by such agent or attorney, subject to the time limits set forth in paragraph (c) of this section.

(c) *Period of debarment.* Debarment under this subpart may not be for less than 1 year or more than 5 years from the date of the final agency decision.

(d) *Debarment procedure.* If the Administrator, WHD makes a determination to debar an employer, attorney, or agent, the Administrator, WHD will send the party a Notice of Debarment. The notice will state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment and inform the party subject to the notice of its right to request a debarment hearing and the timeframe under which such rights must be exercised under § 503.43. If the party does not request a hearing within 30 calendar days of the date of the Notice of Debarment, the notice is the final agency action and the debarment will take effect at the end of the 30-day period. The timely filing of an administrative appeal stays the debarment pending the outcome of the appeal as provided in § 503.43(e).

(e) *Concurrent debarment jurisdiction.* OFLC and the WHD have concurrent jurisdiction debar under 20 CFR 655.73 or under this part. When considering debarment, OFLC and the WHD will coordinate their activities. A specific violation for which debarment is imposed will be cited in a single debarment proceeding. Copies of final debarment decisions will be forwarded to DHS and DOS promptly.

(f) *Debarment from other labor certification programs.* Upon debarment under this part or 20 CFR 655.73, the debarred party will be disqualified from filing any labor certification applications or labor condition applications with the Department of Labor by, or on behalf of, the debarred party for the same period of time set forth in the final debarment decision.

§ 503.25 Failure to cooperate with investigators.

(a) No person will interfere or refuse to cooperate with any employee of the Secretary who is exercising or attempting to exercise the Department's investigative or enforcement authority under 8 U.S.C. 1184(c). Federal statutes prohibiting persons from interfering with a Federal officer in the course of official duties are found at 18 U.S.C. 111 and 18 U.S.C. 114.

(b) Where an employer (or employer's agent or attorney) interferes or does not cooperate with an investigation concerning the employment of an H–2B worker or a worker in corresponding employment, or a U.S. worker who has been improperly rejected for employment or improperly laid off or displaced, WHD may make such information available to OFLC and may recommend that OFLC revoke the existing certification that is the basis for the employment of the H–2B workers giving rise to the investigation. In addition, WHD may take such action as appropriate where the failure to cooperate meets the standards in § 503.19, including initiating proceedings for the debarment of the employer from future certification for up to 5 years, and/or assessing civil money penalties against any person who has failed to cooperate with a WHD investigation. The taking of any one action will not bar the taking of any additional action.

§ 503.26 Civil money penalties—payment and collection.

Where a civil money penalty is assessed in a final order by the Administrator, WHD, by an ALJ, or by the ARB, the amount of the penalty must be received by the Administrator, WHD within 30 calendar days of the date of the final order. The person assessed the penalty will remit the amount ordered to the Administrator, WHD by certified check or by money order, made payable to the Wage and Hour Division, United States Department of Labor. The remittance will be delivered or mailed to the WHD Regional Office for the area in which the violations occurred.

Subpart C—Administrative Proceedings

§ 503.40 Applicability of procedures and rules.

(a) The procedures and rules contained in this subpart prescribe the administrative appeal process that will be applied with respect to a determination to assess civil money penalties, to debar, to enforce provisions of the job order or provisions under 8 U.S.C. 1184(c), 20 CFR part 655, subpart A, or the regulations in this part, or to the collection of monetary relief due as a result of any violation.

(b) With respect to determinations as listed in paragraph (a) involving provisions under 8 U.S.C. 1184(c), the procedures and rules contained in this subpart will apply regardless of the date of violation.

Procedures Related to Hearing

§ 503.41 Administrator, WHD's determination.

(a) Whenever the Administrator, WHD decides to assess a civil money penalty, to debar, or to impose other appropriate administrative remedies, including for the recovery of monetary relief, the party against which such action is taken will be notified in writing of such determination.

(b) The Administrator, WHD's determination will be served on the party by personal service or by certified mail at the party's last known address. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

§ 503.42 Contents of notice of determination.

The notice of determination required by § 503.41 will:

(a) Set forth the determination of the Administrator, WHD, including:

(1) The amount of any monetary relief due; or

(2) Other appropriate administrative remedies; or

(3) The amount of any civil money penalty assessment; or

(4) Whether debarment is sought and the term; and

(5) The reason or reasons for such determination.

(b) Set forth the right to request a hearing on such determination;

(c) Inform the recipient(s) of the notice that in the absence of a timely request for a hearing, received by the Chief ALJ within 30 calendar days of the date of the determination, the

determination of the Administrator, WHD will become final and not appealable;

(d) Set forth the time and method for requesting a hearing, and the related procedures for doing so, as set forth in § 503.43, and give the addresses of the Chief ALJ (with whom the request must be filed) and the representative(s) of the Solicitor of Labor (upon whom copies of the request must be served); and

(e) Where appropriate, inform the recipient(s) of the notice that the Administrator, WHD will notify OFLC and DHS of the occurrence of a violation by the employer.

§ 503.43 Request for hearing.

(a) Any party desiring review of a determination issued under § 503.41, including judicial review, must make a request for such an administrative hearing in writing to the Chief ALJ at the address stated in the notice of determination. In such a proceeding, the Administrator will be the plaintiff, and the party will be the respondent. If such a request for an administrative hearing is timely filed, the Administrator, WHD's determination will be inoperative unless and until the case is dismissed or the ALJ issues an order affirming the decision.

(b) No particular form is prescribed for any request for hearing permitted by this section. However, any such request will:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party believes such determination is in error;

(5) Be signed by the party making the request or by the agent or attorney of such party; and

(6) Include the address at which such party or agent or attorney desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the Chief ALJ, at the address stated in the Administrator, WHD's notice of determination, no later than 30 calendar days after the date of the determination. A party which fails to meet this 30-day deadline for requesting a hearing may thereafter participate in the proceedings only by consent of the ALJ.

(d) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service within the time set forth in paragraph (c) of this section. For the requesting party's protection, if the request is by mail, it should be by certified mail. If the request is by facsimile transmission, the original of the request, signed by the party or its attorney or agent, must be filed within 25 days.

(e) The determination will take effect on the start date identified in the written notice of determination, unless an administrative appeal is properly filed. The timely filing of an administrative appeal stays the determination pending the outcome of the appeal proceedings.

(f) Copies of the request for a hearing will be sent by the party or attorney or agent to the WHD official who issued the notice of determination on behalf of the Administrator, WHD, and to the representative(s) of the Solicitor of Labor identified in the notice of determination.

Rules of Practice

§ 503.44 General.

(a) Except as specifically provided in the regulations in this part and to the extent they do not conflict with the provisions of this part, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges established by the Secretary at 29 CFR part 18 will apply to administrative proceedings described in this part.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) will not apply, but principles designed to ensure production of relevant and probative evidence will guide the admission of evidence. The ALJ may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ 503.45 Service of pleadings.

(a) Under this part, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the ALJ may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two copies of all pleadings and other documents in any ALJ proceeding must be served on the attorneys for the Administrator, WHD. One copy must be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2716, Washington, DC 20210, and one copy must be served on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following service and includes the last day of the period unless it is a Saturday, Sunday, or Federally-observed holiday, in which case the time period includes the next business day.

§ 503.46 Commencement of proceeding.

Each administrative proceeding permitted under 8 U.S.C. 1184(c)(14) and the regulations in this part will be commenced upon receipt of a timely request for hearing filed in accordance with § 503.43.

§ 503.47 Caption of proceeding.

(a) Each administrative proceeding instituted under 8 U.S.C. 1184(c)(14), INA section 214(c)(14) and the regulations in this part will be captioned in the name of the person requesting such hearing, and will be styled as follows:

In the Matter of _____, Respondent.

(b) For the purposes of such administrative proceedings the Administrator, WHD will be identified as plaintiff and the person requesting such hearing will be named as respondent.

§ 503.48 Conduct of proceeding.

(a) Upon receipt of a timely request for a hearing filed under and in accordance with § 503.43, the Chief ALJ will promptly appoint an ALJ to hear the case.

(b) The ALJ will notify all parties of the date, time and place of the hearing. Parties will be given at least 30 calendar days' notice of such hearing.

(c) The ALJ may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement must be served upon each other party. Post-hearing briefs will not be permitted except at the request of the ALJ. When permitted, any such brief must be limited to the issue or issues specified by the ALJ, will be due within the time prescribed by the ALJ, and must be served on each other party.

Procedures Before Administrative Law Judge

§ 503.49 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but before the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to

permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof will be at the discretion of the ALJ, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof will also provide:

(1) That the order will have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based will consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the ALJ; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their attorney or agent may:

(1) Submit the proposed agreement for consideration by the ALJ; or

(2) Inform the ALJ that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefore, the ALJ, within 30 days thereafter, will, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

Post-Hearing Procedures

§ 503.50 Decision and order of Administrative Law Judge.

(a) The ALJ will prepare, within 60 days after completion of the hearing and closing of the record, a decision on the issues referred by the Administrator, WHD.

(b) The decision of the ALJ will include a statement of the findings and conclusions, with reasons and basis therefore, upon each material issue presented on the record. The decision will also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator, WHD. The reason or reasons for such order will be stated in the decision.

(c) In the event that the Administrator, WHD assesses back wages for wage violation(s) of § 503.16 based upon a PWD obtained by the Administrator from OFLC during the investigation and the ALJ determines that the Administrator's request was not warranted, the ALJ will remand the matter to the Administrator for further proceedings on the Administrator's determination. If there is no such determination and remand by the ALJ, the ALJ will accept as final and accurate the wage determination obtained from OFLC or, in the event the party filed a timely appeal under 20 CFR 655.13 the final wage determination resulting from that process. Under no circumstances will the ALJ determine the validity of the wage determination or require submission into evidence or disclosure of source data or the names of establishments contacted in developing the survey which is the basis for the PWD.

(d) The decision will be served on all parties.

(e) The decision concerning civil money penalties, debarment, monetary relief, and/or other administrative remedies, when served by the ALJ will constitute the final agency order unless the ARB, as provided for in § 503.51, determines to review the decision.

Review of Administrative Law Judge's Decision

§ 503.51 Procedures for initiating and undertaking review.

(a) A respondent, the WHD, or any other party wishing review, including judicial review, of the decision of an ALJ will, within 30 days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition will be served on all parties and on the ALJ.

(b) No particular form is prescribed for any petition for the ARB's review permitted by this part. However, any such petition will:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the ALJ decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Include as an attachment the ALJ's decision and order, and any other record documents which would assist the ARB in determining whether review is warranted.

(c) If the ARB does not issue a notice accepting a petition for review of the decision within 30 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition has been received, the decision of the ALJ will be deemed the final agency action.

(d) Whenever the ARB, either on the ARB's own motion or by acceptance of a party's petition, determines to review the decision of an ALJ, a notice of the same will be served upon the ALJ and upon all parties to the proceeding.

§ 503.52 Responsibility of the Office of Administrative Law Judges (OALJ).

Upon receipt of the ARB's notice under § 503.51, the OALJ will promptly forward a copy of the complete hearing record to the ARB.

§ 503.53 Additional information, if required.

Where the ARB has determined to review such decision and order, the ARB will notify the parties of:

(a) The issue or issues raised;

(b) The form in which submissions will be made (*i.e.,* briefs, oral argument); and

(c) The time within which such presentation will be submitted.

§ 503.54 Submission of documents to the Administrative Review Board.

All documents submitted to the ARB will be filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5220, Washington, DC 20210. An original and two copies of all documents must be filed. Documents are not deemed filed with the ARB until actually received by the ARB. All documents, including documents filed by mail, must be received by the ARB either on or before the due date. Copies of all documents filed with the ARB must be served upon all other parties involved in the proceeding.

§ 503.55 Final decision of the Administrative Review Board.

The ARB's final decision will be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ.

Record

§ 503.56 Retention of official record.

The official record of every completed administrative hearing provided by the regulations in this part will be maintained and filed under the custody and control of the Chief ALJ, or, where the case has been the subject of administrative review, the ARB.

Signed: at Washington, DC this 22nd of April 2015.

Thomas E. Perez,

Secretary of Labor.

Signed: at Washington, DC this 22nd of April 2015.

Jeh Charles Johnson,

Secretary of Homeland Security.

[FR Doc. 2015–09694 Filed 4–28–15; 8:45 am]

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Part V

Department of Homeland Security

8 CFR Part 214

Department of Labor

Employment and Training Administration

20 CFR Part 655

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2536–13]

RIN 1615–AC02

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[Docket No. ETA–2013–0003]

RIN 1205–AB69

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program

AGENCY: Employment and Training Administration, Labor; U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) and the Department of Labor (DOL) are issuing final regulations governing certification of the employment of nonimmigrant workers in temporary or seasonal non-agricultural employment. This final rule sets forth how DOL provides the consultation that DHS has determined is necessary to adjudicate H–2B visa petitions by setting the methodology by which DOL calculates the prevailing wages to be paid to H–2B workers and U.S. workers recruited in connection with applications for temporary labor certification. Specifically, for the purposes of an H–2B temporary labor certification, this final rule establishes that, in the absence of a wage set in a valid and controlling collective bargaining agreement, the prevailing wage will be the mean wage for the occupation in the pertinent geographic area derived from the Bureau of Labor Statistics Occupational Employment Statistics survey, unless the H–2B employer meets the conditions for requesting that the prevailing wage be based on an employer-provided survey. Any such survey submitted must meet the new methodological criteria established in this final rule in order to be used to establish the prevailing wage. The final rule does not permit use of the wage determinations issued under the Service Contract Act or the Davis Bacon Act as sources to set the prevailing wage in the H–2B temporary labor certification context.

DHS and DOL are issuing this final rule together because DHS, as the Executive Branch agency charged with administering the H–2B program, has determined that the most effective implementation of the statutory H–2B labor protections requires that DHS consult with DOL for its advice about matters with which DOL has expertise, including questions about the methodology for setting the prevailing wage in the H–2B program. DHS (and the former Immigration and Naturalization Service, Department of Justice, which was charged with administration of the H–2B program prior to enactment of the Homeland Security Act of 2002) has long recognized that DOL is the appropriate agency with which to consult regarding the availability of U.S. workers and for assuring that wages and working conditions of U.S. workers are not adversely affected by the use of H–2B workers. This rule also adopts, without change, certain revisions made to DHS's H–2B regulations, to clarify that DHS is the Executive Branch agency charged with making determinations regarding eligibility for H–2B classifications, after consulting with DOL for its advice about matters with which DOL has expertise, including questions related to the methodology for setting the prevailing wage in the H–2B program. Finally, DHS and DOL are issuing, simultaneously with this rule, a companion H–2B rule governing the certification of the employment of nonimmigrant workers in temporary or seasonal non-agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers.

DATES: This final rule is effective April 29, 2015.

FOR FURTHER INFORMATION CONTACT:

For further information on 8 CFR part 214, contact Steven W. Viger, Adjudications Officer (Policy), Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts NW., Washington, DC 20529–2060; Telephone (202) 272–1470 (this is not a toll-free number).

For further information on 20 CFR part 655, subpart A, contact William W. Thompson, II, Acting Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statutory and Regulatory Framework

The Immigration and Nationality Act (INA) establishes the H–2B visa classification for a non-agricultural temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.'' 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b). Section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), requires an importing employer (H–2B employer) to petition the Department of Homeland Security (DHS) for classification of the prospective temporary worker as an H–2B nonimmigrant.[1] DHS must approve this petition before the beneficiary can be considered eligible for an H–2B visa or H–2B status. Finally, the INA requires that ''[t]he question of importing any alien as [an H–2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS], after consultation with appropriate agencies of the Government, upon petition of the importing employer.'' 8 U.S.C. 1184(c)(1), INA section 214(c)(1).

Pursuant to the above-referenced authorities, DHS has promulgated regulations implementing the H–2B program. *See, e.g.,* 73 FR 78104 (Dec. 19, 2008). These regulations prescribe the conditions under which DHS may grant an employer's petition to classify an alien as an H–2B worker. *See* 8 CFR 214.2(h)(6). U.S. Citizenship and Immigration Services (USCIS) is the component agency within DHS that adjudicates H–2B petitions. *Id.*

USCIS examines H–2B petitions for compliance with a range of statutory and regulatory requirements. For instance, USCIS will examine each petition to ensure, *inter alia,* (1) that the job opportunity in the employer's petition is of a temporary nature, 8 CFR 214.2(h)(2)(D), (6)(ii) and (6)(vi)(D); (2)

[1] Under section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Pub. L. 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions that were transferred from the Attorney General or other Department of Justice official to DHS by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, title XV, sec. 1517); 6 U.S.C. 542 note; 8 U.S.C. 1551 note.

that the beneficiary alien meets the educational, training, experience, or other requirements, if any, attendant to the job opportunity described in the petition, 8 CFR 214.2(h)(6)(vi)(C); (3) that there are sufficiently available H–2B visas in light of the applicable numerical limitation for H–2B visas, 8 CFR 214.2(h)(8)(ii)(A); and (4) that the application is submitted consistent with strict requirements ensuring the integrity of the H–2B system, 8 CFR 214.2(h)(6)(i)(B), (6)(i)(F).[2]

DHS has implemented the statutory protections attendant to the H–2B program by regulation. *See* 8 CFR 214.2(h)(6)(iii), (iv), and (v). In accordance with the statutory mandate at 8 U.S.C. 1184(c)(1), INA section 214(c)(1), that DHS consult with ''appropriate agencies of the government'' to determine eligibility for H–2B nonimmigrant status, DHS (and the former Immigration and Naturalization Service) has long recognized that the most effective administration of the H–2B program requires consultation with the Department of Labor (DOL) to advise whether U.S. workers capable of performing the temporary services or labor are available. *See, e.g.,* Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 FR 2606, 2617 (Jan. 26, 1990) (''The Service must seek advice from the Department of Labor under the H–2B classification because the statute requires a showing that unemployed U.S. workers are not available to perform the services before a petition can be approved. The Department of Labor is the appropriate agency of the Government to make such a labor market finding. The Service supports the process which the Department of Labor uses for testing the labor market and assuring that wages and working conditions of U.S. workers will not be adversely affected by employment of alien workers.'').

Accordingly, DHS regulations require that an H–2B petition for temporary employment in the United States must be accompanied by an approved temporary labor certification from DOL. 8 CFR 214.2(h)(6)(iii)(A) and (iv)(A).[3] The temporary labor certification demonstrates that DOL has evaluated, and is providing advice to DHS with respect to, whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 8 CFR 214.2(h)(6)(iii)(A) and (D). In addition, as part of DOL's certification, DHS regulations require DOL to ''determine the prevailing wage applicable to an application for temporary labor certification in accordance with the Secretary of Labor's regulation at 20 CFR 655.10.'' 8 CFR 214.2(h)(6)(iii)(D).

DHS relies on DOL's advice in this area, as DOL is the appropriate government agency with expertise in labor questions and historic and specific expertise in addressing labor protection questions related to the H–2B program. This advice helps DHS fulfill its statutory duty to determine, prior to approving an H–2B petition, that unemployed U.S. workers capable of performing the relevant service or labor cannot be found in the United States. 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b); 8 U.S.C. 1184(c)(1), INA section 214(c)(1). DHS has therefore made DOL's approval of a temporary labor certification a condition precedent to the completion of the H–2B petition. 8 CFR 214.2(h)(6)(iii) and (vi). Following receipt of an approved DOL temporary labor certification and other required evidence, USCIS may adjudicate an employer's complete H–2B petition. *Id.*

Consistent with the above-referenced authorities, since at least 1968,[4] DOL has established regulatory procedures to certify whether a qualified U.S. worker is available to fill the job opportunity described in the employer's petition for a temporary nonagricultural worker, and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 20 CFR part 655, subpart A. As part of DOL's temporary labor certification process, and as required by DHS regulations, 8 CFR 214.2(h)(6)(iii)(D) and (iv), DOL sets the wage that employers must offer and pay foreign workers admitted to the United States in H–2B nonimmigrant status. *See* 20 CFR 655.10. This final rule sets forth DOL's methodology for setting the wage, consistent with the INA and existing DHS regulations.

As discussed above, DHS has determined that the most effective implementation of the statutory labor protections in the H–2B program requires that DHS consult with DOL for its advice about matters with which DOL has unique expertise, particularly questions about the methodology for setting the prevailing wage in the H–2B program. The most transparent and effective method for DOL to provide this consultation is by setting forth in regulations the standards it will use to provide that advice, as required by existing DHS regulations. DOL's rules set the standards by which employers demonstrate to DOL that they have tested the labor market and found insufficient numbers of qualified and available U.S. workers, and set the standards by which employers demonstrate to DOL that the offered employment does not adversely affect U.S. workers. By setting forth this structure in regulations, DHS and DOL ensure the provision of this advice by DOL is consistent, transparent, and provided in the form that is most useful to DHS.

As discussed in greater detail below, DOL's authority to issue its own legislative rules to carry out its duties under the INA has been challenged in litigation. On April 1, 2013, the U.S. Court of Appeals for the Eleventh Circuit upheld a district court decision that granted a preliminary injunction against enforcement of the 2012 comprehensive H–2B rule (2012 H–2B rule) on the ground that the employers were likely to prevail on their allegation that DOL lacks H–2B rulemaking authority. *Bayou Lawn & Landscape Servs.* v. *Sec'y of Labor,* 713 F.3d 1080

[2] DHS also publishes annually a list of countries whose nationals are eligible to participate in the H–2B visa program in the coming year. *See* 8 CFR 214.2(h)(6)(i)(E); *see also, e.g.,* 79 FR 3214 (Jan. 17, 2014) notice of eligible country list). As part of its adjudication of H–2B petitions, USCIS must determine whether the alien beneficiary is a national of a country on the list; if not, USCIS must determine whether it is in the U.S. interest for that alien to be a beneficiary of such petition. *See* 8 CFR 214.2(h)(6)(i)(E).

[3] The regulation establishes a different procedure for the Territory of Guam, under which a petitioning employer must apply for a temporary labor certification with the Governor of Guam. 8 CFR 214.2(h)(6)(iii)(A).

[4] DHS has required a temporary labor certification as a condition precedent to adjudication of an H–2B petition for temporary employment in the United States since 2008. 73 FR 78103. DOL, however, has promulgated regulations governing its adjudication of employer applications for temporary labor certification since 1968, when DOL promulgated regulations under which it would review, among other things, ''the employer's attempts to recruit workers and the appropriateness of the wages and working conditions offered.'' *See* 33 FR 7570 (May 22, 1968) (DOL final rule on certification of temporary foreign labor for industries other than agriculture and logging). Until 1986, there was a single H–2 temporary worker classification applicable to both temporary agricultural and non-agricultural workers. In 1986, Congress revised the INA to create two separate programs for agricultural (H–2A) and non-agricultural (H–2B) workers. *See* 8 U.S.C. 1101(a)(15)(H)(ii), INA 101(a)(15)(H)(ii), 66 Stat. 163 (June 27, 1952); Immigration Reform and Control Act of 1986, Public Law 99–603, Sec. 301, 100 Stat. 3359. Under the 1968 final rule, DOL considered, ''such matter[s] as the employer's attempts to recruit workers and the appropriateness of the wages and working conditions offered.'' 33 FR at 7571.

(11th Cir. 2013). On remand, the district court issued an order vacating the 2012 H–2B rule, and permanently enjoined DOL from enforcing the rule on the ground that DOL lacks rulemaking authority in the H–2B program. *Bayou Lawn & Landscape Servs.,* No. 3:12–cv–183 (N.D. Fla. Dec. 18, 2014) (*Bayou II*). The *Bayou II* decision is currently on appeal to the 11th Circuit. However, on February 5, 2014, the U.S. Court of Appeals for the Third Circuit held that ''DOL has authority to promulgate rules concerning the temporary labor certification process in the context of the H 2B program, and that the 2011 Wage Rule was validly promulgated pursuant to that authority.'' *La. Forestry Ass'n* v. *Perez,* 745 F.3d 653, 669 (3d Cir. 2014).

In order to ensure that there can be no question about the authority for and validity of the regulations in this area, DHS and DOL (the Departments), together, are issuing this final rule. By proceeding together, the Departments affirm that this rule is fully consistent with the INA and existing DHS regulations implementing the H–2B program and is vital to DHS's ability to faithfully implement the statutory labor protections attendant to the program. *See* 8 U.S.C. 1101(A)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b); 8 U.S.C. 1103(a)(6), INA section 103(a)(6); 8 U.S.C. 1184(c)(1), INA section 214(c)(1); 8 CFR 214.2(h)(6)(iv). This final rule implements a key component of DHS's determination that it must consult with DOL on the labor market questions relevant to its adjudication of H–2B petitions. This final rule also affirms DHS's and DOL's determination that implementation of the consultative relationship may be established through regulations that determine the method by which DOL will provide the necessary advice to DHS.

B. The CATA I Litigation, 2011 Wage Rule, and Congressional Riders

In 2008, DOL issued regulations governing DOL's role in the H–2B temporary worker program. The regulation established, among other things, a methodology for determining the wage that a prospective H–2B employer must pay. Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes, 73 FR 78020 (Dec. 19, 2008) (the 2008 rule).[5] The 2008 rule provided that the prevailing wage would be the collective bargaining agreement (CBA) wage rate if the job opportunity was covered by an agreement negotiated at arms' length between a union and the employer; the Occupational Employment Statistics (OES) wage rate if there was no CBA; a survey if an employer elected to provide an acceptable survey; or a wage rate under the Davis-Bacon Act (DBA), 40 U.S.C. 276a *et seq.,* or the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 351 *et seq.,* if one was available for the occupation in the area of intended employment. *See* 20 CFR 655.10 (2009). In the absence of the CBA wage, the employer could elect to use the applicable SCA or the DBA wage in lieu of the OES wage. *See* 20 CFR 655.10(b) (2009). The 2008 rule and the agency guidance implementing it required that when prevailing wage determinations were based on the OES wage survey, which is compiled by the Bureau of Labor Statistics (BLS), the wage had to be structured to contain four tiers to reflect skill and experience.[6] DOL subjected most provisions of the 2008 rule to the Administrative Procedure Act's (APA) procedural requirements, but because the agency had already been implementing the four-tiered wages in the H–2B program pursuant to sub-regulatory guidance,[7] DOL did not seek public comments on the use of the four-tiered wage methodology for determining prevailing wages when promulgating the 2008 rule. *See* 73 FR at 78031. In 2009, shortly after the promulgation of the 2008 H–2B regulation, a suit was filed under the APA challenging several aspects of the 2008 rule. *See Comite de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,* No. 2:09–cv–240–LP, 2010 WL 3431761 (E.D. Pa. 2010) (*CATA I*). Among the issues raised in that litigation was the use of the four-tiered wage structure in the H–2B program. In an August 30, 2010 decision, the court ruled that DOL had violated the APA by failing to adequately explain its reasoning for adopting skill and experience levels as part of the H–2B prevailing wage determination process. *Id.* at * 19. The court ordered promulgation of ''new rules concerning the calculation of the prevailing wage rate in the H–2B program that are in compliance with the [APA].'' *Id.* at * 27.

In response to the *CATA I* order, DOL published a final rule, Wage Methodology for the Temporary Non-agricultural Employment H–2B Program, on January 19, 2011, 76 FR 3452 (the 2011 Wage Rule). In that rule, DOL determined that ''there are no significant skill-based wage differences in the occupations that predominate in the H–2B program, and to the extent such differences might exist, those differences are not captured by the existing four-tier wage structure.'' 76 FR at 3460. Therefore, the 2011 Wage Rule revised the wage methodology by eliminating the 2008 rule's four-tier wage structure on the ground that it violated the obligation to set H–2B wages at a rate that did not adversely affect U.S. workers' wages.[8] *Id.* at 3458–3461.

The new methodology set the prevailing wage as the highest of the OES arithmetic mean wage for each occupational category in the area of intended employment; the applicable SCA/DBA wage rate; or the CBA wage. The rule also eliminated the use of employer-provided surveys as alternative wage sources, except in

[5] Before 2008, DOL set the prevailing wage in the H–2B program through sub-regulatory guidance. *See, e.g.,* General Administration Letter (GAL) 10–84, ''Procedures for Temporary Labor Certifications in Non Agricultural Occupations'' (April 23, 1984); GAL 4–95, ''Interim Prevailing Wage Policy for Nonagricultural Immigration Programs'' (May 18, 1995), Attachment I, available at *http://wdr.doleta.gov/directives/attach/GAL4-95_attach.pdf;* GAL 2–98, ''Prevailing Wage Policy for Nonagricultural Immigration Programs'' (published Oct. 31, 1997; effective Jan. 1, 1998) *available at http://wdr.doleta.gov/directives/attach/GAL2-98_attach.pdf.*

[6] The 2008 rule required that when the prevailing wage was based on the OES, it should reflect skill levels. The agency's implementing guidance required that the prevailing wage contain four wage tiers based on skill level. As a result, we refer throughout this rule to the 2008 rule's requirement of four wage tiers.

Because the OES survey captures no information about actual skills or responsibilities of the workers whose wages are being reported, the four-tiered wage structure, adapted from the statutorily required four tiers applicable to the H–1B visa program under section 212(p)(4) of the INA, 8 U.S.C. 1182(p), was derived by mathematical formula as follows to reflect ''entry level,'' ''qualified,'' ''experienced,'' and ''fully competent'' workers: Level 1 is the mean of the lowest-paid ⅓, or approximately the 17th percentile; Level 2 is approximately the 34th percentile; Level 3 is approximately the 50th percentile; and Level 4 is the mean of the highest-paid ⅔, or approximately the 67th percentile.

[7] *See supra* n.5.

[8] DOL found that in 2010, almost 75 percent of H–2B jobs were certified at a Level 1 wage (the mean of the lowest one-third of all reported wages), and over a several year period, approximately 96 percent of the prevailing wages issued were lower than the mean of the OES wage rates for the same occupation. 76 FR at 3463. DOL determined that in the low-skilled occupations in the H–2B program, the mean ''represents the wage that the average employer is willing to pay for unskilled workers to perform that job.'' *Id.* Therefore, DOL concluded that the use of skill levels adversely affected U.S. workers because it ''artificially lowers [wages] to a point that [they] no longer represent[ ] a market-based wage for that occupation.'' *Id.* The application of the four levels set a wage ''below what the average similarly employed worker is paid.'' *Id.* DOL concluded that ''the net result is an adverse effect on the [U.S.] worker's income.'' 76 FR at 3463.

limited circumstances.[9] The effective date of the 2011 Wage Rule was originally set for January 1, 2012. However, as a result of litigation challenging the effective date and following notice-and-comment rulemaking, DOL issued a final rule, 76 FR 45667 (Aug. 1, 2011), revising the effective date of the 2011 Wage Rule to September 30, 2011, and a second final rule, 76 FR 59896 (Sept. 28, 2011), further revising the effective date of the 2011 Wage Rule to November 30, 2011.

Shortly before the 2011 Wage Rule was to become effective, Congress issued an appropriations rider effectively barring its implementation. The Consolidated and Further Continuing Appropriations Act, 2012, enacted on November 18, 2011, provided that ''[n]one of the funds made available by this or any other Act for fiscal year 2012 may be used to implement, administer, or enforce, prior to January 1, 2012 the [2011 Wage Rule].'' Public Law 112–55, 125 Stat. 552, Div. B, Title V, sec. 546 (Nov. 18, 2011) (the November 2011 Appropriations Act). In response to the Congressional prohibition on implementation, DOL delayed the effective date of the 2011 Wage Rule until January 1, 2012. 76 FR 73508 (Nov. 29, 2011). The delayed effective date was necessary because, although the November 2011 Appropriations Act prevented the expenditure of funds to implement, administer, or enforce the 2011 Wage Rule, it did not prevent the 2011 Wage Rule from going into effect. 76 FR at 73509. Had the 2011 Wage Rule gone into effect, it would have superseded and nullified the prevailing wage provisions from the 2008 rule, leaving DOL without a methodology to make prevailing wage determinations. *Id.* Because the issuance of a prevailing wage determination is a condition precedent to approving an employer's request for an H–2B temporary labor certification, 20 CFR 655.10, DOL's H–2B temporary labor certification program would be inoperable without the ability to issue a prevailing wage pursuant to regulatory standards. Accordingly, DOL determined that it was necessary, in light of the November 2011 Appropriations Act, to delay the effective date of the 2011 Wage Rule to allow DOL to continue to make prevailing wage determinations under the wage provisions of the 2008 rule.

Subsequent appropriations legislation[10] contained the same restriction prohibiting DOL's use of appropriated funds to implement, administer, or enforce the 2011 Wage Rule. This legislation necessitated subsequent extensions of the effective date of that rule. *See* 76 FR 82115 (Dec. 30, 2011) (extending the effective date to Oct. 1, 2012); 77 FR 60040 (Oct. 2, 2012) (extending the effective date to Mar. 27, 2013); 78 FR 19098 (Mar. 29, 2013) (extending the effective date to Oct. 1, 2013). While the 2011 Wage Rule implementation was suspended, DOL remained unable to implement the wage methodology that, among other things, eliminated the four-tier wage structure, and instead relied on the prevailing wage provisions of the 2008 rule, including the use of the four-tiered wage structure, when issuing a prevailing wage based on the OES.

C. CATA II and the 2013 Interim Final H–2B Wage Rule

Based on DOL's ongoing use of the 2008 rule's four wage tiers, the *CATA I* plaintiffs returned to court seeking immediate vacatur of the four-tiered wage structure from the 2008 rule. On March 21, 2013, the district court agreed with plaintiffs that its prior holding that the four-tiered wage structure was promulgated in violation of the APA remained unremedied.

Therefore, the court vacated 20 CFR 655.10(b)(2), which was the basis for the four-tiered wage structure, and remanded the matter to DOL, ordering it to comply within 30 days. *Comite de Apoyo a los Trabajadores Agricolas* v. *Solis,* 933 F. Supp. 2d 700 (E.D. Pa. 2013) (*CATA II*). Shortly thereafter, on April 1, 2013, the U.S. Court of Appeals for the Eleventh Circuit upheld a separate district court decision that granted a preliminary injunction against enforcement of the 2012 H–2B rule on the ground that the employers are likely to prevail on their allegation that DOL lacks H–2B rulemaking authority. *Bayou Lawn & Landscape Servs.,* 713 F.3d 1080.

In response to the vacatur and 30-day compliance order in *CATA II,* and the Eleventh Circuit's decision in *Bayou Lawn & Landscape Servs.,* the Departments[11] promulgated an interim final rule, Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program, Part 2, 78 FR 24047 (Apr. 24, 2013) (2013 IFR), which established a new wage methodology. In the 2013 IFR, the Departments struck the phrase, ''at the skill level,'' from 20 CFR 655.10(b)(2). As a result of the deletion of this phrase, the Departments now require that prevailing wage determinations issued using the OES survey be based on the mean wage for the occupation in the area of intended employment. 78 FR at 24053. The 2013 IFR became effective on April 24, 2013, the date of publication, because of the need to comply within the 30-day period ordered by the *CATA II* Court. The rule was published pursuant to 5 U.S.C. 553(b)(B), which authorizes agencies to make a rule effective immediately upon a showing of ''good cause.'' Significantly, however, the 2013 IFR only implemented the court-ordered change to the wage methodology in 20 CFR 655.10(b)(2). It left intact all other provisions of the wage methodology and procedures contained in the 2008 rule at 20 CFR 655.10, including allowing the use of employer-submitted surveys, and permitting voluntary use of an SCA or DBA wage if one was available for the occupation in the area of intended employment.

Despite immediate implementation of the provisions of the 2013 IFR, the Departments requested comments on all aspects of the prevailing wage methodology of 20 CFR 655.10, including, among other things, whether the OES mean is the appropriate basis for determining the prevailing wage; whether wages based on the DBA or SCA should be used to determine the prevailing wage and if so, to what extent; and whether the continued use of employer-submitted surveys should be permitted and if so, how to better ensure their methodological soundness. The comment period closed on June 10, 2013, and the Departments received over 300 comments on all aspects of the H–2B wage methodology from interested parties.[12]

[9] These circumstances include very specific situations in which the job may be in a geographic location that is not included in BLS's data collection for the OES (*e.g.,* the Commonwealth of the Northern Mariana Islands) or where the job opportunity is not ''accurately represented'' within the job classification used in those surveys. 76 FR at 3466–3467.

[10] These include the Consolidated Appropriations Act of 2012, Public Law 112–74, 125 Stat. 786 (Dec. 23, 2011); Continuing Appropriations Resolution, 2013, Public Law 112–175, 126 Stat. 1313 (Sept. 28, 2012); Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113–6, 127 Stat. 198 (Mar. 26, 2013); Continuing Appropriations Act, 2014, Public Law 113–46, 127 Stat. 558 (Oct. 17, 2013); and Joint Resolution Making further Continuing Appropriations for Fiscal Year 2014, Public Law 113–73, 128 Stat. 3 (Jan. 15, 2014).

[11] The Departments issued the 2013 IFR jointly to dispel questions that arose contemporaneously with its promulgation about the respective roles of the two agencies and the validity of DOL's regulations as an appropriate way to implement the interagency consultation specified in section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1). *See supra* Sec. I.A.

[12] A substantial number of comments on the IFR repeated, to a great extent, the same arguments that had been raised in connection with the 2011 rulemaking. *See* 76 FR at 3458–3463.

On July 23, 2013, DOL proposed the indefinite delay of the effective date of the 2011 Wage Rule, and accepted comments from the public on the proposed indefinite delay through August 9, 2013. 78 FR 44054. The reasons for this delay were two-fold: First, at that time, Congress's continued denial of appropriated funds for this purpose, with no indication that the prohibition would be lifted in the future, made implementation of the 2011 Wage Rule effectively impossible. Second, at that time, the Departments were reviewing and analyzing the comments received on the 2013 IFR to determine whether changes to 20 CFR 655.10 and 8 CFR 214.2(h)(6) were warranted in light of the public comments. For these reasons, on August 30, 2013, DOL published a final rule indefinitely delaying the effective date of the 2011 Wage Rule. 78 FR 53643, 53645 (indefinite delay rule). In the final indefinite delay rule, DOL stated that when ''Congress no longer prohibits implementation of the 2011 Wage Rule, the Department [of Labor] will publish a document in the **Federal Register** within 45 days of that event apprising the public of the status of 20 CFR 655.10 and the effective date of the 2011 Wage Rule.'' *Id.* DOL also stated that, ''if Congress lifts the prohibition against implementation of the 2011 Wage Rule, the Department [of Labor] would need time to assess the current regulatory framework, to consider any changed circumstances, novel concerns or new information received, and to minimize disruptions.'' 78 FR at 53645.

On January 17, 2014, the Consolidated Appropriations Act, 2014, Public Law 113–76, 128 Stat. 5, was enacted. In that law, for the first time in over two years, DOL's appropriations did not prohibit the implementation or enforcement of the 2011 Wage Rule. Moreover, on February 5, 2014, the U.S. Court of Appeals for the Third Circuit held that ''DOL has authority to promulgate rules concerning the temporary labor certification process in the context of the H–2B program, and that the 2011 Wage Rule was validly promulgated pursuant to that authority.'' *La. Forestry Ass'n* v. *Perez,* 745 F.3d 653, 669 (3d Cir. 2014). The Third Circuit further found that DOL did not act in contravention of the procedural requirements of the APA in issuing the 2011 Wage Rule, and that the INA's requirement of the four wage tiers in the H–1B program, 8 U.S.C. 1182(p)(4), section 212(p)(4) of the INA, is not mandated in the H–2B program. *Id.* at 680. Under well-settled law, following the removal of the prohibitive rider, DOL was ''free to take any steps deemed necessary to implement, administer and enforce the regulations.'' *Am. Fed'n of Gov. Employees* v. *OPM,* 821 F.2d 761, 764 (D.C. Cir. 1987).

D. The CATA III Decision and Its Impact on H–2B Wage Rulemaking

As discussed above, given the swift deadline for compliance in the *CATA II* decision, the 2013 IFR adopted a focused approach, limited to eliminating the use of skill levels in setting wages under 20 CFR 655.10(b)(2). 78 FR 24047, 24053. Although comments were solicited in the 2013 IFR on the use of employer-provided surveys and the use of the SCA and DBA wage determinations to set the prevailing wage, no changes were made in the 2013 IFR to 20 CFR 655.10(b)(4), (b)(5), or (f) from the 2008 rule, which governed those wage sources, or to the procedures for employers to request and receive a prevailing wage. *Id.* at 24053–55.

In 2014, CATA challenged the Departments' decision under the 2013 IFR to continue to permit use of employer-provided surveys to set the prevailing wage under 20 CFR 655.10(f). *Comite de Apoyo a los Trabajadores Agricolas* v. *Perez,* No. 2:14–02657, 2014 WL 4100708 (E.D. Pa. July 23, 2014). In addition, CATA challenged DOL's continued use under the 2013 IFR of the 2009 Prevailing Wage Guidance,[13] which continued to permit surveys to incorporate skill levels even though DOL had eliminated skill levels from prevailing wage determinations based on the OES methodology. *Id.* The District Court dismissed the case on procedural grounds. On December 5, 2014, the appellate court reversed the dismissal in *Comite de Apoyo a los Trabajadores Agricolas* v. *Perez,* 774 F.3d 173, 191 (3d Cir. 2014) (*CATA III*), vacating both 20 CFR 655.10(f), which established the conditions under which DOL would accept employer-provided surveys to set the prevailing wage, as well as the 2009 Prevailing Wage Guidance.

The *CATA III* court invalidated the use of employer-provided surveys in the H–2B program on both substantive and procedural grounds under the APA. First, the court held that DOL's failure to explain the broad acceptance of employer-provided surveys where an OES wage is available was procedurally invalid, particularly because this decision was a policy change from the 2011 Wage Rule's prohibition of most employer-provided surveys as an alternative to the OES. 774 F.3d at 187–188. Next, the court held that Section 655.10(f) was arbitrary, and therefore substantively invalid under the APA, given DOL's findings in the 2011 Wage Rule, 76 FR at 3465, that the OES is the ''most consistent, efficient, and accurate means of determining the prevailing wage rate for the H–2B program.'' The court further considered issues that DOL had not addressed as part of the development of the administrative record in the 2011 Wage Rule; it held that the survey provision of the 2013 IFR was substantively invalid under the APA because the survey provision permitted wealthy employers to commission surveys that resulted in a lower prevailing wage than that paid by less affluent employers without means to produce such surveys, and resulted in significant variations in the prevailing wage within a single occupation in the same geographic location. 774 F.3d at 189–190. Finally, the court held that the 2009 Wage Guidance violated the APA because it allowed employers to submit employer-provided surveys that contained tiered wages based on skill levels. The court held that this conflicted with the *CATA II* order, which required prevailing wages to be calculated based on the mean of wages in the occupation without regard to skill levels, and 20 CFR 655.10(b) of the 2013 IFR, which eliminated tiered wages in the calculation of the OES wage. 774 F.3d at 190–191.

The court justified its decision to vacate the wage survey provision of the IFR, 20 CFR 655.10(f), along with the Wage Guidance. ''[I]f we did not do so, we would leave in place a rule that is causing the very adverse effect that DOL is charged with preventing, and we would be 'legally sanction[ing] an agency's disregard of its statutory or regulatory mandate.''' 774 F.3d at 191 (quoting *CATA II,* 933 F. Supp. 2d at 714). Thus, the court ''direct[ed] that private surveys no longer be used in determining the mean rate of wage for occupations except where an otherwise applicable OES survey does not provide any data for an occupation in a specific geographical location, or where the OES survey does not accurately represent the relevant job classification.'' *Id.* The court concluded by suggesting the immediate implementation of the 2011 Wage Rule on employer-provided surveys as an interim final rule,

[13] The 2009 Prevailing Wage Guidance set the methodology for employer-provided surveys across the DOL-administered programs. *See* Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, Revised (revised Nov. 2009) (''2009 Prevailing Wage Guidance'' or ''2009 guidance''), *available at http://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.*

explaining: ''That rule offers rational, lawful limits on the use of employer surveys, already has gone through notice and comment, has been funded by Congress in its 2014 authorization, and has been upheld by this Court. . . .'' *Id.* Because of *CATA III*'s vacatur of that part of the wage regulation permitting the use of employer-provided surveys to set the prevailing wage, DOL immediately ceased accepting all employer-provided surveys. In light of the vacatur of 20 CFR 655.10(f), DOL lacked legal authority to accept such surveys without engaging in additional rulemaking.

Given the substantive concerns expressed by the *CATA III* court about the validity of employer-provided surveys in the H–2B program, DOL's options for accepting such surveys under this final rule are now necessarily more limited than under the 2013 IFR. The 2011 Wage Rule generally prohibited surveys, but allowed exceptions in specific situations in which the job may be in a geographic location that is not included in BLS's data collection for the OES or where the job opportunity is not ''accurately represented'' within the job classification used in those surveys, and those determinations were supported by DOL's contemporaneous fact-finding. 76 FR at 3466–3467. We asked the public in the 2013 IFR for any ''additional data on the accuracy and reliability of private surveys covering traditional H–2B occupations to allow for further factual findings on the sufficiency of private surveys for setting prevailing wage rates'' in light of the concerns expressed in the 2011 Wage Rule, 78 FR at 24055, and this preamble reviews below that input and makes additional administrative factual determinations.

On March 14, 2014, DOL announced its decision to engage in further notice and comment rulemaking ''working off the 2011 Wage Rule as a starting point.'' 79 FR 14450, 14453. DOL concluded at that point that ''recent developments'' in the H–2B program required additional consideration of the comments submitted in connection with the 2013 IFR, and that further notice and comment was appropriate. *Id.* However, the U.S District Court for the Northern District of Florida's decision in *Perez* v. *Perez,* No. 3:14-cv-682 (N.D. Fla. Mar. 4, 2015) (*Perez*), discussed below now requires us to address the H–2B wage issues more expeditiously than planned in March 2014.

In finalizing the 2013 IFR, the Departments underscore that stakeholders have had several opportunities since 2008 to comment on the three primary issues covered by this final rule: (1) The appropriateness of using the mean wage or tiered wage when basing the prevailing wage on the OES; (2) the appropriate role of the SCA and DBA wage rates in setting the H–2B prevailing wage; and (3) whether and under what circumstances an employer-provided survey could be used to set the prevailing wage. Most recently, we provided the public with the opportunity to comment on all aspects of this final rule in response to the 2013 IFR, and we received over 300 comments from a range of interested parties, including employers, worker advocates, and members of Congress. Therefore, we have balanced the Departments' and the public's interest in additional notice and opportunity for public comment against our current need to timely act in response to the *Perez* decision, discussed below, as well as our need to achieve some stability in the administration of the H–2B program. For these reasons, we have assessed the input received in response to the request for comments in the 2013 IFR, and we issue a final rule today based on the review and analysis of those comments.

E. Perez and Good Cause To Issue This Final Wage Rule With an Immediate Effective Date

1. The *Perez* Vacatur and Its Impact on Program Operations

Three months after the *CATA III* decision, on March 4, 2015, the U.S. District Court for the Northern District of Florida, which previously had vacated DOL's 2012 H–2B rule and enjoined its enforcement in *Bayou II,* vacated the 2008 rule and permanently enjoined DOL from enforcing it. *Perez* v. *Perez,* No. 14-cv-682 (N.D. Fla. Mar. 4, 2015). As in its decision in *Bayou II* vacating the 2012 H–2B rule, the court in *Perez* found that DOL had no authority under the INA to independently issue legislative rules governing the H–2B program. *Perez,* slip op. at 6. Based on the *Perez* vacatur order and the permanent injunction, DOL ceased operating the H–2B program to comply immediately with the court's order. Shortly after the court issued its decision, DOL posted a notice on its Web site informing the public that ''effective immediately, DOL can no longer accept or process requests for prevailing wage determinations or applications for labor certification in the H–2B program.'' [14]

At the time of the *Perez* vacatur order on March 4, 2015, DOL had pending over 400 requests to set the prevailing wage for an H–2B occupation, and almost 800 applications for H–2B temporary labor certification representing approximately 16,408 workers. In order to minimize disruption to the H–2B program and to prevent economic dislocation to employers and employees in the industries that rely on H–2B foreign workers and to the general economy of the areas in which those industries are located, on March 16, 2015, DOL filed an unopposed motion requesting a temporary stay of the *Perez* vacatur order. On March 18, 2015, the court entered an order temporarily staying the vacatur of the H–2B rule until and including April 15, 2015. On April 15, 2015, at the request of proposed intervenors, the court entered a second order extending the temporary stay up to and including May 15, 2015. The court in *Perez* requested briefing on several issues, including whether the plaintiff had standing to challenge the 2008 rule. The court's extension of the stay on April 15 occurred late in the day, after DOL had already initiated processes necessary to provide for an orderly cessation of the H–2B program and after DOL had already posted a notice to the regulated community on its Web site that the H–2B program would be closed again the next day. On April 16, 2015, following the court's stay extension, DOL immediately posted a new notice on its Web site that it would continue to operate the H–2B program as it existed at the time of the *Perez* vacatur order and resume normal operations.

The court order in *Perez* did not vacate the 2013 IFR, and the court's concerns about DOL's independent regulatory authority do not impact the authority for issuing the 2013 IFR, which was promulgated jointly by DOL and DHS. However, although the Departments requested comment on all of the prevailing wage methodology for the H–2B program when they issued the 2013 IFR as discussed above, the 2013 IFR only amended the H–2B prevailing wage methodology in one way: it made a single change to 20 CFR 655.10(b)(2) to eliminate the use of skill levels in setting wages based on the OES. The 2013 IFR left the rest of the wage methodology and procedures from the 2008 rule untouched, and those provisions remained in effect until *CATA III* vacated 20 CFR 655.10(f). The court order in *Perez* then vacated the remainder of 20 CFR 655.10, except for 20 CFR 655.10(b)(2), which was amended in the 2013 IFR and thus not subject to the *Perez* vacatur. Thus, the

[14] Employment and Training Administration, *Announcements, http://www.foreignlaborcert.doleta.gov* (Mar. 4, 2015).

Perez vacatur eliminated virtually all of DOL's wage methodology and procedures for setting prevailing wages, including the crucial regulatory provision that ''[t]he employer must request a prevailing wage determination from the NPC in accordance with the procedures established by this regulation'' set out at 20 CFR 655.10(a); the requirement that the prevailing wage be set at a CBA wage rate that was negotiated at arms' length between the union and the employer if there was a CBA covering the job opportunity in 20 CFR 655.10(b)(1); and the provision permitting the employer to request a DBA or SCA wage rate in 20 CFR 655.10(b)(5). The combination of the vacatur of 20 CFR 655.10(f) in *CATA III* and the decision in *Perez* left DOL without a complete methodology or any procedures to set prevailing wages in the H–2B program.[15]

DHS is charged with adjudicating petitions for a nonimmigrant worker (commonly referred to as Form I–129 petitions or, in this rule, ''H–2B petitions''), filed by employers seeking to employ H–2B workers. But, as discussed earlier, Congress directed the agency to issue its decisions relating to H–2B petitions ''after consultation with appropriate agencies of the Government.'' 8 U.S.C. 1184(c)(1), INA section 214(c)(1). Legacy INS and now DHS have historically consulted with DOL on U.S. labor market conditions to determine whether to approve an employer's petition to import H–2B workers. *See* 73 FR 78104, 78110 (DHS) (Dec. 19, 2008); 55 FR 2606, 2617 (INS) (Jan. 26, 1990). DOL plays a significant role in the H–2B program because DHS ''does not have the expertise needed to make any labor market determinations, independent of those already made by DOL.'' 73 FR at 78110; *see also* 55 FR at 2626. Without consulting with DOL, DHS lacks the expertise to adequately make the statutorily mandated determination about the availability of United States workers to fill the proposed job opportunities in the employers' Form I–129 petitions. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b); 78 FR 24047, 24050 (DHS–DOL) (Apr. 24, 2013). DHS regulations therefore require employers to obtain a temporary labor certification from DOL before filing a petition with DHS to import H–2B workers. *See* 8 CFR 214.2(h)(6)(iii)(A), (C), (iv)(A). In addition, as part of DOL's certification, DHS regulations require DOL to ''determine the prevailing wage applicable to an application for temporary labor certification in accordance with the Secretary of Labor's regulation at 20 CFR 655.10.'' 8 CFR 214.2(h)(6)(iii)(D).

DOL has fulfilled its consultative role in the H–2B program through the use of legislative rules to structure its advice to legacy INS and now DHS for several decades. *See* 33 FR 7570–71 (DOL) (May 22, 1968); 73 FR 78020 (DOL) (Dec. 19, 2008). Before DOL issued the 2008 rule, it supplemented its regulations with guidance documents that set substantive standards for wages and recruitment and structured the manner in which the agency processed applications for H–2B labor certification. *See* 73 FR at 78021–22. One district court has held that DOL's pre-2008 H–2B guidance document was a legislative rule that determined the rights and obligations of employers and employees, and DOL's failure to issue the guidance through the notice and comment process was a procedural violation of the APA. As a result, the court invalidated the guidance. *See CATA I,* 2010 WL 3431761, at *19, 25. Similarly, the U.S. Court of Appeals for the DC Circuit has held that DOL violated the procedural requirements of the APA when it established requirements that ''set the bar for what employers must do to obtain approval'' of the H–2A labor certification application, including wage and housing requirements, in guidance documents. *Mendoza* v. *Perez,* 754 F.3d 1002, 1024 (D.C. Cir. 2014) (setting substantive standards for labor certification in the H–2A program requires legislative rules subject to the APA's notice and comment procedural requirements). The APA therefore prohibits DOL from setting substantive standards for the H–2B program through the use of guidance documents that have not gone through notice-and-comment rulemaking.

The Departments are again facing the prospect of experiencing another program hiatus if and when the temporary stay expires on or before May 15, 2015. DOL's 2008 rule, which includes all the procedural provisions necessary for employers to request and DOL to issue a prevailing wage determination, is the only comprehensive mechanism in place for DOL to provide advice to DHS because the 2008 rule sets the framework, procedures, and applicable standards for receiving, reviewing, and issuing H–2B prevailing wages and labor certifications. DHS regulations require employers to obtain a temporary labor certification from DOL before filing a petition with DHS to import H–2B workers, and DHS is precluded by its own regulations from accepting any H–2B petition without a temporary labor certification from DOL. *See* 8 CFR 214.2(h)(6)(iii)(A), (C), (iv)(A). In addition, as part of DOL's certification, DHS regulations require DOL to ''determine the prevailing wage applicable to an application for temporary labor certification in accordance with the Secretary of Labor's regulation at 20 CFR 655.10.'' 8 CFR 214.2(h)(6)(iii)(D). Moreover, without advice from DOL, DHS lacks the capability to test the domestic labor market or determine whether there are available U.S. workers to fill the employer's job opportunity. As a result, if and when the stay concludes as currently scheduled on or before May 15, 2015 the vacatur of DOL's 2008 rule will require DOL to once again cease operating the H–2B program, and DOL will again be unable to process employers' requests for prevailing wage determinations and temporary employment certification applications until the agencies can put in place a new mechanism for fulfilling the statutory directive to ensure that the importation of foreign workers will not harm the domestic labor market. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b).

2. Good Cause To Make This Final Rule Effective Immediately

The APA authorizes agencies to make a rule effective immediately, instead of imposing a 30-day delay, upon a showing of good cause. 5 U.S.C. 553(d)(3). The APA's good cause exception to a delayed effective date is easier to meet than the APA's exception at 5 U.S.C. 553(b)(B) for dispensing with notice-and-comment.[16] *Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emp., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981); *U.S. Steel Corp.* v. *EPA,* 605 F.2d 283, 289–90 (7th Cir. 1979). An agency can show good cause for eliminating the 30-day waiting period when it demonstrates the existence of urgent conditions the rule seeks to correct or seeks to address unavoidable time limitations. *U.S. Steel Corp.,* 605 F.2d at 290; *United States* v.

[15] While the provisions of 20 CFR 655.10 continued to be published in the **Federal Register** following the *Perez* decision, only 20 CFR 655.10(b)(2), which was altered in the 2013 IFR, remains operative following *Perez.* Accordingly, the Departments discuss all provisions of 20 CFR 655.10 contained in the **Federal Register** on the date of the *Perez* decision in the past tense in this final wage rule, except for those contained in subparagraph (b)(2).

[16] The APA's good cause exception to notice and comment applies upon a finding that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B).

Gavrilovic, 551 F.2d 1099, 1104 (8th Cir. 1977).

Under the APA's ''good cause'' exception, an agency can take steps to minimize discontinuity in its program after a court has vacated a rule by making a new rule effective immediately. *Mid-Tex Elec. Coop.* v. *FERC,* 822 F.2d 1123, 1131–34 (D.C. Cir. 1987) (upholding good cause to issue a post-remand interim rule without notice and comment or 30-day delayed effective date); *see also Shell Oil Co.* v. *EPA,* 950 F.2d 741, 752 (D.C. Cir. 1991) (observing that where the agency had a regulatory void as the result of a vacatur of its rule, it should consider issuing an interim rule under the good cause exception because of the disruptions posed by discontinuity in the regulations); *Action on Smoking and Health* v. *Civil Aeronautics Bd.,* 713 F.2d 795, 800 (D.C. Cir. 1983) (same). Moreover, courts find ''good cause'' to make a rule effective immediately under the APA when an agency is moving expeditiously to eliminate uncertainty or confusion that, left to linger, could cause tangible harm or hardship to the agency, the program, program users, or other members of the public. *See, e.g., Mid-Tex,* 822 F.2d at 1133–34 (agency had good cause to proceed without notice and comment or 30-day delayed effective date to promote continuity and prevent ''irremedial financial consequences'' and ''regulatory confusion''); *Nat'l Fed'n of Fed. Employees* v. *Devine,* 671 F.2d 607, 609, 611 (D.C. Cir. 1982) (agency had good cause to proceed without notice and comment or 30-day delayed effective date based on emergency circumstances, including uncertainty created by pending litigation about significant aspects of the program, and potential harm to agency, to program, and to regulated community); *AFGE.* v. *Block,* 655 F.2d at 1157 (agency had good cause to proceed without notice and comment or 30-day delayed effective date where absence of immediate guidance from agency would have forced reliance upon antiquated guidelines, creating confusion among field administrators, and caused economic harm and disruption to industry and consumers); *Woods Psychiatric Inst.* v. *United States,* 20 Cl. Ct. 324, 333 (1990), aff'd, 925 F.2d 1454 (Fed. Cir. 1991) (agency had good cause when program would continue to suffer administrative difficulties that had previously resulted in litigation and might continue to result in litigation due to uncertainty and confusion over scope of benefits, program standards, and eligibility requirements).

As a result of the *Perez* vacatur, DOL has already had to cease operating the H–2B program for two weeks in March 2015. DOL faces this prospect again at the expiration of the stay on or before May 15, 2015. The on-again-off-again nature of H–2B program operations has created substantial confusion, uncertainty and disarray for the agencies and the regulated community. The original vacatur order in *Perez* left DOL with hundreds of pending and time-sensitive applications for prevailing wages and temporary labor certifications. Two weeks later, following the court's stay of the vacatur and upon resumption of the H–2B program, those cases pending on the date of the vacatur created a backlog of applications, while, at the same time, employers began filing new applications for prevailing wages and certifications. DOL worked diligently and quickly to address the backlog and simultaneously keep up with new applications. Then, facing the expiration of the stay on April 15, 2015, DOL once again prepared to cease H–2B operations, which included posting a notice to the regulated community on its Web site that day announcing another closure, which was then obviated at the last minute by the court's extension of the stay late in the day on April 15. The next day, DOL announced that despite its earlier announcement, it would continue to operate the H–2B program as a result of the stay extension. These circumstances, which are beyond the Departments' ability to control, have resulted in substantial disorder and upheaval for the Departments, as well as employers and employees involved in the H–2B program.

The Departments have concluded that because of the program hiatus caused by the *Perez* vacatur, the anticipated additional hiatus at the expiration of the stay of that order, and the uncertainty and confusion surrounding operation of the H–2B program, we have good and substantial cause to rely on the APA's exception, 5 U.S.C. 553(d)(3), to make this rule effective immediately.[17] DHS and DOL must act expeditiously to enable the agencies to meet their statutory obligations under the INA and to prevent any further program disruption and economic dislocation. This final wage rule—which addresses a necessary component of the broader mandate of ensuring an adequate test of the U.S. labor market—must come into effect on the same day as the companion H–2B comprehensive rule, in order to provide for a seamless continuity of the H–2B program administration and enforcement, and complete implementation of all regulatory provisions.[18] Any delay in the effective date of this wage rule will require implementation of 20 CFR 655.10 without all the provisions necessary to its complete implementation. Accordingly, the Departments are relying on the APA's good cause exception to the 30-day delayed effective date, 5 U.S.C. 553(d)(3), to issue this new final rule establishing the methodology for DOL to determine the prevailing wage in the H–2B program with an immediate effective date.

F. Comments Regarding DHS's Authority To Consult With DOL and To Set Wages

While the comments received from the public overwhelmingly focused on the changes to the DOL prevailing wage methodology, a few submissions focused on DHS's authority to consult with DOL and to set wages. Some of these comments welcomed DHS's and DOL's joint promulgation of the 2013 IFR. Commenters stated that the IFR is consistent with statutory authority and that consultation with DOL is appropriate in light of DOL's expertise. A few commenters, however, stated that DHS improperly delegated its authority regarding the H–2B program to DOL. Another commenter also questioned why DHS does not consult with other government entities apart from DOL. Commenters also asked whether DOL had authority to promulgate the 2013 IFR. Finally, some commenters questioned DHS's statutory authority to set H–2B wages, stating that the INA does not support DHS's requirement that H–2B employment not adversely affect the wages and working conditions of United States workers.

1. DHS's Authority To Consult With DOL

DHS disagrees with the comments that DHS improperly delegated its authority involving the H–2B visa classification to DOL. The general provision at 8 U.S.C. 1184(c)(1), INA section 214(c)(1) requires DHS to consult with other ''appropriate agencies of the Government'' in adjudicating a variety of nonimmigrant

[17] We note that the Departments are not invoking the good cause exception to forego the APA's requirement of notice and comment, because this wage rule is a final rule following the request for comment in the 2013 IFR, and this preamble sets forth our consideration of those comments on all aspects of the wage methodology.

[18] The procedures for requesting a wage determination are set forth in the new comprehensive H–2B rule entitled, Temporary Non-agricultural Employment of H–2B Aliens in the United States, and published simultaneously as a companion rule to this final wage rule.

visa petitions, including petitions for H (such as H–2B) nonimmigrants, based on the specific requirements of each visa category. The H–2B nonimmigrant classification allows employers to petition for H–2B beneficiaries only ''if unemployed persons capable of performing such service or labor cannot be found in this country.'' 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b). In compliance with the statutory requirement under 8 U.S.C. 1184(c)(1), INA section 214(c)(1), DHS has identified DOL as the most appropriate agency to consult regarding the availability of U.S. workers and their wages and working conditions for purposes of classifying aliens as H–2B nonimmigrants under 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(B), given DOL's expertise regarding U.S. labor. To satisfy the statutory consultation requirement, DHS regulations require that an H–2B petition for temporary employment in the United States be accompanied by an approved temporary labor certification from DOL. 8 CFR 214.2(h)(6)(iii)(A) and (iv)(A). These regulations require DOL to make the threshold determination of whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity. *See* 8 CFR 214.2(h)(6)(iii)(A) and (D). Thus, DHS has permissibly conditioned part of its own decision to grant an H–2B visa petition on DOL's expert advisory opinion, that is, on DOL's determination whether a temporary labor certification should be granted. *See La. Forestry,* 745 F.3d at 673–74 (*citing U.S. Telecom Ass'n* v. *FCC,* 359 F.3d 554, 567 (D.C. Cir. 2004)). In addition, as part of DOL's certification, DHS regulations require DOL to ''determine the prevailing wage applicable to an application for temporary labor certification in accordance with the Secretary of Labor's regulation at 20 CFR 655.10.'' 8 CFR 214.2(h)(6)(iii)(D). It is similarly permissible for DHS to ''adopt a regulatory provision allowing the DOL to promulgate a narrow class of rules governing the temporary labor certification process. Without the ability to establish procedures to administer the temporary labor certification process, the DOL would not be able to fulfill the consulting role defined by DHS's charge to the DOL to issue temporary labor certifications.'' *La. Forestry,* 745 F.3d at 674.[19]

Finally, DHS's authority to administer and enforce immigration laws is longstanding. *See* section 102 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 112, and 8 U.S.C. 1103(a), INA section 103(a). To ensure that there can be no question about the authority and validity of DOL's prevailing wage determination regulations in fulfilling its consultative role with DHS, this final rule includes 8 CFR 214.2(h)(6)(iii)(D), which specifically sets forth DOL's role as the appropriate consultative agency for purposes of assisting DHS in addressing questions necessary to DHS's adjudication of H–2B petitions. Similarly, to ensure the validity of the regulations outlining procedures to determine prevailing wages, DHS and DOL are jointly issuing this final rule.

2. DHS's Authority To Set H–2B Wages

DHS disagrees with comments stating that DHS lacks legal authority to set H–2B wages, and in particular, its authority to rely on DOL's advice, as a threshold matter, as to what constitutes the prevailing wage for H–2B occupations. DHS's authority to administer and enforce immigration laws through regulations is well established. *See* section 102 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 112, and 8 U.S.C. 1103(a), INA section 103(a). Further, 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b) establishes the H–2B visa classification for a nonagricultural temporary worker ''. . . who is coming temporarily to the United States to perform . . . temporary [nonagricultural] service or labor *if unemployed persons capable of performing such service or labor cannot be found in this country''* (emphasis added). In order to meet the statutory obligations required under 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b), and to determine whether ''unemployed persons capable of performing such service or labor cannot be found in this country,'' an adequate testing of the U.S. labor market is necessary. Any meaningful test of the U.S. labor market requires that H–2B petitioning employers must attempt to recruit U.S. workers at the prevailing wage and pay H–2B beneficiaries such prevailing wages. As noted in detail above, DOL is the appropriate Government agency to set standards for testing the U.S. labor market, and to determine the manner in which prevailing wages affect such tests of the U.S. labor market. DHS has permissibly conditioned its approval of an H–2B petition on DOL's determination whether the U.S. labor market was adequately tested using the applicable prevailing wage. DHS retains the authority to deny a petition notwithstanding DOL's decision to grant a temporary labor certification. The regulatory provisions involving the determination of prevailing wages, which are jointly promulgated here, are necessary in order for DHS to meet the statutory obligations imposed under 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b).

Accordingly, in this rule, DHS is adopting the revision to 8 CFR 214.2(h)(6)(iii)(D) in this rulemaking without change.

II. Methodology for Determining the Prevailing Wage

A. Use of the Occupational Employment Statistics Survey

1. Application of Two- and Four-tiered Wage Structures to OES in H–2B: 1998–2011

In 1998, DOL first implemented use of the OES survey as an efficient and cost-effective way to develop consistent and accurate prevailing wage determinations in the H–2B program. *See* GAL 2–98, ''Prevailing Wage Policy for Nonagricultural Immigration Programs'' (November 30, 1998). The OES wage survey, issued by the Bureau of Labor Statistics (BLS), is among the largest continuous statistical survey programs. BLS produces the survey materials and selects the nonfarm establishments to be surveyed using the list of establishments maintained by State Workforce Agencies (SWAs) for unemployment insurance purposes. The OES collects data from over 1 million establishments. Salary levels based on geographic areas are available at the national and State levels and for certain territories in which statistical validity can be obtained, including the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Salary information is also made available at the metropolitan and nonmetropolitan area levels within a State. Wages for the OES survey are straight-time, gross pay, exclusive of premium pay. Base rate, cost-of-living allowances, guaranteed pay, hazardous duty pay, incentive pay including commissions and production bonuses,

[19] DOL is presently litigating its independent authority to issue legislative rules in the H–2B program. *See Bayou Lawn and Landscape Servs.* v. *Perez,* No. 3:12-cv-183, 2014 WL 7496045 (N.D. Fla. Dec. 18, 2014), appeal pending, No. 15–10623E (11th Cir.); *G.H. Daniels III & Assocs.* v. *Solis,* No. 12-cv-01943, 2013 WL 5216453, at *5 (D. Colo. Sept. 17, 2013), *appeal pending,* No. 13–1479 (10th Cir.). The analysis provided in this rule concerning the Departments' consultative relationship under the INA makes clear that DOL has the statutory authority to issue legislative rules governing the temporary labor certification process. Thus, while there are other arguments that would equally justify DOL's issuance of legislative rules in this circumstance, the Departments do not think it necessary to provide a further discussion of this issue for the purposes of this rule.

tips, and on-call pay are included. These features are unique to the OES survey, which is a comprehensive, statistically valid, and useable wage reference, and widely used in the DOL's other foreign labor certification programs (H–1B and PERM). The frequency and precision of the data collected, as well as the comprehensive nature of the occupations for which such data is collected, make it an appropriate data source for determining applicable wages across the range of occupations found in the H–2B program.

BLS surveys workers' wages based on the 2010 Standard Occupational Code (SOC) system, which is used by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data.[20] All workers are classified into one of 840 detailed occupations according to their occupational definition.[21] To facilitate classification, detailed occupations are combined to form 461 broad occupations, 97 minor groups, and 23 major groups. Detailed occupations in the SOC with similar job duties, and in some cases skills, education, and/or training, are grouped together. However, the OES survey captures no information about differences within the groupings based on skills, training, experience or responsibility levels of the workers whose wages are being reported.

Despite the change in 1998 from reliance on State workforce agency surveys to the OES survey in the H–2B program, DOL continued its prior practice of setting a prevailing wage based on two skill levels—''entry level'' and ''experienced level''—as previously set out in GAL 4–95 and subsequently reiterated in GAL 2–98. Because, as noted above, the OES does not provide data about skill differential within SOC codes, DOL established the entry and experienced skill levels mathematically. In 1998, the entry level, or Level I, wage was set at the mean of the lower one-third of the survey universe (approximately the 17th percentile), and the experienced level, or Level II, wage was the mean wage of workers in the upper two-thirds of the survey universe (approximately the 67th percentile). These two ''skill level'' tiers were expanded in 2005 guidance to include four ''skill levels''—''entry level,'' ''qualified,'' ''experienced,'' and ''fully competent''—and, based on a linear interpolation, Levels 1 through IV were set, respectively, at approximately the 17th percentile, the 34th percentile, the 50th percentile, and the 67th percentile.[22] In 2008, DOL proposed and finalized regulations governing the H–2B temporary worker program, and that rule essentially codified various aspects of the 2005 guidance, including the requirement that the prevailing wage for labor certification must include skill levels (73 FR 29942, May 22, 2008 (2008 NPRM); 73 FR 78020, Dec. 19, 2008 (2008 rule), and DOL's sub-regulatory guidance continued to require four skill levels. Because the four-tiered wage structure had already been implemented through guidance documents, the 2008 rule did not seek comment on the codification of four ''skill levels'' in the H–2B regulations.

2. Elimination of Tiered Wage Structure in H–2B: 2011–present

As discussed above in Sec. I. B., supra, the lack of notice-and-comment rulemaking in the 2008 rule on the issue of the four-tiered wage structure in the H–2B program resulted in a court ruling in 2010 that the implementation of the tiered wages violated the APA. *CATA I,* 2010 WL 3431761. The *CATA I* decision required DOL to, among other things, issue a new wage methodology rule that complied with the APA's notice and comment requirements. Accordingly, DOL engaged in notice-and-comment rulemaking that resulted in the elimination of the tiered wage structure in its 2011 Wage Rule. 75 FR 61578 (Oct. 5, 2010); 76 FR 3452 (Jan. 19, 2011). DOL based the elimination of the ''skill levels'' in the 2011 Wage Rule on the conclusion that:

> almost all jobs for which employers seek H–2B workers require little, if any, skill—an assertion with which few commenters disagreed. H–2B disclosure data from Fiscal Year (FY) 2007 to 2009 demonstrates that most of the jobs included in the top five industries for which the greatest annual numbers of H–2B workers were certified—construction; amusement, gambling and recreation; landscaping services; janitorial services; and food services and drinking places—require minimal skill to perform, according to every standardized source available to the Department, such as the SOC, O*NET and the Occupational Outlook Handbook. These jobs include, but are not limited to, landscaper laborer, housekeeping cleaner, construction worker, forestry worker, and amusement park worker, which make up the majority of occupations certified in those years, all of which require less than 2 years of experience to perform, if that. This prevalence of job opportunities in low-skilled categories is generally reflected in the H–2B employer applications. These jobs have typically resulted in a Level I wage determination, which is lower than the average wage paid to similarly employed workers in job classifications in non-H–2B jobs.

76 FR at 3459 (footnote omitted). DOL further concluded that ''there is no correlation in the four-tier wage structure between the skill level required to perform a job and the wage attached to it.'' 76 FR at 3460. Noting that the comments on the 2010 proposal did not present data or analysis to the contrary, DOL concluded in the final rule that ''there are no significant skill-based wage differences in the occupations that predominate in the H–2B program, and to the extent such differences might exist, those differences are not captured by the existing four-tier wage structure.'' *Id.* Ultimately, DOL concluded that the use of tiered wages in the H–2B program adversely affected U.S. workers because it ''artificially lowers [wages] to a point that [they] no longer represent[] a market-based wage for that occupation.'' 76 FR at 3463. The application of the four tiers set a wage ''below what the average similarly employed worker is paid[,]'' and ''the net result is an adverse effect on the [U.S.] worker's income.'' *Id.* With the elimination of the wage tiers in the 2011 Wage Rule, when the prevailing wage determination was based on the OES survey, the prevailing wage was set at the mean of the wages of workers in the occupation in the area of intended employment.

As noted above, because of Congressional riders, the 2011 Wage Rule was never implemented, and DOL continued to implement the four-tiered

[20] The OES data are used for many purposes in government. For example, BLS uses the data to make quarterly benchmark adjustments for the Employment Cost Index. *See http://www.bls.gov/news.release/eci.toc.htm.* BLS also uses the OES employment data as the ''denominator'' to calculate rates for the Occupational injury and illness rates. *See http://www.bls.gov/news.release/osh.toc.htm.* OES employment and wage distributions are used by the Bureau of Economic Analysis to estimate social security receipts. *See http://www.bea.gov/newsreleases/national/pi/pinewsrelease.htm. See also* ''What are the OES data used for?'' *http://www.bls.gov/oes/oes_ques.htm.*

[21] On May 22, 2014, the Office of Management and Budget (OMB) published a **Federal Register** notice announcing its periodic review of the 2010 SOC manual for revision in 2018 and soliciting public comment. For a timetable of the SOC revision process, see *http://www.bls.gov/soc/.*

[22] The expansion from two to four skill levels in 2005 stemmed from 2004 legislation enacting section 212(p)(4) of the INA, 8 U.S.C. 1182(p)(4), requiring the prevailing wage issued by DOL in the H–1B temporary specialty worker visa program to include four tiers commensurate with experience, education, and level of supervision. The DOL applied that statutory formula to H–2B temporary labor certification applications as well as the H–1B and permanent labor certification programs although there was no corresponding statutory provision for the H–2B program. *See* ETA Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs (revised May 9, 2005) (''2005 PWD guidance'' or ''2005 guidance''), available at *http://www.foreignlaborcert.doleta.gov/pdf/policy_nonag_progs.pdf.*

approach established in the 2008 rule. In 2013, the *CATA II* decision permanently enjoined DOL from using the four-tiered approach and vacated the corresponding provision in the 2008 rule. 933 F. Supp. 2d 700, 711–716. *CATA II* held that because DOL concluded in the 2011 Wage Rule that the four wage tiers ''artificially lower[ ] wage[s] to a point that [they] no longer represent . . . market-based wage[s] for the occupation'' and ''have a depressive effect on the wages of [United States workers,]'' 76 FR at 3477, they were in violation of the INA and DHS regulations, each of which explicitly preclude the grant of labor certifications to foreign workers whose employment may ''adversely affect wages and working conditions of similarly employed United States workers.'' *CATA II,* 933 F. Supp. 2d at 712–713 (citing 8 U.S.C. 1101(a)(15)(H)(ii)(b), INA section 101(a)(15)(H)(ii)(b); 8 CFR 214.2(h)(6)(iv)(A)). In response to *CATA II,* DOL and DHS issued the 2013 IFR, which, for the OES component of the prevailing wage determination, again eliminated the four-tiered wages, and established the mean of workers' wages in the occupation in the area of intended employment as the set point for a prevailing wage determination based on the OES survey. 78 FR 24047.

3. Comments on the IFR's Elimination of Wage Tiers

In the 2013 IFR, the Departments specifically invited comments on ''whether the OES mean is the appropriate basis for determining the prevailing wage.'' 78 FR at 24053. All worker advocates who commented expressed general support for the continued use of the OES mean, stating it was far preferable to the 2008 rule's four-tiered approach. They agreed with the Departments' finding in the IFR that dividing wages into four skill levels artificially lowered wages. In their view, the use of the OES mean substantially improves the protection of the wages and working conditions of U.S. workers because most H–2B jobs require little or no prior training or experience. They also agreed with the Departments' conclusion that a four-tiered approach is inappropriate because there are no significant skill-based wage differences in the H–2B occupations. Numerous H–2B employers and associations of employers generally opposed the use of the OES mean wage, and most advocated for a return to the four-tiered structure.[23] In their view, the OES mean overstates the prevailing wage for most H–2B positions because H–2B workers typically possess only entry level skills, yet under the OES mean they are paid a rate higher than more skilled permanent workers. Thus, in their view, H–2B workers typically should be compensated at the lowest of the four tiers established for a position. These commenters emphasized the impact of the substantially increased labor costs associated with the use of the OES mean wage and the detrimental effect on the profitability of their businesses. Many commenters expressed particular concern about the impact of the OES mean on small businesses, many predicting that it would make it impossible for many employers to continue in business, resulting in a direct ''adverse effect'' on the employment of U.S. workers.

Some commenters disagreed with DOL's premise in 2011, *i.e.,* that a single prevailing wage is appropriate for each occupation in the H–2B program because ''the majority of H–2B jobs reflect no or few skill differentials[.]'' 76 FR at 3459. They asserted that if the premise was true, there should be no significant differences between the average wage and the Level I wage under the four-tier wage system (the average wage paid to workers in the lower third of the wage distribution for the occupation). In their view, the significant difference between the OES mean wage and the mean wages computed for the lowest tier under the four-tier approach demonstrates that significant skill differentials exist within H–2B occupations.

a. Support for Using the OES Mean

Several worker advocates included the same basic position in their comments that a four-tier approach is inappropriate because there are no significant skill-based wage differences in the occupations that predominate in the H–2B program, and to the extent such differences exist, the differences are not captured by the existing four-tier system. In their view, eliminating tiers is appropriate because H–2B jobs require little or no experience and the use of the OES mean better protects U.S. wages and working conditions.

One commenter, an economic advocacy group, acknowledged that the use of the OES mean was a significant improvement over the approach taken in the 2008 rule. In its view, however, the IFR does not sufficiently protect the wages and working conditions of all workers in positions using H–2B workers. Setting the wage at the OES mean will pressure employers to establish the OES mean as the norm for a position, resulting in the eventual reduction in higher wages now received by U.S. workers in the position. According to this commenter, the only way to ensure that there is no reduction in wages paid to U.S workers would be to set the H–2B wage at the highest wage for a position. As an alternative to this method, it suggested that the Employment and Training Administration (ETA) use the OES 90th percentile wage rate for a position, which the commenter asserted would adequately protect the interests of U.S. workers.

The Departments received extensive comments from the forestry industry. One commenter suggested that the OES mean should be used for all H–2B jobs requiring little or no training (all O*NET Job Zone 1 positions) absent higher wages under a CBA, SCA, or DBA for a particular job. For H–2B jobs requiring some training (O*NET Job Zone 2 and 3 positions), it stated that the OES mean should also generally be used.[24] However, as discussed in the section that follows on the use of the SCA and DBA wage determinations to set the prevailing wage, a number of commenters stated that the SCA occupational codes and job descriptions generally better fit the forest industry's H–2B jobs than those used in the OES.

b. Opposition to Using the OES Mean

Several employers and associations of employers preferred the use of tiered wage rates because such rates, in their view, reflect the actual demands of the positions for which they seek H–2B or U.S. workers. Most of these commenters expressed an interest in preserving the approach set forth in the 2008 rule. Some commenters asserted that DOL was bound by the appropriations legislation to apply the four-tiered

[23] Although most employers advocated for a return to the practice under the 2008 rule, several also supported as an alternative the approach included in the Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. (2013), which was adopted by the Senate in June 2013 as part of its consideration of comprehensive immigration reform (hereinafter S. 744). S. 744's relevant provision, section 4211(a), reads, in part, ''if there is no [CBA or DBA/SCA wage], the wage level [shall be] commensurate with the experience, training, and supervision required for the job based on Bureau of Labor Statistics data.'' Although it calls for wage levels or tiers, the bill does not specify the requisite number of levels. Moreover, as noted above, BLS does not issue data that takes these factors into account within an SOC.

[24] *See* Procedures for O*NET Job Zone Assignment (March 2008), Appendix, available at: *http://www.onetcenter.org/dl_files/JobZoneProcedure.pdf.* In short, the 5 Job Zones are as follows: Job Zone 1 requires little or no preparation; Job Zone 2 requires some preparation; Job Zone 3 requires medium preparation; Job Zone 4 requires considerable preparation; and Job Zone 5 requires extensive preparation.

approach.[25] Many commenters expressed an interest in preserving a tiered approach, without expressing a strong preference among the 2008 rule, ETA's 2005 PWD guidance,[26] or the approach outlined in bipartisan immigration reform legislation considered and passed out of the U.S. Senate in 2013 (S. 744). Others supported one or more of these approaches as alternatives to their preferred approach; others preferred the S. 744 approach alone.

Many commenters cited to a study conducted by an H–2B employer coalition, predicting a substantial across-the-board increase in labor costs from the use of the OES mean rather than tiered wages. Some commenters emphasized the impact that use of the OES mean would have on wages within particular industries. For example, one commenter asserted that in the forestry industry wage-rate increases would exceed 20 percent in most areas and exceed 60 percent in Arkansas, Idaho, and Virginia. Another commenter stated that landscape employers, based on new wage determinations, would face an average wage increase in H–2B wage rates of $3.27 an hour, or more than 36.9 percent. To emphasize its point about the large, unexpected increases experienced by employers within its industry, this commenter included a chart showing by state the amount and percentage of increases. To underscore a similar point across industries, the workforce coalition included a chart showing, by state and occupation, the amount and percentage increases that result from using the OES mean. While many commenters complained about the effect of using the H–2B rule on their particular industries (*e.g.,* landscaping, transient amusement, lodging), a few commenters sought specific exemptions for their industries.

One commenter (describing itself as a group of ''H–2B employers, agents who help small businesses . . ., and legal and economic experts'') made the following claims to support its view that the OES skill-levels should be used to set prevailing wages:

- use of tiered wage levels could not allow employers to pay H–2B workers a lower wage than was appropriate because ETA certified the wage level;
- the OES mean wage inflates the wages for more than half the H–2B workers in a particular occupation;
- the 2011 Wage Rule's focus on wage depression for H–2B workers should have been outweighed by concerns about the impact of the ultimate wage depression on U.S. workers—the loss of their jobs;
- preventing wage deflation for H–2B workers does not protect domestic workers because the vast majority of H–2B applications involve 25 or fewer workers and the total number of H–2B workers is too small to impact domestic workers; [27]
- the 2013 IFR's analysis of wage depression was flawed because ''the mean exceeds the median of the [wage] distribution. This means that a majority of workers, permanent or temporary, skilled or entry level, earn less than the arithmetic mean'';
- the 2013 IFR inappropriately did not consider that the presence of temporary foreign workers is complementary and improves the job security of permanent U.S. workers, making ''[t]he wage depression issue'' irrelevant;
- the 2013 IFR's stated premise, *i.e.,* that tiered wage rates are inappropriate because ''almost all H–2B jobs involve unskilled occupations requiring few or no skill differentials,'' 78 FR 24047, 24053, is incorrect because, in the commenter's view, wage variation within H–2B occupations necessarily indicates differing skill levels for workers in the H–2B program; and
- the use of a single prevailing wage for a classification that includes different tasks, skills, and experience, ''makes no economic sense'' and will prevent the hiring of workers with the lowest skills in those categories.[28]

A different commenter, an association of H–2B employers, stated that by requiring H–2B workers to be paid at the OES mean, the Departments denied some H–2B workers wages they were previously paid at a higher skill level. Several other commenters expressed similar concerns, and made the following points:

- DOL should provide data to support its position that ''skill levels as determined currently do not reflect wage levels in lower skilled jobs.'' It is arbitrary to require the same rate be paid for a hotel housekeeping position without regard to whether the employee is able to clean 5 or 15 rooms per day;
- wages must be market driven, reflecting both the demand for workers for various seasonal positions not filled locally and the levels of experience available within the labor pool of seasonal and visitor workers;
- conflating tiers 1 through 4 compels employers to pay a wage rate that is appropriate for a more skilled worker than the lower-skilled worker requested by its application, which upwardly skews its labor costs not only for the H–2B workers but also for other individuals it employs;
- use of the OES mean is based on the false premise that unskilled entry-level positions should be paid an amount that greatly exceeds the Federal minimum wage;
- use of the OES mean requires an employer to pay an H–2B wage that is not based on the appropriate entry-level wage for the position, but instead a rate that includes wages paid to more experienced workers in the position or those with supervisory duties. The ''premium'' paid to the more experienced workers and supervisors appropriately reflected the nature of their jobs as year-round, permanent employees, differentiating them from temporary, supplemental employees;
- the OES mean reflects, in part, the wages paid to workers that have greater training, experience, and education than entry-level H–2B employees. It is inappropriate to include in the prevailing wage computation the rates paid to senior, experienced workers whose contributions to the employer's operations are greater than the H–2B workers because the senior workers require less supervision and are involved in fewer accidents than the entry-level workers; and
- the OES mean arbitrarily inflates the wages of entry-level workers and deflates the wages of more experienced workers. A ''one-size-fits all approach ignores real-world wage differentiation factors such as supervisory duties, responsibilities, seniority/tenure, talent, dependability and efficiency.'' The regulatory history supports the use of setting wages based on the skill required for a position. Before 2005, where an applicant was the only employer in an area of intended employment, setting the H–2B wage required an analysis of

[25] Although this argument is not developed at length by the commenters, they appear to contend that because Congress previously had barred implementation of the 2011 Wage Rule, which eliminated the use of tiered wages, it intended to deny the use of appropriated funds to promulgate any rule, such as the IFR, which also eliminates their use.

[26] 2005 PWD guidance explained *supra.*

[27] This group provided an extensive submission on the tiered wage issue, and the comment contained numerous exhibits, including articles, wage comparisons, and declarations submitted in lawsuits involving the H–2B program.

[28] It provided the following examples from DOL's Standard Occupational Classification system to assert that workers are not ''similarly employed'' or ''substantially comparable.'' ''Landscaping and Grounds Keeping Workers'' includes workers who install sprinkler equipment as well as workers who pull weeds; ''Amusement and Recreation Attendants'' includes workers in video arcades, marinas, golf courses, and ski resorts; and ''Lifeguards'' includes lifeguards at the local public swimming pool as well as members of a ski patrol at winter ski resorts.

the skill and experience levels of the occupation. The term ''similarly employed'' was defined, in part, in DOL's permanent labor certification (PERM) regulations as ''jobs requiring a substantially similar level of skills within an area of intended employment.'' 20 CFR 656.40(b).

c. Comments Specific to the Forestry Industry

A number of commenters, including worker advocates and employers in the industry, expressed the view that the SCA rates better reflect wages paid in the forestry industry than the OES mean.[29] A group of worker advocates favored the general use of the SCA rates where they apply, instead of the OES mean for H–2B jobs in this industry. This comment asserted that where H–2B jobs are grouped together with other jobs that cannot be included accurately in the same O*NET Job Zone, ETA should establish O*NET sub-codes for such positions.[30] It explained that where a particular SOC code contains a mix of jobs—some requiring little preparation, but many others requiring substantially more preparation—the OES mean wage inflates the wages for jobs requiring little preparation. The group proposed that where ETA and its O*NET partners have identified sub-occupations with different O*NET levels within a single SOC code, ETA, in consultation with BLS, should establish a methodology to determine the prevailing wages for those positions. It proposed that in the interim ETA should adjudicate, on a case-by-case basis, the wage rates for affected occupations. Apparently, the group would have ETA determine whether a particular position requires more or less preparation than typical for other jobs within the OES classification, and then provide notice of such adjudication and an opportunity for labor organizations and worker advocacy groups to participate. Additionally, it stated that, absent strong evidence to the contrary, ETA should establish as a floor for ''mixed occupational SOC codes'' a wage rate not less than 95% of the OES rate for that code. The group asserted that relatively few H–2B jobs require substantial prior training (O*NET Job Zones 4 and 5) and questioned whether such jobs are appropriate for H–2B certification. For such positions, however, it stated that the presumption should be that the OES mean wage is appropriate.

An employer stated that gaps in the OES survey data result in extreme differences from county to county when compared year to year and that wide variations in required OES wages for adjoining counties demonstrate that the rates do not reflect actual wage rates paid to workers in the counties. In its view, the SCA rates better reflect the true prevailing wage for forestry occupations in an area, but it suggested that the H–2A program provided a better model for its industry. This commenter stated that ETA should establish state or regional rates for forestry work based on wages paid within the same multi-state regions used in the H–2A program. Alternatively, it suggested that ETA could establish larger geographical regions that follow the seasonal migratory patterns for forestry-related work: A Northeast Region, a Midwest and Great Lakes Region, a Pacific and Northwest Region, a Southwest Region, and a Southern Region. As a second possible alternative to the existing system, the commenter advocated the use of an average state-wide wage to avoid the wide divergence in rates from one particular local area of employment to another.

d. Other Comments

An individual commenter in the public sector stated that the use of skill levels, where level one becomes the default level for H–2B workers, could have an adverse effect on U.S. workers. At the same time, the commenter expressed concern that the use of the OES mean rate—without regard to skill—could lead to workers with different skills and education receiving the same level of pay. As an example he chose the OES ''Construction Managers'' category, which groups construction foreman and job superintendent, positions that in his view both required job experience but only one of which (job superintendent) required a college degree. The commenter suggested that each position likely would receive the same H–2B rate of pay, despite the different educational requirements for the two positions. He suggested that the use of some tiers, but not necessarily four, would be more appropriate than using the OES mean.

Another individual commenter suggested that ETA create a two-tiered system based on the percentage differences between the average wage issued for a position in fiscal years 2011 and 2012 and the mean wage for that position. He characterized his approach as follows: ''Wage Tier 1 = the mean of the lowest ⅓ of the wages reported. Wage Tier 2 = the mean of the top ⅔ of wages reported.''

Some commenters, including a group of employers, employer agents, lawyers and economists, criticized DOL's reading of the court's order in *CATA II* to require the OES mean wage. This group claimed that the use of the OES mean is not required by *CATA II*; in its view, the decision only required DOL to stop using the skill levels that the Office of Foreign Labor Certification (OFLC) had long been using. Two associations of H–2B employers asserted that the Departments presented no evidence that H–2B workers occupy positions where similarly employed U.S. workers are actually paid the mean OES wage. They also asserted that DOL does not apply the arithmetic mean for wage determinations in its other labor certification programs.

4. Decision To Retain the Mean Wage When Issuing a Prevailing Wage Based on the OES

After reviewing the use of the OES survey in setting the prevailing wage in the H–2B program, including consideration of all the comments received on the 2013 IFR, the Departments have decided to continue to set the prevailing wage at the mean wage of all workers in the occupation in the area of intended employment when the prevailing wage is based on the OES survey. As discussed in the preambles to the 2010 NPRM, the 2011 Wage Rule, and the 2013 IFR, it remains our view that the OES mean better protects U.S. workers from adverse effect than the tiered-wage approach used previously in the H–2B program.

A basic principle of supply-and-demand theory in economics is that in market economies, shortages signal that adjustments should be made to maintain equilibrium. Therefore, if employers experience a shortage of available workers in a particular region or occupation, compensation should rise as needed to attract workers. Market signals such as labor shortages that would normally drive wages up may become distorted by the availability of

[29] These comments are also addressed in Sec. II.B., *infra,* in the discussion of the use of the SCA wage determinations to set the prevailing wage in the H–2B program.

[30] O*NET is sponsored by ETA through a grant to the North Carolina Department of Commerce, which operates the National Center for O*NET Development through a partnership of public and private-sector organizations. The O*NET program is the nation's primary source of occupational information. Central to the project is the O*NET database, containing information on hundreds of standardized and occupation-specific descriptors. The database, which is available to the public at no cost, is continually updated by surveying a broad range of workers from each occupation. The O*NET program groups occupations into five ''Job Zones.'' Each Job Zone acts as a grouping of occupations that are similar with regard to: How much education is needed to do the work, how much related experience people need to do the work, and how much on-the-job training people need to do the work. *See http://www.onetcenter.org/about.html* and *https://www.onetonline.org/help/online/zones.*

foreign workers for certain occupations, thus preventing the optimal allocation of labor in the market and dampening increased compensation that should result from the shortage. In enacting the foreign worker programs, generally, Congress has recognized the potential for market distortion by requiring in labor certification programs generally that the availability of foreign workers must not adversely affect the wages and working conditions of U.S. workers. *See, e.g.,* 8 U.S.C. 1182(a)(5)(A)(i)(II), INA section 212(a)(5)(A)(i)(II); 8 U.S.C. 1188(a)(1)(B), INA section 218(a)(1)(B). In its long-standing regulations, DHS has required this showing for the H–2B program. *See, e.g.,* 8 CFR 214.2(h)(6)(iii)(A).

As in 2010 and 2013, we considered, but ultimately rejected, reinstituting a tiered wage system for H–2B employment.[31] We have revisited the question whether we should return to the practice used between 1995 and 2008, in which DOL employed a two-tiered system composed of an ''entry level'' and an ''experienced level'' wage as an alternative to the OES mean. However, we conclude that such an approach would not adequately protect the wages and working conditions of U.S. workers. This position is informed by DOL's prior conclusion that ''there are no significant skill-based wage differences in the occupations that predominate in the H–2B program. . . .'' 76 FR at 3460. In the 2011 Wage Rule, DOL analyzed 4694 wage determinations over a ten-month period in 2010, and found that 74 percent of the determinations were issued at Level I; 10.5 percent were issued at Level II; 8.2 percent were issued at Level III; and 6.9 percent were issued at Level IV. 76 FR at 3468. Overall, in approximately 93 percent of those cases analyzed (summing the percentage of determinations issued at Levels I, II and III), wage rates were issued for H–2B occupations that were below the OES mean for the same occupation. Based on those findings, DOL concluded that the use of skill levels adversely affected U.S. workers because it ''artificially lowers [wages] to a point that [they] no longer represent[ ] a market-based wage for that occupation[,]'' and that ''the net result is an adverse effect on the [U.S.] worker's income.'' 76 FR at 3463; *see also* 75 FR 61578, 61580–81. Similarly, the preamble to the 2013 IFR stated that the OES mean is the appropriate wage level because almost all H–2B jobs involve unskilled occupations requiring few or no skill differentials. 78 FR at 24053. The 2013 IFR reiterated the conclusion that ''there was no justification for stratifying wage levels to artificially create wage-based skill levels when in fact there is no great difference in skill levels with which to stratify the job.'' *Id.*

DOL continues to see the pattern identified in 2011, in which Level I wages (approximately the 17th percentile) predominate where a tiered wage structure is in place. DOL conducted a fresh analysis for this rule of the frequency with which the former Level I wages occur in prevailing wage determinations under a tiered wage structure. In a statistically significant random sample of 472 wage determinations issued in FY 2012, before implementation of the IFR, DOL found that 344 determinations, or 72.88 percent of the sample, were issued at Level I; 68 wage determinations, or 14.41 percent of the sample, were issued at Level II; 41 wage determinations, or 8.69 percent of the sample, were issued at Level III; and 19 wage determinations, or 4.03 percent of the sample, were issued at Level IV. As a result, approximately 96 percent of the wage determinations analyzed in the 2012 sample (summing the percentage of determinations issued at Levels I, II and III) were below the OES mean wage. Based on this analysis, DOL remains convinced that when tiered wages are available and the tiers are set below the mean, the average wage of workers in the occupation is driven down, resulting in an adverse effect on U.S. workers' wages caused by the influx of foreign workers.

Moreover, a tiered approach in the H–2B program has been an inadequate proxy for skill or other characteristics associated with wages, thereby discrediting comments on the 2013 IFR suggesting that any variation in wage payments when tiers are in place reflects remuneration for relative skill or proficiency. These commenters argued that if the premise that there are a few or no skill differences in H–2B work were accurate, we would not see the range of wages, and the dispersal away from the mean, that can be observed on an H–2B wage distribution. The wage differential, they say, must reflect a skill differential. However, many more factors can account for the H–2B wage differential than skill level. The literature reflects that there are factors in addition to skill level that can account for OES wage variation for the same occupation and location, which include, but are not limited to: Size of employer; seniority; rate of worker turnover; union status; gender, race, ethnicity, or nationality; work hour schedule; age; availability of benefits in the form of training opportunity, health insurance, paid time off, and other benefits; sub-location within the same area of intended employment; and pay structure (performance-based pay vs. fixed pay per hour).[32]

In the absence of a tiered wage system, the Departments must assign prevailing wages in the H–2B program in a manner in which does not depress wages for U.S. workers because of the artificially elevated labor supply in the market. Thus, we must identify the point on the OES wage distribution that protects the wages of U.S. workers from the depressive effect of the influx of surplus labor. In 2011 and in 2013, DOL concluded that the mean was that point (76 FR at 3462; 78 FR at 24053), and we rely on that same finding following public comment for the purposes of this final rule. The mean is the average of all wages surveyed in an occupation in the geographic area, and in the low-skilled occupations in the H–2B program, the mean represents the average wage paid to unskilled workers to perform that job. If the prevailing wage is set below the mean, the average wage of workers in the occupation would be drawn down, resulting in a depressive effect on U.S. workers' wages overall. In addition, we have set the wage rate at the mean rather than at the median because the mean provides equal weight to the wage rate received by each worker in the occupation across the wage spectrum and maintaining the OES mean provides regulatory continuity. As a result, when the prevailing wage is based on the OES survey, we will set it at the mean because it is the most appropriate wage to use in order to avoid immigration-induced labor market distortions

[31] In light of the *CATA II* holding and the findings by the DOL on which it is based, we concluded that a return to the four-tiered approach was not feasible.

[32] *See* BLS, ''How much could I be earning? Using Occupational Employment Statistics data during salary negotiations'' (2014), *http://www.bls.gov/oes/earnings.pdf*; BLS, ''Measuring the distribution of wages in the United States from 1996 through 2010 using the Occupational Employment Survey'' (2014). *http://www.bls.gov/opub/mlr/2014/article/measuring-the-distribution-of-wages-in-the-united-states-from-1996-through-2010-using-the-occupational-employment-survey-1.htm*; BLS, ''How Jobseekers and Employers Can Use Occupational Employment Statistics (OES) Data during Wage and Salary Discussions'' (2010), *http://www.bls.gov/oes/highlight_wage_discussions.pdf*; Krista Sunday and Jordan Pfuntner, ''How widely do wages vary within jobs in the same establishment?'' (2008), *http://www.bls.gov/opub/mlr/2008/02/art2full.pdf*; Charles Brown, et. al., ''The Employer Size-Wage Effect'' (1989), *http://unionstats.gsu.edu/8220/Brown-Medoff_Wage-Size_JPE_1989.pdf*; John Buckley, ''Wage differences among workers in the same job and establishment'' (1985), *http://stats.bls.gov/opub/mlr/1985/03/art2full.pdf*.

inconsistent with the requirements of the INA.

For all these reasons, we have not returned to a tiered system as a basis for setting the prevailing wage for H–2B workers. We recognize that the use of the OES mean, rather than the use of tiered wages, has in some cases resulted in an increase in the wages paid to H–2B workers, which may result in overall increases in labor costs for some U.S. businesses that employ H–2B workers. The Departments also recognize that the use of the OES mean may impose particular burdens on small businesses. However, DOL is obligated to set a prevailing wage that protects all U.S. workers from adverse effect; this requirement could not be met by setting a lower wage for small businesses. In addition, most H–2B employers now have experience paying workers at the OES mean, which was established in the H–2B program two years ago. DOL concludes that the impact on small businesses of having to pay the OES mean wage will be less than that incurred under the 2013 rule, given that employers have been able since then to base projections of future labor costs on these wage rates. As discussed above, DOL concludes that use of the OES mean best meets the Departments' obligation to protect against adverse effect, while setting the prevailing wage at a threshold based on artificial skill levels likely distorts the labor market for U.S. workers, driving down wages.

B. Use of the SCA and DBA as Wage Sources in H–2B Prevailing Wage Determinations

1. History of the SCA and DBA Prevailing Wage Determinations in the H–2B Program

DOL historically relied on the prevailing wage regulations used for permanent labor certifications in the immigrant labor program, as codified at 20 CFR 656.40, to determine prevailing wages in the H–2B program. Versions of section 656.40(a)(1) that pre-date 2005 set wage rates at the levels mandated by the DBA and the SCA ''if the job opportunity is in an occupation which is subject to a wage determination'' in the area of intended employment under either statute. As a result, before 2005, if an H–2B job fell within an occupation for which an SCA or DBA wage determination had been issued in the area of intended employment, that wage rate became the H–2B prevailing wage, even in cases in which the OES survey may have identified a wage for a comparable occupation. DOL abandoned this approach in the same 2005 guidance that introduced skill-based tiered wages, which gave employers the option to request the SCA or DBA prevailing wage determination, but did not mandate its application. *See* 2005 PWD Guidance. The H–2B rule issued in 2008 similarly permitted, but did not require, use of the SCA and DBA prevailing wage determinations. 73 FR 78020. As a result, under the 2008 rule DOL set the prevailing wage as: The collective bargaining agreement (CBA) wage rate; the OES four-tier wage rate if there was no CBA; an acceptable survey provided at the employer's election; or a wage rate under DBA or SCA at the employer's request, if one was available for the occupation in the area of intended employment. *See* 20 CFR 655.10 (2009). In the absence of a CBA wage, the employer could elect to use the applicable SCA or DBA wage in lieu of the OES wage. *Id.*

In DOL's 2010 H–2B Wage NPRM, DOL proposed revisions to the wage methodology that set the prevailing wage as the highest of: The OES arithmetic mean wage for each occupational category in the area of intended employment; the applicable SCA/DBA wage rate (if one was available); or the CBA wage. 75 FR 61578 (Oct. 5, 2010). This approach was finalized in 2011, 76 FR 3452, although never implemented as a result of Congressional riders, as discussed above. Because the riders prevented implementation of the 2011 ''highest of'' approach, DOL continued to use the approach in the 2008 rule, which permitted employers to request prevailing wages based on the SCA and DBA, if applicable and available.

The 2013 IFR retained the ''employer's option'' approach. 78 FR 24047. The preamble to the IFR explained that ''although there are various ways to define or calculate the prevailing wage rate, [DOL concludes] that, under the present circumstances in which we must act expeditiously in response to the *CATA II* order, the use of any of these three wage rates [the OES mean, the SCA or the DBA] will serve to meet DOL's obligation to determine whether U.S. workers are available for the position and that the employment of H–2B workers will not adversely affect U.S. workers similarly employed.'' 78 FR at 24054.

2. Comments on the 2013 IFR's Use of the SCA and DBA Wage Determinations to Set the Prevailing Wage

The 2013 IFR sought ''comment on the use of the DBA and the SCA in making prevailing wage determinations, and *if these wage rates should apply, to what extent.*'' 78 FR at 24054 (emphasis added). We identified three ways in which we could continue to incorporate DBA and SCA wage determinations in the H–2B program if we elected to use those wage sources: (1) Applying the DBA or SCA wage determinations if they represent the highest available prevailing wage determination for the job opportunity in question (the 2011 approach); (2) making the SCA and DBA wage determinations available to the employer if it chooses to rely on them for that job opportunity, regardless of whether the wage is the highest or lowest available (the 2008 Rule and 2013 IFR approach); and (3) in the absence of a CBA wage, mandating use of the SCA or DBA wage determination applicable to that job opportunity (the pre-2005 approach). *Id.*

As a general matter, many worker advocates supported the mandatory application of SCA and DBA prevailing wage determinations where they are available for the occupation in the area of intended employment for which certification is being sought. These commenters often argued that the SCA and DBA wage determinations were the most complete and accurate measure of appropriate compensation levels for the occupations covered by those statutes in the geographic areas for which such wage rates have been determined. Many such commenters argued in favor of DOL's pre-2005 approach in which the SCA and DBA wage determinations must be used where applicable to the job in the area of intended employment. However some commenters did not clearly state whether they advocated for use of the SCA and DBA wage determinations in the H–2B program as part of the unimplemented 2011 ''highest of'' methodology, in which SCA and DBA wage determinations are used only if they are higher than the OES mean and/or a CBA wage.

Similarly, many employers and employer associations advocated in favor of the approach in the 2008 rule, but did not identify whether this preference was specifically tied to the 2008 rule's voluntary use of the SCA and DBA wage determinations, or whether it reflected a preference for the four-tiered OES structure over the OES mean. In addition, many of the same commenters suggested that, in the event we do not employ the 2008 rule's voluntary use of the SCA and DBA wage determinations, we should adopt the 2005 guidance, which mirrors the 2008 rule's employer election to use SCA or DBA wage determinations. Many commenters also suggested that the Departments adopt the wage standards set out in S. 744, as alternative

acceptable wage methodologies.[33] With respect to the SCA and the DBA, these commenters appear to suggest that S. 744's reliance on the use of the ''best available information'' to set the prevailing wage indicates that the SCA and DBA wage determinations should be used only when those wage determinations independently apply to the work the relevant H–2B employees will perform, *i.e.,* when H–2B personnel perform work under a Government contract subject to the statutes.

One employer who is an extensive user of the H–2B program suggested that the SCA is a more appropriate rate-setting device for forestry occupations than is the OES because of the OES's single category of forestry worker, rather than the SCA's three categories. This commenter submitted that for forestry workers, the OES artificially inflates the wages of lower paid, manual labor-type forestry work and suggested that the SCA's use of three categories better recognizes the distinction between forestry work that requires solely manual labor and skilled forestry work performed by college graduates. This commenter further suggested that, with respect to the ''range of'' forestry-related occupations, the Departments should issue ''regional'' SCA rates as well as a ''regional'' OES wage rate with four skill levels, from among which an employer could select its preferred option.[34] Employers in the seafood processing industry asserted that the SCA and DBA job classifications (as well as the OES/SOC classifications) did not reflect well the production-based jobs in the seafood industry.

An association of contractors criticized the DBA wage determinations. This commenter argued that DBA rates are ''grossly inflated'' due to the ''unscientific methodology'' used to create them, and underscored that the surveys used to collect the information for the DBA wage determination are voluntary. As a result, this commenter suggested that labor organizations and large government contractors disproportionately submit the required data, resulting in wage determinations that are inconsistent with the actual prevailing wage rates. This comment also suggested that the system of deferring to the local area practice in defining the job duties of a particular classification makes it ''difficult to determine the appropriate wage rate for many construction-related jobs.''

We received virtually identical submissions from a dozen worker advocacy groups who advocated that DOL return to the pre-2005 approach, which required the use of the SCA or DBA wage determinations if the job opportunity was in an occupation subject to a wage determination in the area of intended employment under either statute. Most of the entities submitted the same statement advancing this position, expressing the view that the SCA and DBA wage rates ''are the most complete and accurate measure of determining appropriate compensation levels for the occupations covered by those Acts in those geographic areas for which such wage rates have been determined'' and asked that SCA and DBA wage rates be required in all circumstances in which they were available. The commenter further noted that requiring the use of SCA and DBA wage rates wherever available would be consistent with DOL's approach prior to 2005.

Moreover, as discussed above regarding the use of the OES mean to set the prevailing wage, a comment submitted by a worker advocacy project on behalf of a large consortium of worker groups underscored the view that the SCA wage determinations are particularly apt in the forestry and logging occupations because they are more ''closely tailored'' to the jobs and the SCA ''classification includes many jobs that demand more knowledge, training and experience and pay higher wages.'' [35] This comment, which was joined by a number of other advocacy organizations, discussed alternative approaches depending upon Job Zone. The comment suggested that the OES mean should ''at all times'' be the prevailing wage for Job Zone 1 jobs, unless there was a higher CBA, SCA or DBA rate, and that the OES mean ''should generally be used to determine the prevailing wage rate'' for Job Zone 2 and 3 occupations. However, the comment also recommended that the SCA should be used for forest and conservation workers (citing specifically SOC Code 45–4011, ''Forest and Conservation Workers,'' classified as Zone 3 in O*NET) because the commenter suggested that the SOC occupations for these jobs include both jobs that require little to no preparation and those that require more knowledge and training.

As discussed in the OES section above, the same comment also suggested that if there were additional occupations beyond forestry for which many H–2B certifications were issued that were grouped in an SOC code with other occupations requiring different levels of preparation, DOL should develop new sub-codes using the O*NET system. Pending the development of these sub-codes, the comment asked that DOL use a case-by-case method to determine the appropriate wage rate. For Job Zones 4 and 5 (occupations requiring considerable preparation and occupations requiring extensive preparation), the group suggested the OES mean should be the presumed rate absent strong evidence to the contrary. The commenter discussed the use of O*NET Job Zones where the SOC code includes a mix of jobs and some require substantially more preparation than others, and concluded that O*NET sub-classifications should be created for any Job Zones 2 and 3 jobs that require mixed levels of skills and training ''to permit a separate treatment of lower skilled jobs in a SOC class appropriately to reflect actual wage differences based upon the real differences in the training and skills needed to do the job.'' The comment again emphasized that classifying H–2B forest and conservation workers in a Job Zone 3 classification ''is misleading as to the actual job duties performed for the positions certified for H–2B workers,'' so they again recommended using SCA wage rates for such workers. They also identified other H–2B jobs that fall within Job Zone 3, and stated that many of them may be appropriate, but that there may be circumstances where the H–2B jobs ''do not require Zone 3 levels of experience and training, similar to forestry. In cases where this is identified, if there are SCA or Davis Bacon rates that apply, they should be used.'' If not, they again recommended creating sub-classifications and using ad hoc adjudication to set rates in the meantime.

An individual commenter stated that the U.S. workers would be adversely

[33] *See* Sec. II.A., *supra,* for the text of the wage provision in S. 744.

[34] This commenter relied on the comment it had submitted for consideration during the 2011 Wage Rule proceeding. In the preamble to the 2011 Wage Rule, DOL rejected the proposal to establish regional prevailing wage rates for reforestation, explaining that an employer can avoid the complexity of paying various wage rates where projects stretch across multiple counties or states with different wage rates by paying the highest of the prevailing wages of those areas, which is similar to paying a regional wage, particularly because ''[p]revailing wage rates for forestry work are generally the same across contiguous counties—and frequently noncontiguous counties—in the same State.'' 76 FR 3452, 3464. In addition, DOL concluded that it ''is not feasible or desirable to establish regional wage rates for particular industries in the H–2B program'' because the wage rates must be locality-based in order to prevent adverse effect on U.S. workers. *Id.* We reiterate that conclusion in this rulemaking as well.

[35] As noted above, an employer in the forestry industry articulated a similar point in advancing a preference for the SCA over the OES to set the prevailing wage for forestry occupations. However, no other comments singled out any other particular industry or occupation to which the SCA was better suited to set the prevailing wage.

affected if the regulations ''retain the component of the 2008 final rule that permits, but does not require, an H–2B employer to use . . . DBA or SCA wage determinations.'' Finally, a federation of labor organizations suggested that ''[w]here the DOL has already calculated a prevailing wage rate under the DBA or SCA in order to ensure that wages for currently-employed workers are not adversely affected, it would border on irrational for the agency to ignore such a wage determination when setting a prevailing wage rate for workers employed in the H–2B program.'' We considered all the comments addressing the use of the SCA and DBA wage determinations to set the prevailing wage, as well as the DOL's historical practice, and its current procedures.

3. ETA's Process for Determining the Prevailing Wage Based on the SCA or DBA

ETA used the following process to issue prevailing wage determinations under the 2008 rule, as modified at 20 CFR 655.10(b)(2) by the 2013 IFR. ETA issued a prevailing wage determination for a specific job performed in a specific geographic area. In order to do so, H–2B jobs or tasks were structured into occupational titles. These occupations were catalogued in taxonomies, which established how the occupations were defined, organized and presented. Taxonomies would vary depending on the wage survey used. For example, as discussed above, when conducting the OES survey, BLS surveys of workers' wages are based on the 2010 SOC system, which contains 840 detailed occupations, each one of which has its own definition. Detailed occupations in the SOC with similar job duties, and in some cases skills, education, and/or training, are grouped together to form 461 broad occupations, 97 minor groups, and 23 major groups. The SOC classifies all occupations in the economy, including private, public, and military occupations, in order to provide a means to compare occupational data produced for statistical purposes across agencies. It is designed to reflect the current occupational work structure in the U.S. and to cover all occupations in which work is performed for pay or profit.

By contrast, the Wage and Hour Division (WHD) employs the *SCA Directory of Occupations* (SCA Directory), which classifies occupations for the purposes of issuing SCA prevailing wage determinations.[36] The SCA Directory provides a list of occupations with accompanying position descriptions. The current edition of the directory contains 408 occupations, of which 339 are ''standard'' occupations applicable to both metropolitan and non-metropolitan areas; the remaining 69 are ''non-standard'' occupations. The DBA prevailing wage determinations are based on a third and separate occupational taxonomy, which, rather than relying on general task descriptions for each occupation, is defined according to local practice.[37] As a result, under the DBA, occupations with similar tasks may have different occupational titles based on variations in local area practice.

Although WHD is the agency responsible for the administration and enforcement of the SCA and DBA, all prevailing wage determinations requested through the H–2B program, regardless of whether the wage source is the OES, the SCA or the DBA, were set by ETA's National Prevailing Wage Center (NPWC). In order to issue a prevailing wage determination for a position requested in the H–2B program, the NPWC needed to first match the job duties identified on the employer's request for a prevailing wage, Form 9141, to an occupational title for which a prevailing wage determination exists. On the Form 9141, the employer requested a wage for an H–2B job that the employer identified by both SOC code and by the job's duties and tasks.

For all prevailing wage requests, the NPWC assessed the employer's job description, checked the employer's submitted SOC code against the job description, and determined the most accurate SOC code for the position. If the prevailing wage was based on the OES survey, which is keyed to the SOC system, the NPWC found the SOC occupation on its online wage library [38] and assigned the OES wage. However, where the employer requested a prevailing wage based on the SCA or the DBA, the NPWC not only matched the employer's job description to an SOC occupation, but also conducted the same matching process to find the appropriate occupational title in the SCA directory or the DBA online tool.

Although there is some overlap in the occupational titles and descriptions, the SOC, the SCA and DBA taxonomies can vary in ways that are challenging in setting the prevailing wage. The occupations contained in the SCA Directory and the DBA taxonomies are often defined more narrowly than are the corresponding occupations in the SOC system.[39] Furthermore, there may not be a corresponding SCA or DBA wage for every SOC code because the classifications included in SCA and DBA prevailing wage determinations are not always as comprehensive as the SOC code. As a result, this matching process required NPWC analysts to exercise professional judgment in determining whether an occupational taxonomy contains a particular title applicable to the employer's job description, and which occupation in the applicable taxonomy most closely resembled the position requested by the employer on the Form 9141.

Often, the job duties listed on a Form 9141 requesting an SCA or DBA wage either did not correspond to the job duties of the occupational classification in the SCA and DBA systems, or contained a combination of duties that cross one or more occupational titles, while the work performed under an H–2B job order ordinarily fits within a single SOC. In the former case, where the duties described by the employer were incompatible with the duties in an occupation within the relevant SCA or DBA wage determination, the NPWC would issue a default OES-based prevailing wage determination. In the latter case, where the duties described by the employer crossed occupational titles, the NPWC would issue a prevailing wage that is the highest wage of the SCA or DBA occupations encompassing the employer's job duties.[40] *See* 2009 Guidance at 4.

[36] The current 5th edition of the SCA Directory was published on April 17, 2006, and can be accessed at *http://www.dol.gov/whd/regs/compliance/wage/SCADirV5/SCADirectVers5.pdf.*

[37] *See http://www.wdol.gov/dba.aspx.*

[38] *See* Foreign Labor Certification Data Center Online Wage Library, available at *http://www.flcdatacenter.com/.*

[39] For example, in the SCA Directory, a General Forestry Laborer, code 08520, may, among other things, sow seeds and lift seedlings, and hand scalp the seedlings. A Brush/Precommercial Thinner, SCA code 08010, may use a chainsaw, brush blade, or other hand-held equipment to remove excess trees and other vegetation. Finally, a Tree Planter, SCA code 08370, may plant trees using shovels or hoes, but may perform only part of the tree planting functions, while a Tree Planter, Mechanical, SCA code 08400, would complete the planting process using a mechanical planter. Although these tasks are all related, they are separated into different occupations in the SCA directory, with separate prevailing wages. Under the OES/SOC system, however, these tasks could all be captured under the same SOC code, 45–4011—Forest and Conservation Workers, which applies to workers who perform manual labor necessary to develop or protect forest areas, and includes forest aides, seedling pullers, and tree planters. These workers may cut trees, thin trees using saws, plant trees, or sow and harvest crops such as alfalfa.

[40] By contrast, SCA and DBA implementing regulations allow contractors to compensate employees at the rate specified for each classification in the applicable wage determination, provided they maintain payroll records accurately reflecting the hours spent working at each of the jobs. *See* 29 CFR 4.169 (SCA); 29 CFR 5.5(a)(1)(i) (DBA).

By contrast, when an SCA- or DBA-covered contract requires the performance of work for which the applicable wage determination contains no corresponding classification, the WHD engages in a conformance process to determine what the appropriate prevailing wage should be for the unlisted, relevant occupation. This generally entails identifying a wage rate that is reasonable in relationship to the wage rates of listed occupations in the applicable wage determination. 29 CFR 4.6(b)(2).[41] It would not be feasible to adopt such procedures for the H–2B program because the conformance process generally takes longer than is compatible with NPWC's obligation to set an accurate prevailing wage rate in time for an employer to recruit U.S. workers at the appropriate prevailing wage.

Finally, once the proper occupational title was identified, a similar matching process needed to occur to determine the proper area of intended employment. In the DBA context, however, the area of intended employment might determine not just the appropriate wage, but also the title and description of the job itself, because the DBA taxonomy varies from area to area and is determined by local area practice. Issuing a DBA prevailing wage determination thus required the NPWC to match the Form 9141 tasks to a specific job taxonomy for every area of intended employment.

4. Decision Not To Allow Use of SCA and DBA Wage Determinations in the H–2B Program

In the 2013 IFR, the Departments asked whether and to what extent SCA and DBA wage determinations should be used in the H–2B program. 78 FR at 24054. This request for input reflected, in part, DOL's past practice of using the SCA and DBA wage determinations in the H–2B program in a variety of ways, and whether those methods effectively served our obligation to prevent against adverse effect to the wages of U.S. workers. Our previously varied use of the SCA and DBA wage determinations to set the H–2B prevailing wage included relying on them as the sole, mandatory source for determining the prevailing wage before 2005, allowing their use at the employer's discretion in 2008, and requiring their use if they were the highest of an array of wage sources in the unimplemented 2011 wage rule. Under each of those scenarios, some groups strongly favored the approach, and others strongly objected. Comments on this subject in response to the 2013 IFR generally reflected the same divergence of opinion, with some groups favoring the mandatory use of the SCA and DBA wage determinations, others favoring only their discretionary use, and still others favoring their use only where the wage determinations were higher than the OES mean. In considering the competing interests of the regulated community with respect to using the SCA and DBA wage determinations to set the H–2B prevailing wage, the Departments' challenge is to protect against adverse wage effects resulting from the importation of foreign workers, establish a policy that promotes regulatory stability, and address the administrative challenges in conforming the SCA and DBA wage determinations in the H–2B program. Our decision, as outlined below, reflects these considerations.

This rule does not provide the option to request, for purposes of the H–2B program, a prevailing wage determination under the SCA or the DBA. The decision will result in the use of the SOC-based OES as the basis for all prevailing wage determinations in the H–2B program, unless an employer has a CBA or meets one of the conditions that would permit the submission of an employer-provided wage survey as discussed, *infra,* in Sec. II.C. In making this decision, we underscore that the SCA and DBA wage determinations remain the only appropriate wage sources for establishing the prevailing wages for use in the federal contracts to which they apply. However, for the reasons that follow, we are not allowing the use of the SCA and DBA prevailing wage determinations in the H–2B program, and the regulatory text that follows reflects that the option to use the SCA or DBA wage determinations as a source for an H–2B prevailing wage is not available. Thus, subsection (b)(5) in the 2008 rule does not appear in 20 CFR 655.10 of this final rule. This decision will have no impact on the independent statutory requirements imposed by the SCA and DBA on any employers employing H–2B or non-H–2B workers on a federal government contract covered by those statutes.[42]

a. Challenges Conforming the SCA and DBA Prevailing Wage Determinations to the H–2B Program

Our decision not to allow the use of the SCA and DBA wage determinations for establishing prevailing wage rates in the H–2B program is based largely on DOL's challenges conforming the SCA and DBA taxonomies and wage determinations to requests for prevailing wages in the H–2B program, including to avoid the potential for inconsistent prevailing wage determinations in the H–2B program. The substantial distinctions between the SOC system and the SCA and DBA occupation taxonomies, as discussed above, make the tasks of issuing and enforcing SCA and DBA prevailing wages in the H–2B program more complex than necessary to assure that U.S. workers experience no adverse wage effects when foreign workers are employed on a temporary basis.

As noted above, the SCA and DBA classifications are defined more narrowly than those in the SOC system, and job duties captured by an SOC occupation often span two or more applicable occupational titles in the SCA and DBA. Because the NPWC assigned the prevailing wage from the occupation with the higher wage in those cases where the employer's job duties cross more than a single SCA or DBA occupation, employers had an economic incentive to tailor their job descriptions on the Form 9141 to fit within the lower-paid occupational title.[43] The NPWC's experience has shown that in mixed-occupation cases in which it has issued an SCA prevailing wage determination and assigned the higher prevailing wage, it was not uncommon for the same employer to submit a new Form 9141 for the same job, and revise the job duties to conform to the lower-paying SCA occupation. In such circumstances, the NPWC then issued the lower wage because the new Form 9141 request then conformed to a single SCA or DBA

[41] *See* SCA and DBA Conformance Processes, available at *http://www.dol.gov/whd/recovery/pwrb/Tab7SCACnfrmncPrcss.pdf*; 29 CFR 5.5(a)(ii) and *http://www.wdol.gov/aam/aam213.pdf*.

[42] The SCA and DBA wage rates will remain in force and effect for all workers, including H–2B workers, who perform work on government contracts, but under this rule, the SCA and DBA wage determinations will not be used as wage sources to set the prevailing wage in the H–2B program. Therefore, when an H–2B employer with an SCA or DBA contract requests a prevailing wage from ETA's National Prevailing Wage Center, the NPWC will give the employer a prevailing wage based on the OES survey, with a reminder, as is currently issued, that the employer must comply with all applicable wage obligations. As is the case now, this obligation to comply with all applicable wage standards effectively results in the obligation to pay the highest legally applicable wage (*i.e.,* the SCA, DBA, the OES mean, or state or local minimum wages) regardless of the prevailing wage determination issued by OFLC.

[43] By contrast, the SCA and DBA systems, when administered by WHD for the purpose of application to government contracts, create considerably less economic incentive to tailor job descriptions because the contracting agency specifies job duties for the purposes of a government contract based upon the work to be performed, without regard to profit maximization.

occupation. However, if WHD later enforced the prevailing wage in cases where employees were performing job duties beyond the occupation assigned, employers might be required to pay the higher wage to the misclassified workers. But even requiring back wages and assessing civil money penalties does not provide an adequate approach, because no enforcement scheme can reach every violator. In addition, such relief will not typically reach potential U.S. applicants who may have sought the position if the employer had advertised the job with the appropriate wage. As a result, the incentive to craft job descriptions to fit the relatively more narrow SCA and DBA occupational categories thus compromises protections otherwise afforded to U.S. workers seeking to perform similar work in the area of intended employment.

The use of SCA and DBA wage determinations in the H–2B program has never carried with it the implementing tools established in the SCA and DBA regulations, such as the ability to prorate mixed-duty job descriptions or the conformance process that accompanies those wage determinations when administered by WHD. As discussed above, the conformance process used by WHD cannot be used by NPWC to issue H–2B prevailing wage determinations because the conformance process generally takes significantly longer than the timeframe under which the NPWC must issue prevailing wages. The absence of the SCA and DBA regulatory structures that facilitate WHD's effective implementation of the wage determinations, coupled with the frequent mismatch between the SOC occupations and the SCA and DBA classifications, could result in varying applications of the wage determinations between ETA and WHD. This is particularly true because ETA issues a single prevailing wage for the job opportunity in the H–2B program, while, in the SCA and DBA programs, multiple wage rates may apply to a single worker, depending on the tasks performed at various points during the job. In order to eliminate confusion concerning implementation of the SCA and DBA wage determinations, DOL will not rely on SCA and DBA wage determinations as a source for H–2B prevailing wage determinations. WHD is the agency statutorily tasked with the administration of the SCA and DBA, and has extensive experience issuing prevailing wage determinations in the specific classifications within the SCA and DBA, and that agency will have sole authority within DOL to issue a prevailing wage based on those wage determinations. Without the regulatory structure attendant to the SCA and DBA wage determinations and because of the misalignment in their taxonomies as compared to the default SOC system currently in use, we conclude that the use of those wage determinations in the H–2B program is not feasible, and we are not allowing their use as prevailing wage determination sources.

The challenges noted above—the distinctions between the occupational categories under the SOC codes and those in the SCA and DBA and the absence of the same regulatory structures that promote effective implementation of those wage determinations—have caused uncertainty and confusion in the H–2B program, which in turn has resulted in complex litigation over the proper wage. *Pacific Coast Contracting, Inc.,* Case No. 2014–TLN–00012 (Board of Alien Labor Certification Appeals (BALCA), March 5, 2014) illustrates the manner in which distinctions in occupational classification can create confusion and uncertainty for employers requesting SCA- and DBA-based prevailing wage determinations in the H–2B program. In that case, an employer requested and received two prevailing wage determinations under the SCA based on different job descriptions, one for a ''Brush/Precommercial Thinner'' and one for a ''Tree Planter.'' The employer's advertisements offered the job at a wage range that included both the lower and the higher wages from the two wage determinations. ETA denied the temporary labor certification because the job opportunity involved duties from both tree planting and pre-commercial thinning, and the employer should have offered the wage for the higher-paid job that encompassed all the duties the employer expected to be performed. The employer argued that the SCA regulation, 29 CFR 4.169, governed. That regulation permits government contractors to pay different wage rates to a service employee who performs work within more than one classification in a workweek, provided the contractors maintain payroll records accurately reflecting such hours. The Board of Alien Labor Certification Appeals (BALCA) properly rejected this argument, concluding that the ''H–2B temporary labor certification program is not governed by the SCA implementing regulations,'' but is governed solely by the H–2B regulations. *Pacific Coast,* slip. op. at 4.[44] As with *Pacific Coast,* DOL has experienced an increase in litigation involving the misalignment of the employer's job description to that in the SCA wage determination, and DOL concludes that the risk of such litigation and the potential for inconsistent prevailing wage determinations will be mitigated by no longer relying on the SCA and DBA wage determinations for establishing H–2B prevailing wage rates.

The challenges identified above in using the SCA and DBA wage determinations as prevailing wage sources would be alleviated by relying solely on the SOC-based OES as the primary wage source for prevailing wage determinations in the H–2B program. SOC occupational titles are broadly defined, and therefore capture a wider range of job duties than do the SCA and DBA occupational titles. As such, small differences in the requested job duties reported on a Form 9141 will not often result in differences in the prevailing wage issued under the OES. On the other hand, the very fact that SCA and DBA often provide more tailored occupational titles posed challenges in the H–2B program because in many cases duties for a single H–2B job opportunity cross multiple SCA or DBA occupations. The problems presented in *Pacific Coast, supra,* likely would not have arisen had the employer requested an OES prevailing wage determination because a single relevant SOC code would have captured all of the job requirements identified by the employer. Furthermore, centralizing the SCA and DBA prevailing wage determination process within WHD will reduce the potential for inconsistencies between the programs.[45]

[44] The BALCA consists of Administrative Law Judges assigned to DOL and designated to be members of BALCA, and decides immigration-related administrative appeals. 20 CFR 655.4.

[45] As we explain more fully in Sec. II.C., *infra,* DOL will accept an employer-provided survey under very limited conditions. However, where those conditions may be met, an SCA or DBA wage determination may not be submitted as an ''employer-provided survey'' under this rule because of the challenges conforming the SCA and DBA wage determinations to the H–2B prevailing wage process as discussed above. If an employer submitted SCA and DBA wage determinations as an employer-provided survey, the NPWC would still conduct the extra analysis described above, *i.e.,* analysts must align the SOC code and the job duties submitted by the employer to that occupation in the SCA or DBA taxonomy. The NPWC's challenge in implementing the SCA and the DBA wage determinations rests not in defining the proper wage for an SCA or DBA occupational title—WHD has already accomplished this task and published this information—but rather in cross-walking the employer's identified position to an established SCA or DBA occupation. By contrast, in order for an employer to base a request for a prevailing wage on an employer-provided survey, the duties of the occupation surveyed have likely already been tailored to match those in the employer's job opening. Therefore, permitting the submission of SCA and DBA wage determinations as employer-

b. Improved Prevailing Wage Procedures Without Adverse Effect to U.S. Workers

Declining to allow employers the option to request an H–2B prevailing wage based on an SCA or DBA wage determination will streamline the H–2B prevailing wage determination process and expedite review of applications by the NPWC. As mentioned above, to issue a prevailing wage determination, the NPWC matched the tasks identified in the Form 9141 to an SOC code for every prevailing wage application received. Because the OES wage data is aligned with the SOC taxonomy, once the SOC code has been identified, it is relatively easy for NPWC to issue an OES-based prevailing wage for the occupation. An additional step is required, however, to match the position the employer has described on the Form 9141 to the corresponding occupation in the SCA Directory or the DBA local practice, which can be a cumbersome process because the duties identified on the Form 9141 do not always coincide with the duties reflected in the SCA and DBA occupational titles. As was recognized in the preamble to the 2013 IFR, determining whether multiple wage rates exist for every application is a time consuming process. 78 FR at 24054. If the H–2B regulation does not permit the optional use of the SCA and DBA wage determinations as sources to set the H–2B prevailing wage, the administration of the wage process will be streamlined and expedited, and disputes over their application and the attendant litigation will be reduced.

It is particularly time consuming for the NPWC to issue H–2B prevailing wage determinations based on DBA wage determinations because the same occupations can sometimes encompass different job duties based on the prevailing practice in the locality in question. The result is that the matching process described above must be completed for each area of intended employment identified in the Form 9141. Issuing an H–2B prevailing wage determination based on DBA wage rates differs from the process for determining the prevailing wage in an area of intended employment for the OES and the SCA. When issuing an H–2B prevailing wage determination based on a DBA wage rate, the NPWC does not identify the appropriate occupation only once and then locate that occupation's proper wage in each geographic area applicable to the employer's job opportunity. Rather, the job descriptions themselves change based on the local practice. This requires the NPWC to sort through each locality's taxonomy to find a position that matches the job duties identified on the Form 9141 for each area of intended employment. This particular complexity in relying on DBA wage determinations for determining H–2B wage rates further underscores how the decision not to permit their use in the H–2B program will streamline the wage determination process, and reduce disputes over their application and any attendant litigation.

The percentage of H–2B prevailing wage requests seeking an SCA- or DBA-based prevailing wage determination steadily increased over the last few years, thereby increasing the amount of time and resources that are devoted to issuing these determinations. Although there is some fluctuation, in the three fiscal years (FYs 2010, 2011, and 2012) before implementation of the wage provisions in the 2013 IFR, the NPWC issued H–2B prevailing wage determinations based on SCA and DBA wage rates, on average, in slightly more than one percent of all H–2B wage determinations.[46] In FY 2014, the first complete fiscal year after implementation of the 2013 IFR, the NPWC issued H–2B prevailing wage determinations based on SCA and DBA wage rates in approximately seven percent of all H–2B wage requests.[47] For the first quarter of FY 2015 (October 1, 2014–December 31, 2014), SCA and DBA wage rates were issued for approximately 14 percent of all H–2B prevailing wage determinations.[48] Thus, the NPWC experienced an approximately six-fold increase in the issuance of H–2B prevailing wage rates based on SCA and DBA wage determinations through FY 2014 and an even greater increase for the beginning of FY 2015, a figure that does not take into account requests submitted but rejected because the NPWC determined, following its analysis, that the employer's job opening did not fit the SCA or DBA occupation. The decision not to permit the issuance of H–2B prevailing wage determinations based on the SCA and DBA wage rates will allow the NPWC to redirect those resources for use in processing OES prevailing wage determinations and for reviewing employer-provided surveys, thereby increasing the efficiency, consistency and speed with which all prevailing wage determinations are processed.

The 2013 IFR acknowledged that the SCA and DBA wage rates constituted sound and reliable evidence of a wage that would ''not adversely affect U.S. workers similarly employed,'' 78 FR at 24054, and this rule does not reach a different conclusion. Instead, the rule is based on the ''extensive discretionary authority [granted to] the Secretary of Labor [under the INA to use] any of a number of reasonable formulas to prevent the employment of [temporary] foreign workers from having an adverse effect upon domestic workers. The immigration statute does not specify the particular way in which avoidance of this adverse effect must be determined.'' *Florida Sugar Cane League, Inc.,* v. *Usery,* 531 F.2d 299, 303–304 (5th Cir. 1976). Thus, based on this wide latitude, we have determined that not issuing H–2B prevailing wage determinations based on SCA and DBA wage determinations will improve the administration and efficiency of the H–2B program, including promoting consistency in prevailing wage determinations, and that the remaining sources relied on to set the prevailing wage will adequately protect U.S. workers against adverse effect in their wages and working conditions arising from the employment of foreign workers. Workers who are currently working in H–2B occupations in which the SCA or DBA wages are higher than the OES mean are unlikely to be affected by the decision not to allow SCA and DBA wage determinations because most employers will have already chosen to pay the lower OES mean in that situation (unless those employers are required to pay the SCA or DBA wage rates under a government contract, as explained above).

C. Use of Employer-Provided Surveys To Set the Prevailing Wage

1. History of Employer-Provided Wage Surveys in the H–2B Program

Before 1998, in the absence of an applicable SCA or DBA wage

provided surveys would only create the same challenges for the NPWC as if they were allowed as an optional basis upon which to set the prevailing wage for H–2B purposes. Accordingly, this final rule does not permit the use of SCA and DBA wage determinations as sources to set the prevailing wage in the H–2B program, whether employers ask for them expressly in their prevailing wage requests, or rely on them indirectly through the submission of an employer-provided survey under the narrow conditions in which DOL will accept such surveys.

[46] There is no direct link between the number of prevailing wage determinations and the number of temporary employment certifications. For example, an employer may request one PWD and then a second PWD for the same job opportunity, but would use only one of those two PWDs for its temporary employment certification application. NPWC issued 45 SCA and DBA PWDs in fiscal year 2010 for the H–2B program (out of 4,096 total H–2B determinations), 77 in 2011 (out of 4,551 total), and 110 in 2012 (out of 8,370 total).

[47] 634 SCA or DBA H–2B wage determinations out of 9,250 total.

[48] 936 SCA or DBA H–2B wage determinations out of 6,427 total.

determination or a CBA, DOL determined the applicable prevailing wage rate based on a wage survey provided by the local State Employment Service Agency (SESA). *See* GAL 4–95 at p. 1–2.[49] Employer-provided surveys were permitted for setting prevailing wage rates only where the results of the employer-provided survey were ''more comprehensive'' than the SESA survey. *Id.* at 7.[50]

In 1998, DOL began using the OES to set prevailing wages in the H–2B program where there was no available CBA, SCA, or DBA wage rate, but continued to allow employers to submit employer-provided surveys in the absence of a CBA, SCA, or DBA wage rate for the employer's job, even where there was an available OES wage. *See* GAL 2–98 at pp. 1, 7. GAL 2–98 eliminated the requirement that the employer-provided survey must be ''more comprehensive'' than the SESA survey. *Id.* Instead, employers submitting a survey had to disclose the survey methodology in enough detail ''to allow the SESA to make a determination with regard to the adequacy of the data provided and its adherence to [survey] criteria.'' *Id.* The guidance required that the survey data be recently collected:

> (1) The data upon which the survey was based must have been collected within 24 months of the publication date of the survey or, if the employer itself conducted the survey, within 24 months of the date the employer submits the survey to the SESA.
>
> (2) If the employer submits a published survey, it must have been published within the last 24 months and it must be the most current edition of the survey with wage data that meet the criteria under this section.

Id.

In 2005, DOL issued revised prevailing wage guidance that allowed employers to continue to submit surveys. *See* 2005 PWD Guidance. If the job opportunity was not covered by a CBA, the 2005 PWD guidance allowed an employer to submit a wage survey even if there was an OES, SCA, or DBA wage. *Id.* at 14. This guidance maintained the timeliness of data requirements from GAL 2–98 and included a requirement that the employer provide ''the methodology used for the survey to show that it is reasonable and consistent with recognized statistical standards and principles in producing a prevailing wage (*e.g.,* contains a representative sample) . . .'' *Id.* at 15–16.

In the 2008 rule, DOL continued to allow use of employer-provided wage surveys in the absence of a CBA, provided that the surveys met minimum standards for validity. *See* 73 FR at 78,056 (20 CFR 655.10(f)). In the 2008 rule, DOL codified its historical standards for evaluating employer-provided wage surveys, stating that in each case where the employer submits a survey or other wage data for which it seeks acceptance, the employer must provide specific information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow a determination of the adequacy of the data provided and validity of the statistical methodology used in conducting the survey in accordance with guidance issued by the OFLC national office. The 2008 rule also codified the timeliness of data requirements under GAL 2–98. *Id.*

In November 2009, shortly before DOL centralized prevailing wage determinations with the NPWC, it issued a new prevailing wage guidance document reiterating the standards carried over from the May 2005 guidance document, now reflected in the 2008 rule. *See* 2009 PWD Guidance. The 2009 PWD Guidance retained the standards for evaluating employer-provided wage surveys, including the requirement that the employer submit recent data along with information pertaining to the survey's methodology. *Id.* at pp. 14–16, Appendix F.

In the 2011 Wage Rule, DOL eliminated the use of employer-provided wage surveys, except under limited circumstances. The 2011 Wage Rule stated that where there was no CBA, DBA, or SCA wage available for the job opportunity, an employer could submit a survey if the employer's job opportunity was in a geographic area where OES wage data is not available, or where the OES does not accurately represent the employer's job opportunity. *See* 20 CFR 655.10(b)(6) and (7) at 76 FR 3484. However, as discussed above, because the 2011 Wage Rule was never implemented, DOL continued to rely on the 2008 rule to implement the H–2B program. In response to the vacatur order in *CATA II,* DOL published the 2013 IFR, which eliminated the use of skill levels in setting the wages for the OES but otherwise left the 2008 rule unaltered. 78 FR at 24053. The 2013 IFR continued to allow employer-provided surveys under the terms of the 2008 rule, and DOL continued to use the 2009 Prevailing Wage Guidance to govern the review of such surveys.

2. Comments on Employer-Provided Surveys

As discussed above, the 2013 IFR made no changes to the provisions of 20 CFR 655.10 dealing with employer provided surveys, which were maintained from the 2008 rule until vacated in *CATA III.* However, in the 2013 IFR, the Departments requested public comment on ways that ''the validity and reliability of employer-submitted surveys can be strengthened,'' among other matters. 78 FR at 24055. In response, we received many comments from worker advocates, as well as from employers and their advocates.

Worker advocates argued for a move from the status quo under the 2008 rule—permissive use of employer-provided surveys—which the 2013 IFR did not modify, and which remained in place until the *CATA III* vacatur. The advocates submitted detailed proposals for limiting employer-provided surveys, generally raising concerns that the surveys are inconsistent; are unreliable; are artificially low; contribute to wage depression; are based on a conflict of interest where employers or their agents conduct or fund them; and create a burden on the agency to review. To ameliorate some or all of these concerns, worker advocates supported various survey reforms. Comments from a union federation, a labor-based think tank, and a consortium of worker advocates offered many of the criticisms of surveys, and presented many of the reform ideas.

More specifically, worker advocacy groups echoed concerns, expressed in the 2011 Wage Rule and 2013 IFR, about the consistency, reliability, and validity of employer-provided surveys, and the groups stated that such surveys are only used to depress wages.[51] One labor-based think tank asserted that such surveys are ''fundamentally flawed, regardless of the methodology used, because employer surveys are conducted and/or funded by the employer or its agent,'' creating an inherent pro-employer survey bias.

If the Departments elect to permit in the future employer-provided surveys beyond those allowed under the 2011 Wage Rule, worker advocacy groups, including a labor-based think tank and a federation of unions, overwhelmingly

[49] State Employment Service Agencies were the predecessors to the State Workforce Agencies.

[50] This final rule uses the term ''employer-provided survey'' to mean any survey that an employer submits to DOL for use in setting the prevailing wage. This term does not distinguish between different types of surveyors, and includes both surveys conducted by a government entity and those conducted by private entities. Where this final rule makes distinctions based on the type of entity conducting the survey, it uses specific terminology, such as ''state-conducted survey.''

[51] Several cited seafood processing as an example of an occupation where employer-provided surveys have been used to suppress wages.

asked that we establish significant limitations for them. One labor-based think tank suggested it that if the Departments were to permit any employer-provided surveys, it should require each survey to be publicly posted for 30 days before acceptance and create a new adjudicatory process permitting members of the public or workers to challenge the survey.

In addition, we received virtually identical submissions from a dozen worker advocacy groups who recommended that, if we did not adopt the 2011 Wage Rule, which they favored, we should adopt a multi-part test for assessing employer-provided surveys. Most of these entities submitted the same statement advancing the following position:

- Recommended that the Departments never permit employer-provided surveys if the resulting wage would be lower than the DBA, SCA, or CBA wage, consistent with DOL policy before 2005;
- Asked that the Departments require any employer to demonstrate that the OES mean is inaccurate and inappropriate for the position. In the view of these commenters, the OES mean wage is the only accurate and appropriate wage for Zone 1 occupations if BLS has sufficient data to calculate the mean wage for the SOC. They stated that employer-provided surveys should only be permitted for Zones 2 and 3 if the employer can demonstrate that the job requires no pre-hire training or experience or requires less training or experience than other jobs in that occupational group; [52]
- Recommended that we incorporate by reference the standards for employer-provided surveys in the PERM rule at 20 CFR 656.40(g), ''including requiring that employer-provided surveys must be statistically accurate and independently verifiable'';
- Recommended that we ''not accept employer-provided surveys that are based on data from H–2B employers whose wages have been depressed by participation in the prior four-tiered system or by reliance on prior employer wage surveys that did not meet the [PERM] requirements at 20 CFR 656.40(g)'';

A comment submitted by a worker advocacy project on behalf of a large consortium of worker advocacy groups reiterated the proposals above and offered further explanation. Instead of asking the Departments to use the survey standards from the PERM regulation, this comment advocated the use of survey standards from the 2009 Prevailing Wage Guidance [which already applied to the H–2B program at the time the 2013 IFR was published], emphasizing the requirement that any survey be conducted ''across industries that employ workers in the occupation.'' The comment further asked us to define the ''occupation'' in a manner consistent with the SOC. In addition, this comment recommended that, if there were occupations in which ETA receives a significant number of H–2B applications for which it determines that a job in Zone 2 or above requires less skill or experience than other jobs within the SOC (suggesting forestry as such an example), ETA should consult with its O*NET partners to establish appropriate O*NET sub-codes for that occupation. After completing this process, the comment further requested that ETA consult with BLS to establish methodologies that would allow the modification of OES-reported wage rates for those within the new sub-code. This comment asked that in all cases where an employer seeks to challenge the appropriateness of the BLS OES mean wage rate for a position within an SOC, we establish procedures to provide public notice of that application, including notice to labor organizations and others representing the economic interests of workers, allowing them to participate in the determination.

This same comment provided several additional recommendations. First, it stated that the wages of nonimmigrant workers should be excluded from any survey because the wages of such workers have been depressed by earlier wage rules. Second, it suggested a three-year phase-in of the new OES wage rate for employers who have long relied on employer-provided surveys if the industry is impacted by international trade, including in the seafood industry, in lieu of broader use of employer-provided surveys. Third, on the subject of state-conducted surveys, it expressed the view that: ''The H–2B program has been adopted by some industries as a source of cheap labor at rates below the competitive market rates for such labor. State or maritime surveys that document the degree to which certain industries have been able to exploit nonimmigrant labor to pay below the prevailing market rates in that occupational classification should not be the basis for setting future wage rates.''

On the other hand, we received several comments from employers and employer associations in favor of the use of employer-provided surveys.[53] These comments tended to provide only general support for the use of employer-provided surveys with little explanation and largely advocated in favor of the status quo established in the 2008 rule, which remained unchanged under the 2013 IFR, before the *CATA III* vacatur. Comments by several employers and employer associations in the seafood industry, as well as two U.S. Senators, are representative of this group of comments, by offering general support for surveys, particularly where conducted by a state agency. Several comments generally noted that employer-provided surveys are necessary where the type of work to be performed is not sufficiently aligned with the SOC-based OES.

Several commenters noted DOL's long history of permitting employer-provided surveys across multiple programs and asserted that the methodology standards in place at the time the 2013 IFR was published are sufficient. For example, one employer association promoted the use of employer-provided surveys as an ''important safeguard'' for employers whose work ''does not align with OES wage categories,'' but did not identify any specific occupation for which there was a mismatch. This comment further provided that ''the current provision provides more than enough safeguards to ensure such surveys are valid and reliable'' and such surveys have been ''long utilized by the Department [of Labor] across several temporary worker programs.''

Comments offered by several associations of seafood processing employers, individual employers, and members of Congress specifically endorsed use of employer-provided, state-conducted surveys by seafood processing employers. These comments considered state surveys to be reliable, cited the ''unique'' nature of seafood processing occupations, and asserted that the broader SOC category

[52] *See* the explanation of O*NET Job Zones in Sec. II. A., *supra*.

[53] As discussed above, in Sec. II.A. and B, we also received a number of comments that advocated using the wage methodology from the Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. (2013). These comments advocated returning to a tiered OES wage, and we understand these comments to refer to the appropriate OES wage rate. We note, however, that the bill also contained a provision on private surveys. Sec. 4211(a)(1) would have permitted an employer to use ''a legitimate and recent private survey of the wages paid for such positions in the metropolitan statistical area'' only where ''the wage level commensurate with the experience, training, and supervision required for the job based on Bureau of Labor Statistics data . . . is not available.'' Because BLS never issues data that takes these factors into account within an SOC, it is unclear whether this provision was intended always to permit use of private surveys, to allow such surveys only where there was no BLS wage for the SOC, or to use a methodology other than the SOC to determine whether the ''job'' was represented.

encompassing seafood processing was inappropriate to set prevailing wages for these jobs. These comments stated that the work of seafood processors is not accurately represented by the DBA, SCA, or OES job classifications, necessitating the use of employer-provided surveys compiled by state agriculture or maritime agencies. For example, one comment noted that ''the job category of 'seafood processor/picker' is considered under the much broader categories that do not accurately reflect the wages of crab pickers in the Maryland seafood industry.'' In addition, a seafood processing employer asserted that wages for seafood processers were based on particular industry challenges, including foreign competition and natural disasters that disrupt crops, and are generally based on a piece rate, making use of the OES survey data inappropriate in that industry.

Finally, although the 2013 IFR requested public comment on ways that ''the validity and reliability of employer-submitted surveys can be strengthened,'' 78 FR at 24055, we did not receive any comments from any source that provided suggestions on sample size, response rates, or other data improvements that might make such surveys more reliable.

3. The Final Rule Permits Submission of an Employer-Provided Survey Only in Limited Circumstances

Based on DOL's administrative experience with employer-provided surveys, the comments received, and the court's decision on *CATA III,* the Departments have decided to allow the submission of employer-provided surveys to set the prevailing wage in H–2B in limited circumstances. We discuss first the exceptions that *CATA III* recognized, where employer-provided surveys may be permitted in cases in which the OES does not provide data in the geographic area or where the OES does not accurately represent the relevant job classification, which may be conducted by private-sector, nongovernmental entities. We then discuss permissible employer-provided surveys conducted and issued by a state agency even where the OES may provide data to establish a prevailing wage.

a. Wage Surveys Conducted by Nongovernmental Entities

As discussed earlier in this preamble, given the substantive concerns expressed by the court in *CATA III* about the use of employer-provided surveys in the H–2B program, the options for accepting such surveys under this final rule are now necessarily more limited than when the Departments published the 2013 IFR. The court ''direct[ed] that private surveys no longer be used in determining the mean rate of wage for occupations except where an otherwise applicable OES survey does not provide any data for an occupation in a specific geographical location, or where the OES survey does not accurately represent the relevant job classification.'' 774 F.3d at 191.

These exceptions identified in *CATA III* are the exceptions DOL set out in the 2011 Wage Rule, 76 FR at 3466–3467, which were supported by contemporaneous fact-finding. The court underscored this by suggesting that DOL could publish the survey provision in the 2011 Wage Rule immediately as an IFR to satisfy its decision. In the preamble to that rule, DOL recognized that in limited circumstances, some employer-provided surveys might provide useful information—*e.g.,* where the OES survey does not provide data for a job opportunity in a specific geographic area or where a job opportunity is not accurately represented within a job classification used by the OES or alternative government surveys—and that use of an employer-provided survey would be appropriate in those cases. 76 FR at 3465, 3467. However, DOL found that, as a general rule, employer-provided surveys should not be used to establish the prevailing wage, in part because they had been used ''typically . . . to lower wages below the prevailing wage rate'' or ''to avoid using [a government] survey that produces a higher wage.'' *Id.* at 3465, 3466. The decision to reject the routine use of employer-provided surveys in the 2011 Wage Rule was based on DOL's assessment that employer-provided surveys were not consistently reliable and because their review was administratively inefficient. *Id.* at 3465–3466.

DOL continues to have concerns about the consistency, reliability, and validity of employer-provided surveys set out in the 2011 Wage Rule and in the 2013 IFR, 78 FR at 24055. Moreover, DOL experience reviewing employer-provided surveys since 2011 has not provided any demonstrable evidence that the wage information produced from non-government surveys is any more consistent or reliable than DOL determined was the case four years ago. These ongoing concerns were echoed in many comments submitted by worker advocates. The court underscored those concerns in the *CATA III* decision. In fact, the court went further, finding that DOL had arbitrarily allowed wealthy employers to pay for expensive private surveys to lower the prevailing wage when, at the same time, other employers in the same location and occupation who cannot afford such surveys pay the higher OES mean wage. 774 F.3d at 189–190. The court also noted the arbitrariness of the ''considerable'' wage disparities permitted by this system, which fails to set a consistent prevailing wage across an employment area. *Id.* 774 F.3d at 190. This kind of disparity, the court concluded, ''harms workers whether foreign or domestic, is readily avoidable, and [is] completely unjustified.'' *Id.*

We conclude that, given the reliability and comprehensiveness of the OES survey, the 2011 Wage Rule reflects reasonable limitations on an employer's ability to submit an employer-provided survey. That rule's two limited exceptions identify the only circumstances in which employer-provided surveys may provide DOL with wage information to which DOL does not currently have access. Some comments suggested that there are other categories of jobs beyond those identified in the 2011 Wage Rule in which the OES is somehow mismatched to the H–2B job opportunity. However, despite some general criticisms about a particular H–2B job's inclusion in an overly broad SOC category, none of these comments established with any conclusiveness that a specific occupation is not included in the particular SOC surveyed by the OES. Accordingly, we continue to hold the view that the OES adequately covers all occupations outside of the two exceptions identified in the 2011 Wage Rule and upheld in *CATA III.* In addition, except for the limited circumstances discussed here, it is not administratively efficient to expend resources reviewing employer-provided surveys if a robust and accurate prevailing wage under the OES is available.

Accordingly, consistent with the 2011 Wage Rule and pursuant to the court's decision in *CATA III,* this final rule permits the use of a nongovernmental employer-provided survey to set the prevailing wage only where the OES survey does not provide any data for an occupation in a specific geographical location, or where the OES survey does not accurately represent the relevant job classification. In reviewing these exceptions from the 2011 Wage Rule, we note that the characterization of both exceptions in the preamble to the rule contained ambiguities, which are clarified in this final rule. With respect to the 2011 exception that permitted

surveys where the OES does not provide any data for an occupation in a specific geographic area, the regulatory text of the rule allowed surveys in ''geographic areas where the OES does not gather wage data, including but not limited to . . . the Commonwealth of the Northern Mariana Islands[.]'' Sec. 655.10(b)(6), 76 FR at 3484. This suggests that the exception was limited to those geographic areas in which the OES did not actually collect wage data, such as the CNMI. However, the preamble to the 2011 Wage Rule further described this exception as applicable ''[w]here there is no data from which to *determine* an OES wage[.]'' 76 FR at 3476 (emphasis added). This suggests that the no-OES-data exception is somewhat broader, and will also apply where the BLS may collect data in a geographic area but cannot report a wage for the SOC in that area, possibly because the sample size is so small for that area that it does not meet BLS methodological criteria for publication.

DOL intended in the 2011 Wage Rule to permit surveys in both cases, that is, where the OES does not collect data in a geographic area and where the OES does not report a wage in a geographic area, and we adopt this construction of the exception in this final rule. In both cases, there is no BLS data from which to access a wage in the particular geographic area. This is also the reading the *CATA III* court gave to this exception when it directed that private surveys no longer be used ''except where an otherwise applicable OES survey does not *provide* any data for an occupation in a specific geographical area.'' 774 F.3d at 191 (emphasis added). Accordingly, the regulatory text in section 655.10(f)(1)(ii) of this final rule permits surveys where the OES does not collect data in a geographic area, or where the OES reports a wage for the SOC based only on national data. We adopt this construction because, where the OES reports wages for a geographic area based on a national average, that wage is not sufficiently tailored to the geographic area in which the job opportunity exists. Therefore, where the OES does not report wages for the area of intended employment—generally the metropolitan statistical area (MSA), or more broadly at the level of the MSA plus its contiguous areas, or even more broadly at the state level—this exception will apply. An example of a survey for an H–2B job opportunity that would meet this exception in some geographic areas involves SOC Code 45–3011—Fishers and Related Fishing Workers. The OES provides data for this category only for California and Washington State, and beyond those states it reports only the national wage. Therefore, surveys for Fishers and Related Fishing Workers would not be permitted in California or Washington State, but would be permitted in locations outside of those states. We expect that determining whether this exception applies should be relatively easy for both employers and DOL because it is based on objective, publicly available criteria that cannot be influenced.[54]

Similarly, the description of the second exception in the 2011 Wage Rule—where the OES does not accurately represent the job opportunity—also contained an ambiguity that is corrected here. The regulatory text set forth a somewhat unwieldy two-part test that would have led to confusion and subjectivity.[55] Sec. 655.10(b)(7)(i), 76 FR at 3484. However, the preamble to the 2011 Wage Rule suggested the employer's sole burden in invoking this exception was ''[t]o show that a job is not accurately represented within the SOC job classification system, an employer must demonstrate that the job opportunity was not in the [Dictionary of Occupational Titles (DOT)] or if the job opportunity was in the DOT, the crosswalk from the DOT to the SOC Codes places the DOT job in an 'all other' category in the SOC.'' 76 FR at 3467. In further describing this burden, the preamble stated that ''[a]ccordingly, the employer must demonstrate that the job entails job duties which require knowledge, skills, abilities, and work tasks that are significantly different than those in any SOC classification other than with the 'all other' category.'' *Id.*

DOL intended in the 2011 Wage Rule to permit surveys where the job opportunity is not within an SOC occupation, or if it is within an SOC occupation, it is designated in an SOC ''all other'' classification. The regulatory text at Sec. 655.10(f)(1)(iii) has been modified to reflect that.[56] We have concluded that in order to effectively implement this exception, it does not matter whether the job opportunity was included in the DOT and, similarly, the use of the DOT crosswalk to the SOC is no longer essential to establish this exception. What matters is whether or not the job is included within the SOC, and if it is, whether it is included within an SOC ''all other'' classification. For clarity and uniformity of application, in order to use this exception, a job opportunity must not be included within an SOC classification, or if it is, it must fall into the SOC ''all other'' classification. We further clarify that if an occupation is appropriately placed in an ''all other'' classification, it necessarily involves job duties which require knowledge, skills, abilities, and work tasks that are significantly different than those in other SOCs. Therefore, this final rule requires an employer to demonstrate only that its job appropriately falls within the ''all other'' classification to avail itself of the exception, and does not require a separate showing of uniqueness. This clarification is also consistent with the Third Circuit's reading of the exception, namely, that a private survey is available ''where the OES survey does not accurately represent the relevant job classification.'' 741 F.3d at 191. As with the first exception described above, we expect that determining whether a job opportunity fits this exception will be relatively straight-forward for all involved. Moreover, DOL will not accept an employer-provided survey on the basis that the job opportunity is within an ''all other'' SOC if the duties of the job opportunity or the employer's prior filing history suggests that a more specific SOC is applicable.

b. State-Conducted Surveys

After considering the comments submitted in response to the 2013 IFR and re-examining the administrative findings from the 2011 Wage Rule, we have determined that it is appropriate to permit prevailing wage surveys that are conducted and issued by a state as a third, limited category of acceptable employer-provided surveys, even where the occupation is sufficiently

[54] DOL's analysis of FY 2013 H–2B data shows that of the top ten SOC codes used in the H–2B program, only two—Fishers and Related Fishing Workers and Forest and Conservation Workers—may be eligible for this exception because the OES may only report a national wage for the SOC in a particular geographic area. Certified H–2B applications involving those SOC codes combined constitute only 5 percent of all such certified applications. Furthermore, only 2 percent, which is a subset of this 5 percent of all such certified applications, involve geographic areas where the SOC reports only a national mean wage.

[55] Under the 2011 regulatory text, a survey is permissible if the job opportunity was not listed in the Dictionary of Occupational Titles (DOT) and is not listed in the Standard Occupational Classification (SOC) system, or if the job opportunity was listed in the DOT or is listed in the SOC system, the DOT crosswalk to the SOC system links to an occupational classification signifying a generalized set of occupations as ''all other''; and the job description entails job duties which require knowledge, skills, abilities, and work tasks that are significantly different, as defined in guidance to be issued by the OFLC, than those in any other SOC occupation.

[56] This exception will apply if (A) the job opportunity is not included within an occupational classification of the SOC system; or (B) the job opportunity is within an occupational classification of the SOC system designated as an ''all other'' classification.

represented in the OES. In 2011, DOL rejected a comment suggesting that the SWAs rather than employers themselves should conduct surveys to determine the prevailing wage. 76 FR at 3464. DOL concluded then that SWA surveys resulted in inconsistent treatment of the same job opportunity from state to state that reflected ''not the local conditions but the quality of the surveyors and the collection instruments used[.]'' *Id.* However, DOL also concluded in 2011 that ''the prevailing wage rate is best determined through reliable Government surveys of wage rates, rather than employer-provided surveys that employ varying methods, statistics, and surveys [because using only government wage surveys] to determine the prevailing wage is the most consistent, efficient, and accurate means of determining the prevailing wage rate for the H–2B program.'' 76 FR at 3465.[57] Consistent with this assessment, we conclude that surveys conducted and issued by a state represent an additional category of reliable government surveys, and will not suffer the same infirmities as other employer-provided surveys as long as the state-conducted surveys meet the methodological standards included in this rule. The requirement that the state must independently conduct and issue the survey means that the state must design and implement the survey without regard to the interest of any employer in the outcome of the wage reported from the survey. In addition, to satisfy this requirement, a state official must approve the survey.

This result has support in comments offered by worker advocates. Many commenters argued that, if permitted, employer-provided surveys must be conducted by third parties disinterested in the results. In addition, many survey advocates pointed to state-conducted surveys as ones undertaken by neutral third parties free from bias related to the outcome. Finally, no comments suggested that state-conducted surveys suffer from an inherent pro-employer bias, and we conclude that they do not so long as they are conducted using the survey standards we adopt here. Further, we understand that state-conducted surveys are ordinarily provided free of charge, and so allowing this limited exception does not implicate the court's concern in *CATA III* that the 2013 IFR permitted wage disparities based solely on the financial resources available to employers to purchase surveys. 774 F.3d at 189–190.

Moreover, DOL has substantial experience with wage surveys conducted by the states, and DOL concludes that they are generally reliable and an adequate substitute for the OES, provided that they meet sufficient methodological standards.[58] Although ETA no longer funds the states to conduct prevailing wage surveys for the H–2B program given the availability of the OES survey, states continue to play an important role in the collection of prevailing wages for both the OES survey itself, as well as in DOL's H–2A program. As BLS explains in its technical notes for the OES survey, ''[t]he OES survey is a cooperative effort between BLS and the State Workforce Agencies (SWAs). BLS funds the survey and provides the procedures and technical support, while the State Workforce Agencies collect most of the data.'' [59] Given DOL's extensive experience partnering with the states to collect wage data, we now conclude that where a state elects to conduct a survey meeting the methodological requirements in this final rule, it is appropriate to permit that state-conducted wage survey to be used as a permissible alternative to the OES mean wage. This rule permits surveys conducted by state agencies, such as state agriculture or maritime agencies, or state colleges and universities because those sources are reliable and independent of employer influence.

DOL stated in the 2011 Wage Rule that some wage surveys conducted by states did not meet DOL's methodological standards. However, rather than barring all state-conducted surveys because some do not pass muster, we conclude that the appropriate course is to permit the submission of state-conducted surveys, but for DOL to review them carefully, and reject those that do not meet methodological requirements. In addition, DOL is no longer concerned about the depletion of administrative resources in the review of employer-submitted surveys noted in 2011 for the following reasons. *See* 76 FR at 3465, 3466. First, far fewer employers will be permitted to submit wage surveys under this final rule than were allowed under either the 2013 IFR or the 2008 Rule. In addition, because employers will no longer have the option to request SCA and DBA wage determinations, resources typically devoted to review of requests to use the SCA and DBA wage determinations can be reallocated to review employer-provided surveys. Finally, as discussed in greater detail below, this final rule will require a uniform cover sheet for all surveys submitted that will facilitate a more streamlined, consistent, and effective review. Accordingly, we conclude that the review of state-conducted wage surveys—in addition to those employer-provided surveys that may be submitted as permitted by the 2011 Wage Rule—will not place a significant burden on DOL resources or measurably impact processing times.

DOL's experience to date shows that state-conducted surveys have produced prevailing wage rates below the OES mean. However, we conclude that this is likely the result of those instruments surveying the wages of only entry level workers. The now-vacated 2009 Prevailing Wage Guidance permitted surveys using skill levels and, as a result, under the 2013 IFR, the state surveys submitted by some employers surveyed only entry level workers. We think that this explains much of the wage gap between the wages issued under these surveys and the OES mean. As the court held in *CATA III,* acceptance of such skill-level surveys incentivized some employers to submit a survey to receive a skill level wage rate that was no longer permitted under the OES. Moreover, as this rule is implemented, DOL will continue to monitor closely the methodological standards employed and the results produced by state-conducted surveys. Consistency in setting the prevailing wage is best promoted by requiring both state-conducted and other employer-provided surveys to meet the same methodological standards.

Because many state-conducted surveys use their own occupational taxonomy in conducting prevailing wage surveys, we received comments asking us to standardize job classifications by requiring all employer-conducted surveys to use the OES SOC taxonomy. We decline to impose such a standard because it would be inconsistent with DOL's current practice in other immigrant and nonimmigrant programs. Where the survey reflects the actual job duties to be performed by the H–2B workers, it

[57] For the reasons discussed above, this rule differs from the 2011 Wage Rule in that it does not require an employer to pay the highest of the OES, SCA, DBA, and CBA wage rates, and instead eliminates the use of the SCA and DBA wage rates as a source for determining H–2B prevailing wages. Similarly, this final rule does not require an employer to demonstrate that there is no available SCA or DBA wage rate before submitting an employer-provided survey.

[58] Because DOL lacks similar relationships and experience with prevailing wage surveys conducted by local governments, employers may not submit surveys conducted by any unit of government other than the state, unless the employer falls within one of the other two permissible exceptions in this final rule for a job in which the OES does not collect or report data for a geographic area or does not adequately represent the occupation.

[59] Technical Notes for May 2013 Estimates, available at *http://www.bls.gov/oes/current/oes_tec.htm.*

remains an adequate basis upon which to set the prevailing wage, and will not have an adverse effect on the wages and working conditions of U.S. workers. Accordingly, this final rule will permit employer-provided surveys, including those conducted by a state, to survey an ''occupation'' based on the job duties performed, consistent with DOL practice across labor certification programs. This practice may result in a reported wage that is below the SOC-based OES mean, which we conclude will not have adverse effect on the wages of U.S. workers because it is an accurate representation of the wages paid to other workers performing the same duties, given the use of an alternate, non-SOC-based taxonomy.[60] As discussed below, however, consistent with DOL's practice across other programs and under earlier H–2B rules, DOL will require that employer-provided surveys report wages across industries that employ workers in the occupation surveyed and will use the same cross-industry standard for surveys that are conducted by states as well as those that are allowed under the two 2011 categories. Indeed, because this final rule permits employer-provided surveys where the SOC does not adequately represent the occupation, it would frustrate the purpose of that exception to then require employer-provided surveys to be conducted across the SOC.

4. Methodological Standards Applicable to All Employer-Provided Surveys

For the reasons discussed above, this final rule permits the prevailing wage to be set based on an employer-provided survey only where the survey was conducted by a state or in the two limited circumstances where this final rule concludes that the OES wage does not provide adequate information for the geographic area or occupation. DOL will provide all other employers with a prevailing wage determined by either a collective bargaining agreement negotiated at arms' length or the OES mean wage for the occupation.

For the limited class of employer-provided surveys that are permitted, this final rule imposes methodological requirements to ensure that the survey is sufficiently reliable as the basis for setting the prevailing wage. Many of the requirements are imposed to provide consistency between the OES and an employer-provided survey to the extent possible, and were contained in the 2009 Prevailing Wage Guidance that DOL uses to implement the PERM rule.[61] Many worker advocates asked the Departments to include the PERM standards by reference in this final rule. Other requirements in this section are imposed to ensure compliance with the court's decision and order in *CATA III.* Finally, this rule requires use of a standard survey attestation that will provide needed consistency across surveys that are submitted and add efficiencies to the DOL survey review process.

Some commenters asked us to adopt additional requirements, beyond those included in the 2009 Prevailing Wage Guidance that was in effect at the time the 2013 IFR was published, for the limited class of employer-provided surveys permitted under this final rule. The commenters suggested creating an adjudicatory process to allow worker advocates to submit competing evidence in response to an employer-provided survey. DOL has never required such a process in any of the prevailing wage programs that ETA administers, and the agency declines to do so now. ETA analysts review surveys submitted across the immigrant and nonimmigrant programs within DOL's jurisdiction and possess the expertise needed to review an employer-provided survey to determine whether it falls into one of the permissible categories and meets methodological requirements. Accordingly, we determine that any value from this additional information is outweighed by the costs and delays that such a requirement would impose.

a. The Final Rule Bars the Use of Skill Levels in Employer-Provided Surveys and Requires All Surveys To Report the Mean or Median Wage of Workers Similarly Employed in the Area of Intended Employment

This final rule requires that, in the limited circumstances where an employer-provided survey is permitted, the survey must provide the arithmetic mean of the wages of all workers similarly employed in the area of intended employment, except that if the survey provides only a median, the prevailing wage will be based on the median of the wages of workers similarly employed in the area of intended employment.[62] This provision largely mirrors the language in paragraph (b)(2) applicable to use of the OES to set the prevailing wage, and requires an employer-provided survey to include all workers in the occupation regardless of skill level, experience, education, and length of employment. This provision reflects the limitations imposed by the court in the *CATA III* decision, which concluded that surveys based on skill levels impermissibly conflict with the agency's rejection of skill level-based wage determinations in the IFR. *See* 774 F.3d at 190–191.[63]

The court held in *CATA III* that permitting employers to submit surveys that used skill levels was a substantive APA violation in light of DOL's finding in the 2011 Wage Rule and the 2013 IFR that the use of skill levels to issue OES prevailing wages would depress the wages of U.S. workers because most H–2B jobs involve unskilled occupations

[60] A comment submitted by a worker advocate project on behalf of a large consortium of worker groups provided evidence that some employer-provided surveys submitted under the 2008 Rule in FY–2012 resulted in wages below the OES Level One Wage. It appears that some of the wages cited by the commenter as below the OES Level One wage were issued based on a state-conducted survey. As discussed above, a tiered wage rate was permitted for both OES wages and wages issued based on an employer-provided survey under the 2008 Rule. For the reasons discussed elsewhere in this final rule, we have now eliminated the use of skill levels in both OES and employer-provided survey wage rates and have eliminated the option for employers to submit any wage survey conducted by a non-governmental entity other than in very limited circumstances.

[61] The 2009 Prevailing Wage Guidance is also used to assess employer-provided surveys submitted in the H–1B program. It was also used to assess surveys in the H–2B program until the *CATA III* court vacated the guidance as it was applied in the H–2B program. The court's vacatur of the guidance related primarily to its authorization of skill levels in H–2B surveys and most aspects of the guidance document remain reasonable general standards for application to survey assessment.

[62] The 2008 rule at 20 CFR 655.10(b)(4), which remained unchanged under the 2013 IFR, likewise permitted the use of the median if a mean wage was not provided in the survey. This provision permitting the median wage to be used is consistent with the rule for employer-provided surveys across DOL's other programs. *See, e.g.,* 20 CFR 656.40(b)(3) (PERM).

In addition, while 20 CFR 655.10(b)(4) of the 2008 Rule provided that any median from an employer-provided survey must be the ''median of the wages of U.S. workers similarly employed,'' we do not include the ''U.S.'' from this language in the new regulatory text at 20 CFR 655.10(f)(2). DOL has never had a rule in effect for the H–2B program that limited employer-provided surveys that provide a mean wage rate to U.S. workers, and the limitation on surveys providing the median in the 2008 Rule appears to be the result of a drafting error. A discussion of the inclusion of nonimmigrant workers in employer-provided surveys is provided below.

[63] Before the court vacated 20 CFR 655.10(f) of the 2013 IFR in *CATA III,* DOL continued to permit employers to submit surveys that used skill levels, including surveys seeking wages of only ''entry level'' workers or workers with less than a year of experience based on the 2009 Prevailing Wage Guidance. That guidance required employers to survey workers who are ''similarly employed,'' which was defined as ''jobs requiring substantially similar levels of skills.'' 2009 Prevailing Wage Guidance at p. 15.

requiring few or no skill differentials. 774 F.3d at 190–191. Accordingly, to achieve consistency with our methodology for prevailing wages issued under the OES and to comply with the *CATA III* decision, this final rule prohibits employer-provided surveys in the H–2B program that report wages based on skill levels. *See* 20 CFR 655.10(f)(2) of this final rule.

In addition, the requirement that the survey provide the mean or median of the wages of all workers ''similarly employed'' requires the survey to be conducted without regard to the immigration status of the workers surveyed. In imposing this requirement, we revisit DOL's administrative finding in the 2011 Wage Rule that including the wages of H–2B or other nonimmigrant workers in the survey may depress wages. 76 FR at 3467. In addition, some comments in response to the 2013 IFR asked that we bar employer-provided surveys that include the wages of nonimmigrant workers on the same grounds. However, we now conclude, for the reasons stated below, that requiring surveys to collect data without consideration of the immigration status of nonimmigrant workers is appropriate. We caution that this final rule does not allow the selective reporting of only nonimmigrant workers, but requires all similarly employed workers to be included in the sample, regardless of immigration status. DOL will not accept wage surveys that exclude the wages of U.S. workers or exclude the wages of nonimmigrant workers.

DOL's determination in the 2011 Wage Rule was not based on empirical data showing that excluding the wages of nonimmigrant workers from a survey would result in a more accurate prevailing wage. In addition, the commenters did not submit any data supporting their request to exclude nonimmigrant workers from surveys. Requiring the survey to be collected without regard to immigration status will promote consistency with the OES, which does not bar the inclusion of nonimmigrant workers.[64] Further, commercial wage surveys generally do not exclude workers from the survey based on immigration status, and, where this final rule concludes that the OES does not provide adequate information for the occupation or geographic location, we are concerned that requiring the exclusion of nonimmigrant workers would effectively bar employers from using such wage surveys. *See* 20 CFR 655.10(f)(2) of this final rule.[65]

b. This Final Rule Requires Employers To Provide a Standard Attestation With an Employer-Provided Survey That Provides Basic Methodological Information Needed To Evaluate the Request

The content of employer-provided surveys in the H–2B program has varied widely and has not been consistently reliable, which is why such surveys are generally not permitted in this final rule. To enhance the consistency of the limited class of employer-provided surveys that are acceptable under this final rule and ensure that surveys provide sufficient information to allow DOL to make a finding that the survey is reliable, this final rule requires that each employer-submitted survey include a standard attestation, signed by the employer, based on information provided by the surveyor. The attestation must set forth specific information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow a determination of the adequacy of the data provided and validity of the statistical methodology used in conducting the survey. The form, provided as an appendix to this final rule, addresses each of the methodological requirements in this final rule.[66] Submission of this form will not preclude the NWPC from requesting additional information as necessary to evaluate and determine the validity of the survey for the purposes of issuing a prevailing wage determination.

Much of the information required by the new form was already required to be provided under the 2008 rule. This information was unchanged as to employer-provided surveys under the 2013 IFR, and required an employer to provide, among other things: ''Specific information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow a determination of the adequacy of the data provided and validity of the statistical methodology used in conducting the survey in accordance with guidance issued by the OFLC national office.'' *See* 20 CFR 655.10(f)(2) of the 2008 rule. The 2009 Prevailing Wage Guidance provided further instructions on employer-provided surveys, and the NPWC could issue a request for information to seek additional information needed to evaluate a survey that was submitted. However, in practice, employers often submitted information of varying quality and detail. Whether information required by this final rule is new or based on established survey requirements is discussed for each survey requirement in this preamble.

The enhanced survey consistency enabled by the new form will make DOL's review more efficient. In addition, the required attestation will increase the transparency of the survey review process by providing all employers the criteria against which DOL will assess the surveys in an easily accessible format. This will reduce the number of instances where DOL will reject an employer-provided survey because it provides insufficient information to assess its validity.

Although employer-provided surveys are limited to those conducted by bona fide third parties for occupations and geographic areas where the OES does not provide adequate information (as discussed in Sec. II.C.4.f below) or surveys conducted by states (as discussed in Sec. II.C.3 and II.C.4.f), it is appropriate to require the employer to attest to the methodology in the survey to the best of its knowledge and belief. Because the employer is seeking to use the survey to set the prevailing wage, the employer is ultimately responsible for ensuring that the survey meets all required standards. We expect that in many cases the employer will be able to obtain the basic methodological information required to complete the attestation from the survey instrument

[64] The OES instructs employers to exclude the wages of workers ''not covered by unemployment insurance.'' *See, e.g.,* OMB Form 1220–0042 at p. 1, available at *http://www.bls.gov/respondents/oes/pdf/forms/311000.pdf.* State law governs whether nonimmigrant workers, including H–2B workers, are covered by unemployment insurance, and so this instruction may have the incidental effect of excluding the wages of some categories of nonimmigrant workers from the OES survey in some states.

[65] As discussed in Sec. II.C.2, we also received comments asking that DOL ''not accept employer-provided surveys that are based on data from H–2B employers whose wages have been depressed by participation in the prior four-tiered system or by reliance on prior employer wage surveys that did not meet the requirements at 20 CFR 656.40(g).'' Because nearly all employers who have participated in the H–2B program in recent years paid a wage based on wage tiers until the 2013 IFR, this comment suggests the exclusion from surveys of nearly all H–2B employers, an outcome that would go beyond the position that we adopted in the 2011 Wage Rule. We decline to take this suggestion because it requests that the surveyor exclude workers performing identical tasks included in the survey. We conclude that this selective sampling suggested is inconsistent with both the requirements for random or universe sampling discussed below and with the OES methodology.

[66] The methodological standards required in this rule are consistent with—and in some circumstances more extensive than—the methodological standards from the PERM rule that some commenters urged us to apply to the H–2B program. The Paperwork Reduction Act implications of this attestation are discussed in Sec. III.C., *infra.*

itself. *See* 20 CFR 655.10(f)(4) of this final rule.

c. The Final Rule Requires Surveyors To Either Make a Reasonable, Good Faith Effort To Sample All Employers With Workers Similarly Employed in the Occupation and Area Surveyed or Base the Survey on a Random Sample of Such Employers

The 2009 Prevailing Wage Guidance suggested, but did not expressly require, that an employer-provided survey use random sampling. *See* 2009 Prevailing Wage Guidance, Appendix F at p. 2. We are concerned that leaving random sampling as only an option rather than a requirement may result in employer-provided surveys that use selective sampling or other techniques that do not result in a reliable prevailing wage. To address this concern and ensure that surveys submitted are sufficiently reliable, this final rule requires that the surveyor either make a reasonable, good faith attempt to contact all employers employing workers in the occupation and area surveyed, or survey a random sample of such employers.

Where the universe of employers is small, it may be necessary to attempt to contact all employers with workers similarly employed in the occupation and geographic area to ensure that the minimum sample size is met. A reasonable, good faith attempt to contact all employers with workers similarly employed in the occupation means, for example, that the surveyor might send the survey through mail or other appropriate means to all employers in the geographic area and then follow-up by telephone with all non-respondents.

On the other hand, if there are a large number of employers in the geographic area, surveyors will likely use the random sample option. Proper randomization requires the surveyor to determine the appropriate ''universe'' of employers to be surveyed before beginning the survey and to select randomly a sufficient number of employers to survey to meet the minimum criteria on the number of employers and workers who must be sampled, as discussed below. *See* 20 CFR 655.10 (f)(4)(i) of this final rule.

d. The Final Rule Requires All Employer-Provided Surveys To Include the Wages of at Least Three Employers and 30 Workers

Consistent with OES methodology, this final rule requires an employer-provided survey to include wages collected from at least three employers and 30 workers. BLS requires wage information from a minimum of three employers and 30 workers (after raw OES survey data is appropriately scrubbed and weighted) before it deems data of sufficient quality to publish on its Web site. In addition, these standards are consistent with the methodology from the 2009 Prevailing Wage Guidance that was in effect for the H–2B program at the time the 2013 IFR was published and with standards for the PERM program that some commenters recommended we apply to any H–2B surveys accepted. *See* 2009 Prevailing Wage Guidance, Appendix F at p. 2. Further, although the 2013 IFR sought comments on ways to improve the methodology for employer-provided surveys, 78 FR at 24055, we did not receive any comments recommending that we change these minimum sample sizes.

Based on DOL's experience reviewing employer-provided surveys and the desire to provide consistency between the OES methodology and the methodology for employer-provided surveys, we conclude that three employers and 30 workers is the minimum number of data points required to produce a reliable arithmetic mean wage for an occupation in a given area of intended employment. Under this final rule, the surveyor would take into account the nature and duties of the job opportunity, and contact a large enough sample of employers to yield usable data for at least three employers and 30 workers similarly employed, regardless of immigration status, as discussed further in Sec. II.C.4.a above. Employers responding to the survey may not report wages selectively or base responses on only a portion of the workers similarly employed in the occupation that is the subject of the survey; rather, each employer responding to the survey must collect and report wage data for all of its workers in the occupation regardless of their level of skill, education, seniority, or experience. Under this final rule, if a surveyor could not obtain wage results for 30 workers, the area surveyed may be expanded beyond the area of intended employment under the guidelines discussed further below. However, as DOL stated in the 2009 Prevailing Wage Guidance (*see* Appendix F at p. 2), in most cases a surveyor should be able to report data for at least 30 workers and three employers in the occupation and area of intended employment without expanding the survey beyond the area of intended employment. *See* 20 CFR 655.10(f)(4)(ii) of this final rule.

e. The Final Rule Allows the Area Surveyed to be Expanded Beyond the Area of Intended Employment in Certain Limited Circumstances

In any of the three limited categories in which an employer-provided survey may be submitted, this final rule permits the survey to cover a geographic area larger than the area of intended employment only if all of the following conditions are met: (1) The expansion is limited to geographic areas that are contiguous to the area of intended employment; (2) the expansion is required to meet either the 30-worker or three-employer minimum; and (3) the geographic area is expanded no more than necessary to meet these minimum requirements. The H–2B program has always required that surveys reflect wage data for the area of intended employment, but has allowed states and employers to expand wage survey boundaries under limited circumstances, such as where the employer submitting the prevailing wage request is the only entity in the area employing persons in a given occupation,[67] or when the survey elicits an insufficient response from employers.[68] When the number of workers in the area of intended employment [69]—that is, the metropolitan statistical area of the job opportunity and the area within normal commuting distance from the job opportunity—is insufficient to meet survey standards, DOL has also allowed surveys to include data from employers located outside the area of intended employment.[70] This final rule codifies the practice.

This final rule also requires that the area to which the survey expands be

[67] *See* GAL 4–95 (May 18, 1995) at p. 4 (''If the employer requesting a prevailing wage determination is the only employer [in the area of employment] employing workers in the occupation for which the prevailing wage request was made, the SESA may . . . . [s]urvey jobs outside the area of employment with the same 9-digit DOT code as was assigned to the job opportunity/occupation for which the employer requested a prevailing wage determination[.]'').

[68] *See id.* at p. 4 (''SESAs can also . . . survey jobs outside the area of intended employment if a sufficient number of employers fail to respond to a survey to provide a reliable prevailing wage determination.'').

[69] The term ''area of intended employment'' is defined at 20 CFR 655.5 of the companion H–2B rule issued on the same day as this final wage rule.

[70] *See* ETA, Prevailing Wage Determination Policy Guidance (November 2009), Appendix F, at p. 1; ETA, Prevailing Wage Determination Policy Guidance (May 17, 2005), Appendix F, at p. 1; GAL 2–98 (Oct. 31, 1997) at p. 8 (''A valid arithmetic mean for an area larger than an OES wage area, whether MSA, PMSA, or OES Balance of State area, may only be used if there are not sufficient workers in the specific occupational classification relevant to the employer's job opportunity in the area of intended employment.'').

contiguous to the area of intended employment. OFLC's program experience demonstrates that some employers have submitted surveys that expanded the survey area using remote geographic areas located far from the job opportunity. We see no reason for a survey to ignore areas immediately surrounding the job opportunity in favor of geographic areas located large distances from the job In practice, the NPWC rarely, if ever, has found a reason to accept surveys from remote locations. Thus, codifying this limitation will give surveyors clearer guidance and save employers the cost and effort of commissioning surveys the NPWC will not use. The new requirement would also save processing time, as NPWC staff would no longer be presented with surveys for areas not narrowly tailored to suit the job opportunity.

The final rule further requires that surveyors expand the geographic area only to the extent necessary to meet the minimum sample size requirements of this final rule. DOL has traditionally cautioned states and employers that, for purposes of surveys, the geographic area should be expanded only to the extent necessary to produce a representative sample,[71] and this provision codifies that expectation. This limitation reflects DOL's view that surveys submitted for labor certification purposes must take a careful approach to expansion rather than default immediately to state-wide coverage. As always, if the NPWC, in the course of its prevailing wage review, believes that the geographic area is overly broad, the NPWC may ask the employer for additional information and/or reject the survey under this subsection.

Incremental, tailored expansion is consistent with OES survey methodology. The OES data used in the foreign labor certification program (which appears on DOL's Online Wage Library) uses the concept of geographic ''levels'' to allow expansion of the area for which wages are reported. Geographic levels are indicators of the breadth of the area. When the OES survey fails to collect enough usable data for a given geographic area (for example, an MSA or a ''balance of state'' area), BLS rolls over to the next largest geographic area until it reaches an area large enough that it has enough data to report. BLS will expand the area for which it reports data only as necessary, and will report wage data for the smallest area for which reliable data is available.[72]

Surveyors may approach this requirement in two ways. In cases where an employer contracts with a surveyor familiar with the area of employment, the surveyor may determine before beginning the survey that the survey will not elicit a sufficient response to meet the regulatory requirements—for example, if there are not enough employers or workers in the area. In these cases, the surveyor may elect, at the outset, to survey a geographic area larger than the area of employment. The employer, when completing the survey attestation, discussed above at Sec. II.C.4.b, must explain the decision to expand the survey area at the outset, and describe the extent of the expansion and the reason why expansion was needed to meet the regulatory requirements based on information provided by the surveyor.

In other cases, a surveyor may use a more incremental approach. For example, the surveyor may survey the area of intended employment, but the survey still yields an insufficient response. In such cases, the surveyor must either make a reasonable, good faith effort to contact all employers employing workers in the occupation in the expanded area or survey a new, random sample of such employers in the expanded area, as discussed further in Sec II.C.4.c. *See* 20 CFR 655.10(f)(3) of this final rule.

f. The Survey Collection Must Be Conducted by a State or, in a Case Where the OES Does Not Provide Adequate Data for the Geographic Area or the Occupation, a Bona Fide Third Party

This final rule requires that if an employer provides a survey because the OES survey does not provide data for the SOC in a geographic area under 20 CFR 655.10(f)(1)(ii) or the OES does not provide adequate information for the occupation as provided under 20 CFR 655.10(f)(1)(iii), a bona fide third party must conduct the collection.[73] For purposes of this rule, H–2B employers and H–2B employers' agents, representatives, and attorneys are not bona fide third parties.[74] These exclusions are intended to prevent self-interest and other biases from affecting the reliability of employer-provided surveys under this rule, which is also why privately-conducted employer-provided wage surveys are barred in all circumstances where the OES provides adequate data. Such concerns were raised in the comments of many worker advocates in response to the 2013 IFR. These concerns are particularly acute in the case of surveys conducted by H–2B employers, representatives, agents, and attorneys. Even H–2B employers, representatives, agents, and attorneys who are not directly involved in the application for which the survey is submitted are barred from conducting a wage survey under this final rule because we conclude that H–2B employers and the entities that represent them are likely to share common interests and biases that may affect the reliability of such surveys. *See* 20 CFR 655.10(f)(4)(iii) of this final rule.

This rule reflects our determination that DOL will accept non-state surveys only where the OES either does not cover the geographic area and occupation or does not adequately provide data about the job. In these limited circumstances in which the OES does not provide adequate data, it would be inappropriate to require the employer to submit only a state-conducted survey because such a survey may not be available. As discussed in Sec. II.C.3, where an OES wage adequately represents the occupation, thus making the exceptions in 20 CFR 655.10(f)(1)(ii) or (iii) of this final rule inapplicable, a survey conducted and

[71] *See* GAL 4–95 (May 18, 1995) at p. 4 (''If it is necessary to include jobs outside the area of intended employment, the geographic area of consideration should not be expanded more than is necessary to obtain a representative number of employers employing workers in the occupation for which a determination is to be made. For example, it is appropriate to survey cities and counties that are in close proximity to the area of intended employment rather than using a State-wide average wage rate.''), GAL 2–98 (Oct. 31, 1997) at p. 8 (''However, the area of intended employment [for survey purposes] should not be expanded beyond that which is necessary to produce a representative sample. In all cases where an area that is larger than an OES wage area is used, the employer must establish that there were not sufficient workers in the area of intended employment, thus necessitating the expansion of the area surveyed.''), and GAL 1–00 (May 16, 2000), Attachment A, p. 2, available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1214* (restating this principle).

[72] The BLS practice is generally described in GAL 2–98, at p. 4 (''Expansion of Area of Intended Employment . . . The OES survey data will represent all responding employers in the area of intended employment who employ workers in that OES occupational code. If the OES survey does not include enough responses in that area and occupation to allow BLS to publish the data, the OES system will default to all MSAs, PMSAs, and Balance of State areas contiguous to the requested area within that State. If this still does not result in publishable data, the system will default to statewide information for that occupation. Because of the size of the sample, it is unlikely this will occur except in very unusual occupations or in small States.''). *See also* OFLC's explanation of ''geographic level'' at: *http://flcdatacenter.com/faq.aspx.*

[73] This requirement does not bar an employer from paying an otherwise bona fide third party to conduct the survey. In addition, employers who are eligible to submit a survey under Sec. 655.10(f)(1)(ii) or (iii) may submit a survey conducted and issued by a state.

[74] Employer associations may be bona fide third-parties for the purposes of this rule.

issued by a state is the only type of employer-provided survey that may be submitted. *See* 20 CFR 655.10(f)(1)(i). This reflects our determination, discussed above, that use of privately-conducted wage surveys would depress the wages of U.S. workers where OES wages adequately represent the occupation.

g. This Final Rule Requires the Wage Reported by an Employer-Provided Survey To Include All Types of Pay as Set Out in Form ETA–9165

This final rule requires that the wage reported from any employer-provided survey must include all types of ''pay'' to workers in the survey as required by new Form ETA–9165. Form ETA–9165 uses the definition of pay from the OES. The OES requires surveys to consider as pay and convert into the hourly rate reported to the surveyor the base rate of pay, commissions, cost-of-living allowance, deadheading pay, guaranteed pay, hazard pay, incentive pay, longevity pay, piece rate, portal-to-portal rate, production bonus, and tips. *See, e.g.,* Occupational Report of Food Manufacturing (311000) at p.2, OMB No. 1220–0042.[75] For example, if an employer guarantees a minimum hourly wage, but pays other types of monetary compensation, including tips, commission, or piece rate, in excess of the hourly guarantee, the total of the hourly guarantee and this additional compensation must be reported in the survey as the hourly wage paid. This requirement is needed for consistency with the OES. If we did not require inclusion in the survey wage reported of all of the types of pay reported to the OES, those limited surveys permitted by this final rule would necessarily undercut the OES by not reporting the complete wage paid. We understand that employers ordinarily calculate the wage paid for OES purposes by consulting payroll records. We conclude that, given this swift and accurate means of providing the complete rate of ''pay'' in a survey, this requirement is not unduly burdensome. *See* 20 CFR 655.10(f)(4)(v) of this final rule.

h. The Final Rule Requires All Employer-Provided Surveys To Be the Most Recent Edition of the Survey and Be Based on Wages Paid No More Than 24 Months Before the Date of Submission to DOL

This final rule requires that the data reported in an employer-provided survey must be based on wages paid no more than 24 months before the survey is submitted to ETA. The relevant provision of the 2008 Rule at 20 CFR 655.10(f)(3) (which was unchanged in the 2013 IFR until vacated by the *CATA III* decision) required surveys to be based on ''recently collected data[,]'' which, for ''employer-conducted'' surveys meant that the survey data must have been collected within 24 months of its submission.[76] The standard was somewhat different for ''published'' surveys, which were permitted to rely on data published within 24 months of submission, but the data could be collected up to 24 months prior to publication. As a result, at the time they were submitted to the NPWC, published surveys could contain data collected up to 48 months before submission.[77] To ensure that no employer submitted-surveys are based on out-of-date wage information, this final rule requires that all surveys, regardless of when or whether they are published, be based on wages paid not more than 24 months before submission. Thus, this final rule retains the 24-month standard that was applicable to employer-conducted surveys under the 2008 Rule. In addition, by eliminating the ''published'' survey distinction, this final rule broadens the application of the 24-month rule to all employer-provided surveys. The final rule also changes the event that delineates the 24 month period under earlier rules—the survey submitted to the NPWC must be based on wages paid, rather than wage data collected, within the 24 months prior to submission.

This final rule updates and strengthens the data timeliness requirements from earlier rules, starting with the distinction between types of surveys. Over the years, the program and its stakeholders have developed a vocabulary referring to the source of surveys supporting prevailing wage requests. These include, for example, ''published,'' ''unpublished,'' ''commercial,'' and ''private.'' In the digital age, these distinctions are no longer as meaningful or as helpful for prevailing wage determination purposes. Today, technology often allows professional surveyors and users of surveys alike to post or make surveys widely available on the Internet, thus blurring the clear distinctions that once existed between published and private surveys. In addition, the survey landscape has changed dramatically, as the production of surveys has developed into an industry with multiple choices, prices, and arrangements that include, for example, survey search services, survey subscription services, traditional surveyors for hire, and more informal or customized surveys conducted directly by private employers or their agents for limited purposes. Thus, we have concluded that these distinctions made in the 2008 Rule are less relevant, and we eliminate them.

This allows us to collapse the requirements on age of data. To be relevant and reliable, survey data must, among other things, be contemporary. Wage data, in particular, quickly becomes stale in a growing economy, and we have determined that data over 24 months old is sufficiently out-of-date that it does not permit us to set an accurate prevailing wage in the area of intended employment. Moreover, in the information age, it is no longer appropriate for the foreign labor certification program to use employer-provided wage data that at times may be up to four years old. In addition, many professional wage survey services update their surveys annually or quarterly. Requiring wage data to be based on wages paid no more than 24 months before submission in all instances, and accepting only the current edition of the survey, adds rigor and improves data quality for the limited class of employer-provided surveys permitted under this final rule. *See* 20 CFR 655.10(f)(5) of this final rule.

D. Use of a Collective Bargaining Agreement Wage To Set the Prevailing Wage

As discussed above, the 2011 Wage Rule would have required the prevailing wage to be set at the wage rate contained in a collective bargaining agreement only where the CBA rate was the highest of the OES mean, SCA, DBA, and CBA wage rates. In explaining its decision to set the prevailing wage at the CBA wage only where it is the highest applicable wage, DOL stated that ''a CBA rate below the prevailing wage would not be a valid wage for purposes of the H–2B program.'' 76 FR at 3455.

In contrast, the 2008 Rule at 20 CFR 655.10(b)(1), which was unchanged in the 2013 IFR, included the requirement that, unless the job opportunity was covered by a sports league's rules or

[75] Available at *http://www.bls.gov/respondents/oes/pdf/forms/311000.pdf*.

[76] Before the 24-month standard was codified in 2008, it appeared for years in the program's prevailing wage guidance to the states.

[77] For purposes of comparison, OES survey estimates are based on data collected over a three-year period, with the survey updated every six months based on more recent data. In addition, in the 1990s, the DOL recommended that state employment service agencies use their in-house wage surveys for only two years. *See* GAL 4–95 at pp. 9–10 (''SESA Conducted Prevailing Wage Surveys . . . Length of Time Survey Results are Valid . . . SESAs may use survey results for up to 2 years after the data are collected. After 2 years, the results of a new survey should be implemented.'').

regulations, ''if the job opportunity is covered by a collective bargaining agreement (CBA) that was negotiated at arms' length between the union and the employer, the wage rate set forth in the CBA is considered as not adversely affecting the wages of U.S. workers, that is, it is considered the 'prevailing wage' for labor certification purposes.'' 20 CFR 655.10(b)(1). Thus, these rules required the applicable CBA wage rate to be paid in all cases where the job opportunity is covered by the agreement, and would not require the H–2B employer to offer and pay a higher OES, SCA or DBA wage.

In response to the 2013 IFR, we received several comments about the appropriate role of CBA wage rates in the H–2B program. Worker advocates, including a federation of unions and a worker advocate project representing a large consortium of worker advocate groups, asked the Departments to adopt the 2011 Wage Rule's position on the application of the CBA wage rate to the H–2B prevailing wage, and require the CBA wage rate to be paid only where it is the highest wage. These comments generally reflected the concern that a wage rate is often only one of a package of terms and conditions of employment negotiated between an employer and the employees' representative, and the negotiated wage rate may reflect a quid pro quo in exchange for another improved term in the package.

After considering these comments, we adopt the approach under the 2008 Rule, which was unchanged by the 2013 IFR, in which the CBA wage rate is the prevailing wage where it is applicable to the H–2B employer's job opportunity, regardless whether the OES mean is higher. When negotiated at arms' length by a duly elected or recognized bargaining representative, the CBA wage accurately represents the ''wage paid to similarly employed workers in a specific occupation in the area of intended employment[,]'' which is DOL's definition of the prevailing wage for the purposes of its labor certification programs.[78] We are not persuaded by the argument that because the CBA wage may be offset by improvements in other terms and conditions of employment, the wage may not be an accurate representation of the prevailing wage. In setting the prevailing wage, we do not consider or adjust for the many factors that may influence a particular wage, beyond the occupational classification and the geographic area in which the H–2B job opportunity exists. Moreover, as with a CBA wage rate, the OES mean wage reflects only those forms of monetary compensation that the OES classifies as pay, and does not contain any non-monetary compensation that may exist in an occupation in a geographic area.[79] We conclude that a prevailing wage rate based on a CBA wage negotiated at arms' length by the employer and a proper employee representative does not have an adverse effect on the wages of U.S. workers because it reflects the agreement of the parties on the appropriate wage for the job opportunity. Accordingly, the CBA wage should be paid in all circumstances [80] where the job opportunity is covered by the agreement. *See* 20 CFR 655.10(b)(1) of this final rule.

E. Implementation

This final rule will apply to all new prevailing wage requests submitted on or after the effective date of this rule. Any prevailing wage request submitted before the effective date of this rule and pending at the time this rule is published will be processed under the standards of the rule in effect on the date that the prevailing wage request was filed.

III. Administrative Information

A. Executive Orders 12866 and 13563

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Under Executive Order 12866, the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and review by OMB. 58 FR 51735. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. *Id.*

This final rule is a significant regulatory action under section 3(f)(4) of Executive Order 12866. The results of the Departments' cost-benefit analysis under this Part (III.A) are meant to satisfy the analytical requirements under Executive Orders 12866 and 13563. These longstanding requirements ensure that agencies select those regulatory approaches that maximize net benefits—including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity—unless otherwise required by statute. The Departments did not use the cost-benefit analysis under this Part (III.A) for purposes forbidden by or inconsistent with the Immigration and Nationality Act, as amended.

The following analysis evaluates the expected impacts of this final rule. According to the principles contained in OMB Circular A–4, the baseline for the economic analysis of this rule is the situation most recently in effect, as described in detail below, which is based on the 2008 rule and the 2013 IFR, as modified by the *CATA III* court decision on December 5, 2014. As discussed in the preamble, on March 4, 2015, the district court in *Perez* vacated the 2008 rule, effectively ending DOL's ability to issue any prevailing wage determinations (PWDs). On March 18, 2015, the *Perez* court granted a

[78] *See http://www.foreignlaborcert.doleta.gov/pwscreens.cfm.*

[79] The OES excludes attendance bonuses, back pay, draw, holiday bonuses, holiday premium pay, jury duty pay, lodging payments, meal payments, merchandise discounts, nonproduction bonuses, on-call pay, overtime pay, perquisites, profit-sharing payments, relocation allowances, severance pay, shift differential, stock bonuses, tool allowance, tuition repayment, uniform allowances and weekend pay from the definition of pay. *See http://www.bls.gov/oes/oes_ques.htm.*

[80] As under the 2008 Rule, this final rule at 20 CFR 655.10(b)(1) excludes those occupations covered by a sports league's rules or regulations. Prevailing wages for occupations covered by a sports league's rules or regulations are set through the methodology in 20 CFR 655.10(i), as provided in the companion H–2B comprehensive rule entitled, Temporary Non-agricultural Employment of H–2B Aliens in the United States, published the same day as this final wage rule.

temporary stay of the vacatur order. The court ordered a further extension of its temporary stay on April 15, 2015. Therefore, the Departments conclude that it is most appropriate to assess the impact of this final rule compared to the situation that existed immediately prior to the court's vacatur order and during the period of the stay, *i.e.,* the rules governing the most recent PWDs actually issued. Accordingly, we compare this final rule to the situation under the 2008 rule and the 2013 IFR, as modified by *CATA III* (hereinafter referred to for ease of reference as ''the 2013 IFR'' unless a more specific reference to the 2008 rule is required).

The 2013 IFR establishes that when the prevailing wage determination (PWD) is based on the Occupational Employment Statistics (OES) survey, the wage rate is the arithmetic mean of the OES wages for a given geographic area of employment and occupation. The 2013 IFR permits, but does not require, an employer to use a PWD based on employer-provided surveys approved by DOL or Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations. The 2013 IFR also requires the use of an applicable Collective Bargaining Agreement (CBA) wage rate, if one exists. Finally, the 2013 IFR requires that employers offer H–2B workers and U.S. workers hired in response to the required H–2B recruitment a wage that is at least equal to the highest of the prevailing wage or the federal, state, or local minimum wage.

On December 5, 2014, the Court of Appeals for the Third Circuit in *CATA III* vacated the provision of DOL's regulation permitting the use of employer-provided surveys as a basis for PWDs. Accordingly, after that date, DOL no longer accepted such wage surveys when issuing PWDs. Therefore, under the baseline, H–2B employers can use PWDs based on the OES mean, the SCA or DBA wage rate, or the CBA wage rate if one exists.

This final rule retains the OES mean as the default wage, does not permit the use of wage determinations under the SCA or DBA as H–2B wage sources, and establishes three circumstances in which employer-provided surveys may be accepted for PWDs. They are as follows:

- The survey is submitted for a geographic area where the OES does not collect data, or in a geographic area where the OES provides an arithmetic mean only at a national level for workers employed in the Standard Occupation Classification (SOC); [81]
- The job opportunity is not included within an occupational classification of the SOC system or is within an occupational classification of the SOC system designated as an ''all other'' classification; or
- The survey was conducted and issued by a state, including any state agency, state college, or state university.

The final rule continues to use the OES mean as the basis for setting H–2B prevailing wage rates. The OES mean wage rate conforms more closely to the wages paid by employers in a given geographic area of employment and occupation and, as discussed above, is the most appropriate wage to use to prevent adverse immigration-induced labor market distortions inconsistent with the requirements of the Immigration and Nationality Act. The use of the OES mean is consistent with the 2013 IFR in which we explained that the four-tier skill levels used in the 2008 rule did not adequately ensure that H–2B workers are paid a wage that will not adversely affect the wages of similarly employed U.S. workers.

Historically, SCA and DBA wage determinations developed for work on government contracts were used as sources for H–2B prevailing wages before the OES survey began to dominate the wage survey landscape. In the 2008 rule, SCA and DBA wage rates became permissive sources; employers could request their use as a source for PWDs among an array of sources. The 2013 IFR retained the 2008 rule's approach, allowing employers to select among the array of available sources (OES mean, SCA, DBA, or employer-provided surveys).

The final rule does not permit the use of SCA and DBA wage determinations as sources for the H–2B prevailing wage. SCA and DBA wage determinations would still be applicable to and enforced in H–2B work covered by a government contract, but the prevailing wage issued by OFLC would be based on the OES mean, unless an employer-provided survey was submitted and approved. The primary benefits of this approach are the resulting streamlined PWD process, the removal of challenges associated with conforming the SCA and DBA wage determinations into the H–2B prevailing wage process, and the alleviation of the administrative burden associated with matching employers' job descriptions submitted in prevailing wage requests with the appropriate SCA or DBA job classifications.

The final rule allows the use of employer-provided surveys in limited circumstances for determining H–2B prevailing wages. First, in specific geographic locations where OES does not collect wage data or the OES reports only a national-level wage for the SOC, employers are permitted to use a survey that meets the methodological standards required by this final rule. The only geographic area where OES wage data are not collected is the Commonwealth of the Northern Mariana Islands (CNMI).[82] Of the top ten occupations that account for approximately 70 percent of all certified H–2B applications during FY 2013, workers engaged in ''Forest and Conservation'' and ''Fishers and Related Fishing'' related positions are the two occupations for which the OES reports a wage at the national level in some geographic areas. Based on this analysis, certified H–2B applications involving those two SOC codes in geographic areas where wages are reported only at the national level combined constitute no more than 2 percent of all such certified applications.

Second, employers will be able to submit a survey if the job opportunity is not included in the SOC or is in a SOC ''all other'' category. Based on an analysis of approximately 9,250 H–2B PWDs issued during FY 2014, DOL issued a PWD using a SOC ''all other'' category in only 6 instances, constituting less than 0.1 percent of all PWDs issued. Therefore, DOL believes the category is largely unavailable and it has received H–2B certification requests that would meet this category only on very rare occasions.

Third, the final rule permits employers to request a PWD based on a wage survey of all similarly employed workers in the job and area of intended employment where such a survey is conducted and issued by a state. Such a survey must also meet the new methodological standards contained in the final rule.[83] Approximately 1 percent of employers used state surveys as the basis for their PWDs under the 2013 IFR.[84]

The 2008 rule and the 2013 IFR permitted employers to submit

[81] BLS publishes data at the national level only when data for smaller geographic areas are not available.

[82] Currently, employers are not using the H–2B program in the CNMI. In fiscal years 2013–14, DOL issued four PWDs for H–2B positions in the CNMI: Three based on the OES mean wages in Guam and one based on the DBA. However, no H–2B positions were certified during the same period.

[83] A state survey refers to a survey conducted by any state agency, state college, or state university.

[84] Source: A random sample of 524 employers with 10,282 certified H–2B positions between May 1, 2013, and April 30, 2014.

employer-provided surveys as a wage source in lieu of the OES or other sources. The 2011 rule virtually eliminated the use of employer-provided surveys to set the prevailing wage in the H–2B program.

After the issuance of the 2013 IFR and the establishment of the default wage at the OES mean, the use of employer-provided surveys grew exponentially. Pre-IFR use of these surveys included about 1 percent of all PWDs, while post-IFR use climbed to about 30 percent of all PWDs.[85] A review of some post-IFR employer-provided surveys used as wage sources indicated that, in many cases, employers reported wages of workers at the entry-level of the occupation. This may be a key reason why some employer-provided surveys have resulted in wages far below the OES mean.

In addition, in many cases the survey methodology employed was insufficient to produce a reliable and valid wage for the occupation, largely because the current survey standards do not adequately promote valid and reliable results. Given the low quality of many of the surveys deemed acceptable under the existing wage guidance, we have determined that if employer-provided surveys continue to be available, additional methodological rigor is needed to support their continued use. Therefore, the final rule improves the methodological standards required for employer-provided surveys to improve their reliability and validity. Key improvements to the methodological standards generally are as follows:

1. Require the survey to include the mean or median wage of all similarly employed workers in the area of intended employment, regardless of skill level, experience, education, and length of employment;
2. Require the survey to make a reasonable, good faith attempt to contact all employers employing workers in the occupation and geographic area surveyed or conduct a randomized sample of such employers;
3. Require the survey to be independently conducted and issued by a state and approved by a state official or, in the limited circumstances where the OES wage does not provide adequate data for the occupation or geographic area, a bona fide third party;
4. Require the survey to include at least thirty employees and three employers in a sample;
5. Require that surveys include all types of pay set out in the OES survey instrument, including payment of piece rates or production bonuses in the wages reported; [86]
6. Require the wages reported in the survey be no more than twenty-four months old;
7. Require that that surveys be conducted across industries that employ workers in the occupation; and
8. Require that employers submit a new Employment and Training Administration (ETA) Form ETA–9165, which permits DOL to better assess the validity and reliability of the survey.

Changes in the method of determining prevailing wages required by this final rule will result in additional compensation (*i.e.,* transfer payments) for both H–2B workers and U.S. workers hired in response to the required recruitment. In addition, some employers will face additional costs to meet the higher methodological standards of the employer-provided survey. In this section, the Departments discuss the relevant costs, transfers, and benefits that may apply to this final rule.

The impact of wage increases to employers was measured by comparing the prevailing wages under the final rule to the H–2B hourly wages under the baseline (*i.e.,* the 2013 IFR, as modified by the *CATA III* court decision). Under this final rule, DOL would base PWDs on the OES mean, the CBA, and employer-provided surveys in very limited circumstances. For this economic analysis, DOL first calculated the increase in wages as the difference between the prevailing wages under the final rule and the H–2B hourly wages under the baseline for each certified or partially certified application. Next, DOL weighted this wage differential by the number of certified workers on each certified or partially certified application. DOL then summed those products to calculate the weighted average wage differential for all certified H–2B applications under the baseline.

The equation below shows the formula that DOL used to calculate the weighted average wage differential (WWD). In the formula, *Prevailing Wage* is the arithmetic mean of the OES-reported wage, the CBA wage, or the wage from an employer-provided survey under the final rule; and *Certified H–2B Wage* is the H–2B hourly wage under the baseline.

$$\mathrm{WWD} = \sum_{i=1}^{n} \left(\text{Prevailing Wage}_{i} - \text{Certified H-2B Wage}_{i}\right) \times \left(\frac{\text{Number of Certified Workers on Each Application}_{i}}{\text{Total Certified Workers under the Baseline}}\right)$$

Finally, to estimate the total transfer to all H–2B workers that results from the increase in wages due to the application of the final rule's new PWD method, DOL multiplied the weighted average wage differential by the total number of H–2B workers in the United States in a given year.

Under the current baseline, employers could select their prevailing wage source from the OES mean, the SCA or DBA wage, or the CBA wage if one exists. DOL believes employers that select prevailing wages based on the OES mean under the current baseline would continue to select the OES mean, except for those employers who elect to submit a survey in the three circumstances in which surveys are accepted for PWDs under the final rule. As a result, the final rule will have no impact on the employers who continue to use the OES mean. Employers who use the OES mean account for

[85] Source: H–2B PWDs issued FY 2012 and first quarter of FY 2014.

[86] The types of pay that must be reported in the OES survey include: Base rate of pay, commissions, cost-of-living allowance, deadheading pay, guaranteed pay, hazard pay, incentive pay, longevity pay, piece rate, portal-to-portal rate, production bonus, and tips.

approximately 95 percent of the total PWDs under the current baseline.[87]

One of the more challenging aspects of this economic analysis is accurately determining the expected prevailing wages for the employers that selected their prevailing wage sources from the SCA and DBA wage determinations (approximately 5 percent of employers under the current baseline). Employers that submitted an SCA or DBA wage determination as a source for their prevailing wage under the current baseline will no longer be able to use the SCA or DBA wage determinations under the final rule. Therefore, they can either request the OES mean wage as the prevailing wage source or submit a survey conducted and issued by a state or third party, if one is available and permissible and the wage from the survey is lower than the OES mean.[88] However, DOL expects few, if any, employers will be able to use a state survey because they currently are available on a limited basis for the seafood industry, while the industries that use SCA or DBA wages as their prevailing wage sources are construction, forestry, and landscaping. A small number of employers in the forestry industry will be eligible to submit an employer-provided survey because OES data is reported only at the national level; however, due to the fact that employers in these industries typically operate on multi-state itineraries on a single H–2B certification and different prevailing wage rates exist within each area of employment within each itinerary, DOL does not have sufficient data to identify the employers that would be able to switch from the SCA or DBA to an employer-provided survey as their prevailing wage source under the final rule. Therefore, DOL assumed that all the employers that selected their prevailing wage sources from the SCA and DBA wage determinations will select the OES mean as their prevailing wage source under the final rule. This represents a conservative, upper-bound assumption.

Employers that received a prevailing wage determination based on a survey under the 2013 IFR before the *CATA III* decision have not been able to use a survey as a prevailing wage source since that decision. Thus, the baseline for this analysis includes no surveys. However, employers will be able to use a survey conducted by a state if the survey meets the new methodological standards under the final rule. DOL cannot estimate with reasonable accuracy which employers will be able to submit a state survey that meets the new methodological standards under the final rule. Furthermore, no information exists that allows DOL to measure how much the new survey standards will affect the number of state surveys submitted or their resulting wages. Therefore, we are required to make certain assumptions, which are described in the following discussion.

Employers that submitted a state survey as their PWD source under the 2013 IFR prior to the *CATA III* decision will likely continue to submit such a survey if they can still obtain a wage rate that will cost them less than the OES mean. Otherwise, these employers will select the OES mean as their prevailing wage source. DOL anticipates that the wage rates from state surveys will increase because the final rule requires these surveys to include the mean wage of all similarly employed workers, while most state surveys submitted under the 2013 IFR included only entry-level workers.[89] Therefore, it is expected that the new wage rates from state surveys that meet the new methodological standards will increase, but not to the level of the OES mean (the current baseline) or employers would not submit these surveys. Accordingly, it is assumed that for an employer that submitted a state survey under the 2013 IFR before the *CATA III* decision, the new survey wage rate would increase to the OES wage level 2 if the wage rate from the survey that the employer previously submitted was below this level.[90] It is also assumed that if an employer submitted a state survey under the 2013 IFR with a wage rate between OES wage levels 2 and 3, the new wage rate from a state survey that meets the new methodological standards would increase to the OES mean. Therefore, the employer would select the OES mean as the prevailing wage source rather than use a new state survey. Approximately 84 percent of previous state survey wage rates were between OES wage levels 1 and 2.

Under certain circumstances, employers requesting H–2B certifications are permitted to use an employer-provided survey that meets the methodological standards required under this final rule. Such employers must be operating in geographic areas where the OES does not collect data or where the OES reports a wage for the SOC at the national level only. In addition, employers requesting H–2B certifications for an occupation not included in the SOC or designated as an ''all other'' classification will be able to use an employer-provided survey. However, DOL does not have enough information to predict with reasonable accuracy which employers are going to submit the OES mean as the prevailing wage source or which employers are going to submit an employer-provided survey. In addition, DOL has no information about how much the new survey requirements will affect the number of surveys submitted or the resulting wages. Therefore, DOL estimated the upper-bound wage impact of this final rule by applying the OES mean wages to employers that potentially fall into the two categories described above. DOL estimated that employers in these two categories represent approximately 2 percent of all employers in the H–2B Program. Therefore, the upper-bound estimate of the impact would not substantially overstate the true wage impact of this final rule.[91]

DOL based its analysis on sample data drawn from a pool of 3,593 employers with 92,602 certified H–2B positions between May 1, 2013, and April 30, 2014, to represent the most recent data available for the one-year period following the publication of the 2013 IFR on April 24, 2013. A statistically valid sample that accurately represents the employers with certified H–2B

[87] In the first quarter of FY 2014, approximately 65 percent of the total H–2B PWDs were based on the OES, 30 percent were based on employer-provided surveys, and 5 percent were based on SCA or DBA wage determinations. The 30 percent of the total PWDs that were based on employer-provided surveys before the December 5, 2014, *CATA III* decision are now issued based on the OES mean. Therefore, under the current baseline the OES mean accounts for about 95 percent of the total PWDs.

[88] Although an employer-conducted survey may also be provided under this final rule if it is higher, we expect that an employer will only submit a survey to set the prevailing wage if the survey wage would be lower than the OES mean.

[89] Even if the new wage rates from state surveys that meet the new methodological standards are expected to increase from the wage rates in the surveys that employers submitted under the 2013 IFR before *CATA III,* these employers will experience wage decreases under this final rule because they currently use the OES mean as their prevailing wage source under the current baseline.

[90] The OES level 2 wage is approximately the 34th percentile on the OES wage distribution for that occupation in the applicable geographic area. The OES level 3 is the same as the OES median. *See* Sec. II.A.1, *supra,* for an explanation of the linear interpolation that set the four wage levels in H–2B.

[91] At least some of the employers in these two categories that represent approximately 2 percent of all employers in the H–2B program would be able to submit an employer-provided survey that provides a lower wage than the OES mean. DOL could not take this into account in its analysis to estimate the changes in their prevailing wages due to data limitations on which employers are going to submit an employer-provided survey and the resulting wages. However, as discussed *infra,* DOL estimated the cost of conducting an employer-provided survey by a third party for all these employers and included it in the total cost of this rule, again presenting an upper-bound estimate of the cost of this final rule.

positions between May 1, 2013, and April 30, 2014, was drawn to provide a timely measure of the change in hourly wages that would result from this final rule without having to include all the employers with certified H–2B positions following the publication of the 2013 IFR. Consequently, DOL used a random sample of 524 employers with 10,282 certified H–2B positions between May 1, 2013, and April 30, 2014, and conducted a manual extraction of area-of-employment data from these certified H–2B applications, including the city, county, state, and zip code corresponding to the area of employment. DOL then obtained the prevailing wage rate actually certified, the source of the PWD, and the OES mean wage for each employer with certified H–2B positions in the random sample of 524 by SOC code and county of employment from H–2B program data between May 1, 2013, and April 30, 2014.[92] This random sample of 524 employers is consistent with standard statistical methods and exceeds the minimum sample size requirement.[93]

Using the random sample of 524 employers, DOL calculated the increase in wages as the difference between the baseline[94] and the Final rule. This differential was weighted by the number of certified workers on each certified or partially certified application.[95] Those products were then summed to calculate the weighted average wage differential for the randomly selected sample of 524 employers. DOL estimated that the changes in the method of determining wages under this final rule would result in an hourly wage increase of $0.16. The actual wage change for employers will vary depending on the current source for their prevailing wage determinations. For example, employers in the forestry industry may experience greater increases than the average wage increase of $0.16 because more employers in that industry previously selected SCA and DBA wage determinations as their prevailing wage sources. On the other hand, employers in the seafood industry may experience a wage decrease due to the fact that these employers have historically used state-conducted wage surveys not based on the SOC, and such surveys are allowed in certain circumstances under the final rule. Finally, many employers in the food services industry will experience no wage change because almost all employers in that industry already selected the OES mean wage as their prevailing wage source.

The remaining sections of this analysis present the estimated costs of the final rule, the transfer payments associated with the increased wages resulting from the changes in the wage determination method, and the benefits of the final rule.

1. Costs

During the first year that this rule is in effect, employers would need to learn about the new rule and its requirements. DOL estimates this cost for a hypothetical entity interested in applying for H–2B workers by multiplying the time required to read the final rule and/or any educational and outreach materials explaining the wage calculation methodology under the rule by the average compensation of a human resources manager (SOC code 11–3121).[96] In the first year of the rule, if adopted, DOL estimates that the average business participating in the program will spend approximately one hour of staff time to read and review the new regulation. This amounts to approximately $76.43 ($76.43 × 1 hour) in labor costs in the first year. Therefore, DOL calculated the total estimated cost to employers with certified H–2B positions as $274,613 (1 hour × $76.43 × 3,593).

Employers are allowed to submit wage surveys as long as they meet the criteria set forth in the final rule. DOL estimated that approximately up to 185 or 2 percent of H–2B PWDs could be based on private wage surveys.[97] Because a survey can be valid for 24 months, it is estimated that there will be 93 new private wage surveys conducted by third parties for employers each year (93 = 185/2).

Accordingly, these employers will incur additional costs. The cost of conducting a wage survey by a third party can vary widely depending on various factors, such as the scope of the survey, the survey methodology used, the number of respondents, and the nature of the sample. After reviewing pricing information provided by some survey service providers,[98] DOL estimates that it would take a manager (SOC code 11–0000) 8 hours at $76.00 per hour to review and a survey researcher (SOC code 19–3022) a total of 40 hours at $36.58 per hour to randomly select at least 3 employers and 30 employees (8 hours), collect their wage data (16 hours), calculate the hourly average wage (8 hours), and write a report and provide it to the employer (8 hours).[99] Therefore, the direct cost of conducting a wage survey by a third party is estimated at $2,071.20 (= $76 × 8 + $36.58 × 40). DOL then added 10 percent to $2,071.20 to account for a profit for the third party surveyor and the full cost of conducting a wage survey is $2,278.32 (= $2,071.20 × 1.1).[100] In addition, a human resources manager (SOC code 11–3120) at $76.43 and a payroll and timekeeping clerk (SOC code 43–3051) at $27.40, would need to spend one hour and four hours, respectively, for each employer to provide wage information for all of its employees in the same occupation to the third-party agent. This amounts to an additional $186.03 for each employer

[92] Depending on the scope of work required by H–2B workers, multiple PWDs may be needed if the work will be performed in multiple locations for a certified or partially certified application (such as those involving carnival or reforestation workers). While the DOL's program database collects the total number of H–2B workers certified for each certified or partially certified application, the DOL has limited information about H–2B workers certified on the same application who were paid different prevailing wages because they performed work in multiple locations. In this analysis for the certified and partially certified applications with multiple prevailing wage rates, DOL used the average wage rate for each application.

[93] The statistically valid minimum sample size with 95 percent confidence level and 5 percent margin of error is 347. DOL selected a much larger sample than 347 to strengthen the statistical results of the sample in this analysis.

[94] Of the random sample of 524 employers following the publication of the 2013 IFR, 30 percent of the total PWDs were based on employer-provided surveys. DOL replaced the prevailing wages from employer-provided surveys with the OES mean to accurately represent the current baseline.

[95] DOL weighted the wage differentials by the number of certified workers as opposed to the number of workers requested because a decrease in the number of workers granted may occur for several reasons, including the hiring of a U.S. worker in response to required recruitment.

[96] The hourly compensation rate for a human resources manager is calculated by multiplying the hourly wage of $53.45 (derived from the 2013 Occupational Employment Statistics) by 1.43 to account for private-sector employee benefits (Source: Bureau of Labor Statistics). Thus, the loaded hourly compensation rate for a human resources manager is $76.43.

[97] During the fiscal years 2013–14, there were on average 9,253 PWDs. DOL estimated that 2 percent of 9,253, or 185, could be based on private wage surveys under the final rule.

[98] Custom-Insight: Employee Survey Pricing, *http://www.custominsight.com/employee-engagement-survey/pricing.asp.*

Salary Basics—Compensation Surveys, *http://www.salary.com/Small-Business-Advice/advice.asp?part=par408*

HRA–NCA 2014 Benefit and Compensation Survey, *http://www.hra-nca.org/sites/default/files/survey-documents/HRA%202014%20Order%20Form.pdf.*

[99] Hourly wages were derived from the 2013 Occupational Employment Statistics (OES) wage data (*http://www.bls.gov/oes/#data*) and were multiplied by 1.43 to reflect a fully loaded wage rate.

[100] Profit is the amount a business charges above their direct cost. Profit percentage varies widely by industry, and may also vary from business to business within the same industry. DOL used 10 percent because profit typically varies from 3 to 12 percent for the Corps of Engineers contracts. *http://www.nws.usace.army.mil/Portals/27/docs/construction/Preconstruction%20packet/Fig%208-2%20Modification%20Pricing%20Guidelines.pdf.*

surveyed and $558.09 for all three employers surveyed. Therefore, the total cost of conducting an employer-provided survey that meets the requirements of this rule is estimated at $2,836.41 (= $2,278.32 + $558.09). Assuming that 93 employers will conduct a private wage survey by a third-party each year that is valid for two years, DOL estimates that the total cost of conducting a private wage survey per year at $263,786 annually ($2,836.41 × 93).[101]

In addition to the 185 employers that will submit an employer-provided survey, DOL estimated that approximately 93 employers[102] will submit a state survey for their PWDs. As discussed in the PRA section of the preamble, for each submission, the employer's human resource manager ($76.43) will take 25 minutes to complete and sign Form ETA–9165 once the third-party surveyor's survey researcher ($36.58) takes 50 minutes supplying the necessary information. The resulting cost for all 278 employers who submit a private or state survey is $17,352 [($76.43 × 116 hours) + ($36.58 × 232 hours)].

The total cost of the final rule is estimated at $555,751, which is the sum of the regulatory familiarization cost ($274,613), the cost of conducting private wage surveys ($263,786), and the cost of completing and signing Form ETA–9165 ($17,352).

2. Transfers

Transfer payments, as defined by OMB Circular A–4, are payments from one group to another that do not affect total resources available to society. Transfer payments are associated with a distributional effect but do not result in additional benefits or costs to society. The primary recipients of transfer payments reflected in this analysis are H–2B workers and U.S. workers hired in response to the required recruitment under the H–2B program. The primary payers of transfer payments reflected in this analysis are H–2B employers. Under the higher wage obligation established in this final rule, those employers who participate in the H–2B program are likely to be those who have the greatest need to access the H–2B program.

Employment in the H–2B program represents a very small fraction of the total employment in the U.S. economy as well as in the industries represented in the program. The H–2B program is capped at 66,000 visas issued per year, but an H–2B worker who extends his/her stay in H–2B status may remain in the country and not count against the cap. The 2013 IFR assumed that half of all such workers (33,000) in any year are able to extend their stay at least one additional year and that half of those workers (16,500) are able to extend their stay a third year. *See* 78 FR 24059 (April 24, 2013). Therefore, DOL used 115,500 as the total number of H–2B workers in a given year. The change in the method of determining the prevailing wage rate will result in transfers from H–2B workers to U.S. workers and from U.S. employers to both U.S. workers and H–2B workers. A transfer from H–2B workers to U.S. workers arises because, as wages increase for H–2B workers, jobs that would otherwise be occupied by H–2B workers may be more acceptable to a larger number of U.S. workers who will apply for the jobs. Additionally, faced with higher H–2B wages, some employers may find domestic workers relatively less expensive and may choose not to participate in the H–2B program and, instead, may employ U.S. workers. Although some of these U.S. workers may be drawn from other employment, some of them may currently be unemployed or out of the labor force entirely. DOL is not able to quantify these transfers with precision. Difficulty in calculating these transfers arises primarily from uncertainty about the number of U.S. workers currently collecting unemployment insurance benefits who would become employed as a result of this rule.

To estimate the total transfer to H–2B workers that results from the increase in wages due to application of the final rule's new method of determining the prevailing wage, DOL multiplied the weighted average wage differential ($0.16) by the total number of H–2B workers estimated to be in the United States in a given year (115,500). For the number of hours worked per day, seven hours were used as typical. For the number of days worked, DOL assumed that the employer would retain the H–2B worker for the maximum time allowed (9 months or 274 days) and would employ the workers for five days per week. Thus, the total number of days worked equals 196 (274 × 5/7). The following equation shows the formula used to compute the total upper-bound impact per year:

$0.16 (Weighted average wage differential)
× 7 (Working hours per day)
× 196 (Total number of of days worked)
× 115,500 (Total number of H–2B workers)
= $25.35 million (Total impact per year)

We estimated the total impact associated with the increased wages at $25.35 million per year. These calculations also do not include the wage increase for U.S. workers hired in response to the required H–2B recruitment due to a lack of data regarding key points such as the number of U.S. workers hired in response to the employer's recruitment efforts who would be entitled to the H–2B wage rate and what those workers currently earn.

3. Benefits

The Departments have determined that a new wage methodology is necessary for the H–2B program, particularly in light of the *CATA III* decision vacating the regulation authorizing the use of employer-provided surveys as a basis for PWDs. We want to ensure that the method for calculating the prevailing wage rate results in the appropriate prevailing wage necessary to ensure that U.S. workers are not adversely affected by the employment of H–2B workers, including when it results from a survey. The decision to discontinue use of the SCA and DBA wage determinations as a wage source and heighten the methodological standards of employer-provided surveys would help ensure that H–2B workers are paid a wage that will not adversely affect the wages of similarly employed U.S. workers.

The increase in the prevailing wage rates induces a transfer from participating employers not only to H–2B workers but also to U.S. workers hired in response to the required H–2B recruitment. The increase in the prevailing wage rates is expected to improve workers' productivity and the quality of their work, thereby mitigating the higher labor costs to employers. Furthermore, higher prevailing wages promote the retention of experienced workers and minimize the costs of hiring and training new employees, and also create an environment of increased compliance with workplace safety and workers' compensation rules and regulations.[103] These are important benefits and a key aspect of the Departments' mandate to ensure that the

[101] This is an overestimation because some employers would have the option to use surveys published by the state or other employers in the same area of employment for a minor fee. Therefore, the actual number of employer-provided surveys conducted per year would likely be fewer than 93 per year.

[102] During the fiscal years 2013–2014, there were on average 9,253 PWDs. DOL estimated based upon data from the random survey of 524 employers that 1 percent of 9,253, or 93, would be based on state surveys under the final rule.

[103] Hamid Azari-Rad et al., ''State Prevailing Wage Laws and School Construction Costs,'' Industrial Relations, vol. 42, No. 3 (July 2003), available at *http://ohiostatebtc.org/wp-content/uploads/2014/04/School_Costs_9.pdf.*

wages of similarly employed U.S. workers are not adversely affected by H–2B workers.

The discontinued use of the SCA and DBA wage determinations as a source for the prevailing wage in the H–2B program offers additional benefits. The primary benefits of this approach are the streamlining of the PWD process, the removal of challenges associated with conforming the SCA and DBA wage determinations into the H–2B prevailing wage process, and the alleviation of the administrative burden associated with matching employers' job descriptions submitted in prevailing wage requests with the appropriate SCA or DBA job classifications.

A review of post-IFR employer-provided surveys used as wage sources indicated that, in many cases, employers report wages of workers at the entry level of the occupation instead of reporting the mean wage of all workers in the occupation as required when the prevailing wage is based on the OES. In addition, in many cases the survey methodology employed was insufficient to produce a reliable and valid wage for the occupation. Therefore, we have decided to raise the methodological standards required for employer-provided surveys to improve their reliability and validity so the prevailing wage rate adequately reflects the appropriate prevailing wage necessary to ensure that U.S. workers are not adversely affected by the employment of H–2B workers.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA, 5 U.S.C. 553(b), and that are likely to have a significant economic impact on a substantial number of small entities. Under the APA, a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The Departments' interim final rule issued in 2013 was exempt from the notice and comment requirements of the APA because DOL and DHS made a good cause finding in the preamble of that rule, 78 FR at 24055, that a general notice of proposed rulemaking is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B). Therefore, the requirements of the RFA applicable to notices of proposed rulemaking, 5 U.S.C. 603, did not apply to that rule. Similarly, the requirements of the RFA that pertain to final rules, 5 U.S.C. 604, issued by an agency following the publication of a proposal on which notice and comment is required by the APA, 5 U.S.C. 553(b), are inapplicable to this final rule. Therefore, the Departments are not required to either certify that the rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Consistent with the policy of the RFA, the Departments encouraged the public to submit comments that suggested alternative rules that would accomplish the stated purpose of the 2013 IFR and minimize the impact on small entities. We received just a handful of comments responsive to this request, including one from the Office of the Chief Counsel for Advocacy of the Small Business Administration (SBA Advocacy). SBA Advocacy noted that the IFR would suddenly increase the wages that small businesses must pay to hire foreign workers under the H–2B program mid-season, and that employers have told SBA Advocacy that the IFR would have significant economic impacts on their businesses because they operate on narrow margins. In particular, SBA Advocacy obtained input from employer associations in landscaping, seafood processing, and lodging industries, and all those associations asserted that the higher labor costs resulting from the 2013 IFR negatively impacted their businesses. The Departments received similar comments from some small businesses indicating that the 2013 IFR unnecessarily encumbered those businesses with increased wage costs. We also recognize that wage increases may impose unique burdens on small businesses. However, as further explained in Section II.A.4 above, a prevailing wage that protects all U.S. workers from adverse effect is a legal requirement, and this requirement could not be met by setting a lower wage for small businesses. As previously discussed, use of the OES mean best meets the Departments' obligation to protect against adverse effect, whereas setting the prevailing wage at a threshold based on artificial skill levels likely distorts the labor market for U.S. workers, driving down wages. Wage increases from the 2013 IFR resulted for some H–2B employers, but most H–2B employers now have experience paying workers at the OES mean. Moreover, most H–2B employers now have experience paying workers at the OES mean, and DOL concludes it is likely that H–2B employers have incorporated the new wage requirements, which were established in the H–2B program two years ago. This final rule is estimated to increase wages on average only $0.16 per hour above the levels that have been required for two years under the 2013 IFR.

C. Paperwork Reduction Act

The final rule modifies the standards associated with the submission by employers of surveys as an alternative to establishing the prevailing wage based on the OES survey. As noted above, we are modifying the H–2B regulation to set new standards for permissible employer-provided surveys in order to improve their reliability and validity. The new standards require: (1) The survey to include the mean or median wage of all workers regardless of skill or experience; (2) the survey collection must be independently conducted and issued by a state and approved by a state official or, in limited circumstances, a bona fide third party; (3) that surveyors make a reasonable good-faith effort to survey all employers in the occupation and area surveyed or base the survey on a random sample; (4) the survey to include at least 3 employers and 30 employees in a sample; (5) that any wage survey submitted report all types of pay; (6) that surveys be conducted across industries that employ workers in the occupation; (7) that wages paid and reported in the survey be no more than 24 months old; and (8) that employers submit new Form ETA–9165 that permits DOL to better assess the validity and reliability of the survey.

New Form ETA–9165, which is attached as an Appendix to this final rule, asks the employer to respond to a number of questions about the underlying methodology used to develop the wage surveyed. Most of the questions require a yes/no response or the selection of a response from an array of two to four standard choices. There are a few questions that require a fill-in-the-blank response, such as the survey name, title of the job opportunity, the duties of the job, the area of intended employment, and the resulting wage found by the survey. The responses to all of the questions on the form are intended to provide that the third-party who conducts the survey for the H–2B employer complies with the new survey standards, that the employer is aware of the compliance standards and certifies that they have been met, and permits the agency to more easily assess compliance. Once the survey is designed and conducted with the new standards in mind, the third-party surveyor should have at its ready disposal the responses to the questions in the new Form ETA–9165, and should be able to transmit them to the employer

quickly so that the employer may complete the form.

Form ETA–9165 is an information collection subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* and subject to Office of Management and Budget (OMB) review and clearance under the PRA. In order to have the information collections take effect on the same dates as all other parts of the Final Rule, DOL submitted an ICR to OMB under the emergency processing procedures codified in regulations 5 CFR 1320.13. OMB approved the information collection for 6 months, during which time DOL will publish Notices in the **Federal Register** that invite public comment on the collection requirements, in anticipation of extending the ICR.

Overview of Information Collection

Type of Review: New.

Agency: Employment and Training Administration.

Title: Employer-Provided Survey Certification to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey.

OMB Number: 1205–NEW.

Agency Number(s): Form ETA–9165.

Annual Frequency: On occasion.

Affected Public: Individuals or Households, Private Sector—businesses or other for profits, Government, State, Local and Tribal Governments.

Total Respondents: 556.

Total Responses: 556.

Estimated Total Burden Hours: 75 minutes. DOL views the burden on respondents to complete the Form ETA–9165 as a two-step process. DOL concludes that third-party surveyors, including States, will take, on average, 50 minutes to compile the information necessary for the employer to complete Form ETA–9165. In turn, DOL concludes that employers will take, on average, 25 minutes to complete and sign Form ETA–9165 once the third-party surveyor supplies the necessary information.

Total Burden Calculation: 348.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

D. Unfunded Mandates Reform.

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more. It also does not result in increased expenditures by the private sector of $100 million or more, because participation in the H–2B program is entirely voluntary.

E. The Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. We will submit to Congress and the Comptroller General of the United States a report regarding the issuance of the final rule prior to its effective date, as required by 5 U.S.C. 801(a)(1).

F. Executive Order 13132—Federalism

The Departments have reviewed this final rule in accordance with E.O. 13132 regarding federalism and has determined that it does not have federalism implications. The rule does not have substantial direct effects on States, on the relationship between the States, or on the distribution of power and responsibilities among the various levels of Government as described by E.O. 13132. Therefore, the Departments have determined that this rule will not have a sufficient federalism implication to warrant the preparation of a summary impact statement.

G. Executive Order 13175—Indian Tribal Governments

This final rule was reviewed under E.O. 13175 and determined not to have tribal implications. The final rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. As a result, no tribal summary impact statement has been prepared.

H. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the Departments to assess the impact of this final rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. The Departments have assessed this final rule and determined that it will not have a negative effect on families.

I. Executive Order 12630—Government Actions and Interference With Constitutionally Protected Property Rights

This final rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

J. Executive Order 12988—Civil Justice

This final rule has been drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The Departments have developed the final rule to minimize litigation and provide a clear legal standard for affected conduct, and has reviewed the rule carefully to eliminate drafting errors and ambiguities.

K. Plain Language

The Departments have drafted this final rule in plain language.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

Department of Homeland Security

8 CFR Chapter I

Authority and Issuance

Accordingly, for the reasons stated in the joint preamble, the interim final rule amending 8 CFR part 214, which was published at 78 FR 24047 on April 24, 2013, is adopted as a final rule without change.

Department of Labor

Employment and Training Administration

20 CFR Chapter V

Authority and Issuance

Accordingly, for the reasons stated in the joint preamble, part 655 of title 20 of the Code of Federal Regulations is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 continues to read in part as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(6)(iii).

* * * * *

■ 2. Amend § 655.10 by adding paragraphs (b) and (f) to read as follows:

§ 655.10 Determination of prevailing wage for temporary labor certification purposes.

* * * * *

(b) *Determinations.* Prevailing wages shall be determined as follows:

(1) Except as provided in paragraph (i) of this section, if the job opportunity is covered by a collective bargaining agreement (CBA) that was negotiated at arms' length between the union and the employer, the wage rate set forth in the CBA is considered as not adversely affecting the wages of U.S. workers, that is, it is considered the ''prevailing wage'' for labor certification purposes.

(2) If the job opportunity is not covered by a CBA, the prevailing wage for labor certification purposes shall be the arithmetic mean of the wages of workers similarly employed in the area of intended employment using the wage component of the BLS Occupational Employment Statistics Survey (OES), unless the employer provides a survey acceptable to OFLC under paragraph (f) of this section.

* * * * *

(f) *Employer-provided survey.* (1) If the job opportunity is not covered by a CBA, or by a professional sports league's rules or regulations, the NPWC will consider a survey provided by the employer in making a Prevailing Wage Determination only if the employer submission demonstrates that the survey falls into one of the following categories:

(i) The survey was independently conducted and issued by a state, including any state agency, state college, or state university;

(ii) The survey is submitted for a geographic area where the OES does not collect data, or in a geographic area where the OES provides an arithmetic mean only at a national level for workers employed in the SOC;

(iii)(A) The job opportunity is not included within an occupational classification of the SOC system; or

(B) The job opportunity is within an occupational classification of the SOC system designated as an ''all other'' classification.

(2) The survey must provide the arithmetic mean of the wages of all workers similarly employed in the area of intended employment, except that if the survey provides a median but does not provide an arithmetic mean, the prevailing wage applicable to the employer's job opportunity shall be the median of the wages of workers similarly employed in the area of intended employment.

(3) Notwithstanding paragraph (f)(2) of this section, the geographic area surveyed may be expanded beyond the area of intended employment, but only as necessary to meet the requirements of paragraph (f)(4)(ii) of this section. Any geographic expansion beyond the area of intended employment must include only those geographic areas that are contiguous to the area of intended employment.

(4) In each case where the employer submits a survey under paragraph (f)(1) of this section, the employer must submit, concurrently with the ETA Form 9141, a completed Form ETA–9165 containing specific information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow a determination of the adequacy of the data provided and validity of the statistical methodology used in conducting the survey. In addition, the information provided by the employer must include the attestation that:

(i) The surveyor either made a reasonable, good faith attempt to contact all employers employing workers in the occupation and geographic area surveyed or conducted a randomized sampling of such employers;

(ii) The survey includes wage data from at least 30 workers and three employers;

(iii) If the survey is submitted under paragraph (f)(1)(ii) or (iii) of this section, the collection was administered by a bona fide third party. The following are not bona fide third parties under this rule: Any H–2B employer or any H–2B employer's agent, representative, or attorney;

(iv) The survey was conducted across industries that employ workers in the occupation; and

(v) The wage reported in the survey includes all types of pay, consistent with Form ETA–9165.

(5) The survey must be based upon recently collected data: The survey must be the most current edition of the survey and must be based on wages paid not more than 24 months before the date the survey is submitted for consideration.

* * * * *

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix

BILLING CODE 4510–FP–P–9111,–97–P

OMB Approval: 1205-NEW
Expiration Date: xx/xx/xxxx

Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey (20 CFR 655.10(f))

Form ETA-9165
U.S. Department of Labor

Please read and review the instructions carefully before completing this form and print legibly. A copy of the instructions can be found at http://www.foreignlaborcert.doleta.gov/. Those items marked with * are required. Items marked with § are required if the condition listed is met.

5. Requestor Point-of-Contact Information *(from Form ETA-9141, Section B)*

1. Contact's last (family) name *	2. First (given) name *	3. Middle name(s) *
4. Telephone number *	5. Extension	6. Fax Number
7. E-Mail Address		

6. Employer Information *(from Form ETA-9141, Section C)*

7. Legal business name *	
8. Trade name/Doing Business As (DBA), if applicable	
9. Telephone number *	4. Extension
10. Federal Employer Identification Number (FEIN fr IRS) *	6. NAICS code (must be at least 4-digits) *

11. Employer-Provided Survey Information

12. Survey name or title *	
2. A collective bargaining agreement is applicable to the job opportunity? *	❑ Yes ❑ No
3. A professional sports league's rules or regulations are applicable to the job opportunity? *	❑ Yes ❑ No

4. The survey falls within the following permissible category for submission *(select only one)* *

❑ 4a. The survey was independently conducted and issued by a state, including any state agency, state college, or state university.

❑ 4b. The survey is submitted for a geographic area where the OES does not collect data, or in a geographic area where the OES provides an arithmetic mean only at a national level for workers in the SOC.

❑ 4c. The job opportunity is not included within an occupational classification of the SOC system; or the job opportunity is within an occupational classification of the SOC system designated as an "all other" classification

5. If the survey was independently conducted by a state, including any state agency, state college or state university under question 4a, provide responses to questions 5a-5b. *§*

5a. Name of state agency, state college or state university.

_____

5b. Name of the state official approving the survey.

Contact's last (family) name _____ First (given) name _____

13. Employer-Provided Survey Information *(continued)*

6. If the survey is eligible under question 4b or 4c, provide responses to questions 6a-6c §
6a. The collection of data was collected by a third party permitted by ETA regulations at 20 CFR 655.10(f)(4)(iii) and no data for the survey was collected by any H-2B employer or any H-2B employer's agent, representative, or attorney. ❑ Yes ❑ No
6b. Name of third party surveyor.
6c. Name of the official representative of the third party surveyor who approved the survey. Contact's last (family) name First (given) name

7. The survey is based on wages paid 24 months or less before the date on which the survey was submitted to ETA. *	❑ Yes ❑ No
8. This is the most recent edition of the survey. (Answer "yes" if this is the only edition of the survey.) *	❑ Yes ❑ No

D. Relationship to job opportunity listed on the Form ETA-9141

1. Title of job(s) included in the survey *
14. Duties of the job(s) included in the survey (submit an attachment if more space is required): *

15. Identify the area of intended employment, as that term is defined in 20 CFR 655.5, covered by the survey. *
4. The survey was expanded to include workers beyond the area of intended employment * ❑ Yes ❑ No
4a. If yes to question 4, the geographic area surveyed was §
4b. If yes to question 4, the survey was expanded beyond the area of intended employment (check all that apply) § ❑ to meet the 30 worker minimum. ❑ to meet the 3 employer minimum. ❑ The area surveyed was expanded for another reason. Provide below:

E. Survey Methodology

1. It was determined that _____ employers employ workers in the occupation and geographic area surveyed. *	
16. The following sources were used to determine the number of employers employing workers in the occupatio and geographic area surveyed: *	
3. Did the surveyor attempt to contact all employers employing workers in the occupations in the geographic area surveyed or a sample of employers in the geographic area? *	❑ All Employers ❑ Sample
3a. If a sample, was the sample selected randomly? §	❑ Yes ❑ No
3b. If a sample, provide a brief summary of the procedures used to randomize the sample: §	
4. The surveyor attempted to solicit responses from _____ employers in conducting the survey. *	
5. For each responding employer, the survey includes the wages of all workers in the occupation regardless of skill level or experience, education, and length of employment. *	❑ Yes ❑ No
6. The survey includes data collected across industries that employ workers in the occupation. *	❑ Yes ❑ No
7. The survey reflects the mean wage for all workers it covers. *	❑ Yes ❑ No
7a. The mean wage is $ _____ . ___ per _____ (specify whether hourly, weekly, or monthly). §	
8. The survey reflects the median wage for all workers it covers. *	❑ Yes ❑ No

8a. The median wage is $ _____ . ____ per _____ (specify whether hourly, weekly, or monthly). §	
17. The hourly, weekly, or monthly wage reported from the survey is based on data from _____ employers (minimum of 3), and reflects wages from _____ workers (minimum of 30) within the occupation in the geographic area surveyed. *	
10. The hourly, weekly, or monthly wage rate reported by the survey includes all types of wages paid to workers, including base rate of pay, commissions, cost-of-living allowance, deadheading pay, guaranteed pay, hazard pay, incentive pay, longevity pay, piece rate, portal-to-portal rate, production bonus, and tips. *	❑ Yes ❑ No
11. The survey includes wages from workers in the occupation regardless of immigration status. *	❑ Yes ❑ No

F. Employer Declaration

I declare under penalty of perjury that I have read and reviewed this application and that to the best of my knowledge the information contained therein is true and accurate. *I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by a $250,000 fine or 5 years in the Federal penitentiary or both (18 U.S.C. 1001).*

1. Last (family) name *	2. First (given) name *	3. Middle name(s) *
18. Title *		
6. Signature *	6. Date Signed *	

G. OMB Paperwork Reduction Act *(1205-NEW)*

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's reply to these reporting requirements is required to obtain the benefits of temporary employment certification (Immigration and Nationality Act, Section 101). Public reporting burden for this collection of information is estimated to average 75 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Foreign Labor Certification ● U.S. Department of Labor ● Room C4312 ● 200 Constitution Ave., NW, ● Washington, DC 20210. **Do NOT send the completed application to this address.**

Signed: at Washington, DC this 22nd of April, 2015.

Thomas E. Perez,

Secretary of Labor.

Signed: at Washington, DC this 22nd of April, 2015.

Jeh Charles Johnson,

Secretary of Homeland Security.

[FR Doc. 2015–09692 Filed 4–28–15; 8:45 am]

BILLING CODE 4510–FP–C; 9111–97–C

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